

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION ST. NO. 922252 OF 2020

Mr. Nilesh Navlakha & Anrs. ...Petitioners

Versus

Ministry of Information and Broadcasting,
The Secretary/Joint Secretary (P&A)/
Joint Secretary (Broadcasting) & Anrs.

...Respondents

AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT
NO. 8:

I, Sivasubramanian Sundaram, son of Late Shri. C.S. Sivasubramanian, aged about 58 years being the Chief Financial Officer of the Respondent No. 8, on behalf of the Respondent No. 8, do hereby state on solemn affirmation as under:

1. I say that I am working as the Chief Financial Officer with the Respondent No. 8, and that I am duly

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authorized and empowered to file this Affidavit in Reply on behalf of the Respondent No. 8.

2. I say that I have perused the copy of the present Petition and have understood the same. I say that I am filing this Affidavit in Reply on the basis of the documents available with the office of Respondent No. 8.
3. I say that the present Affidavit in Reply is being filed by the answering Respondent pursuant to the order of this Hon'ble Court dated 03 September 2020. I say that this Affidavit in Reply is being filed for the purpose of opposing admission of and grant of any reliefs in the instant Petition along with the Supplementary Affidavit filed on behalf of the Petitioners.
4. I say that liberty of this Hon'ble Court is craved to file additional supplementary affidavit(s) dealing with the averments/contention (including para-wise reply) in the instant Petition or as raised during the course of arguments by the Petitioner and/or as and when

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directed by this Hon'ble Court in addition to this Affidavit in Reply.

5. I say that all the contentions raised by the Petitioners may kindly be treated to have been denied unless the same are specifically admitted in writing. No inference of whatsoever may be drawn against the answering Respondent for not denying a particular averment in the instant Petition and the Petitioners may be put to the strict proof thereof.

6. At the outset, I say that the instant Petition is liable to be dismissed at the very threshold inasmuch as the answering Respondent has reasonable apprehension that the same involves elements of private interest. I say that it is apprehended that the instant Petition has been filed with ulterior motive and with an ultimate aim to curtail the freedom of press enshrined under Article 19(1)(a) of the Constitution of India. That by seeking a relief of temporary postponement of news reporting including telecasting, publishing, republishing reports/articles and/or carrying out

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discussions/debates in relation to the unfortunate, sudden and mysterious demise of the Late Sushant Singh Rajput on 14 June 2020, the Petitioner under the garb of the instant Petition is not only seeking a gag order against all media houses from making any publications but is also attempting to deprive the public of information in relation to the suspicious demise of Late Sushant Singh Rajput. The instant Petition is nothing but an abuse of process of law and for such reasons and mala fide intentions alone, the instant Petition should be dismissed in entirety.

7. I say that the instant Petition is vindictive, frivolous, malicious, untenable in law and has been filed with *mala fide* intent to coerce, harass and intimidate the answering Respondent and other similarly placed media houses and in order to muzzle the answering Respondent and other media houses from carrying news reports and conducting investigative journalism to bring the truth before the public in relation to the unfortunate demise of Late Sushant Singh Rajput under mysterious circumstances.

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8. I say that that it is apprehended that the Petitioners are directly or indirectly connected with the film industry. In fact, it is necessary to bring to the notice of this Hon'ble Court that the instant Petition and the supplementary affidavit in the instant Petition has been filed by one Mr. Nilesh Navlakha who claims to be a reputed film maker/producer and in related to the film industry in Mumbai. In view of the same and considering the fact that various members of the film industry are being regularly probed by the investigating agency in relation to the death of Late Sushant Singh Rajput, the answering Respondent has reasonable apprehension that the instant Petition may have been filed not only to curtail the rights of the press but also with a *mala fide* intention to safeguard the vested interest of such people who apprehend disclosures of their names due to the ongoing investigation in relation to the death of Late Sushant Singh Rajput.
9. It is pertinent to mention that in order to bring forth the real cause of the sudden and mysterious death of the Late Sushant Singh Rajput, the answering Respondent

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and other media houses are engaged in legitimate investigative journalism and in this regard the answering Respondent has reason to believe that detailed investigations into the unfortunate demise of Late Sushant Singh Rajput may have the potential to bring forth the names of such persons who may be connected with the film industry. Therefore, I say that the instant Petition has been filed with the *mala fide* intention of throttling the efforts of investigative journalism of the answering Respondent and other media houses thereby refraining from bring out the truth and disseminating information to the public at large.

10. I say that that instant Petition has been filed under the garb of seeking temporary postponement of news reporting by way of telecasting, publishing, republishing reports/articles and/or carrying out discussions/debates in relation to the demise of Late Sushant Singh Rajput merely to deny and cause obstruction to the fundamental right of the answering Respondent to exercise its freedom of press enshrined under Article 19(1)(a) and with a whimsical agenda to

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harass and intimidate the media houses. The same is also evident from the fact that print media and social media networks have not been made party to the instant Petition despite the fact that information in relation to the unfortunate demise of Late Sushant Singh Rajput has been published on such platforms as well.

11. I say that the fight for justice for Late Sushant Singh Rajput cannot be squandered, halted or blocked by vested interests at this stage, especially when the legitimate investigative journalism conducted by the answering Respondent and other media houses have brought in various unexplored angles and exposed the inconsistencies pertaining to the death of Late Sushant Singh Rajput.

12. I say that the instant Petition is nothing more but a futile attempt to gag the media from reporting on the Sushant Singh Rajput death case. I say that it has been a long fight of more than forty-seven (47) days of investigative journalism by the media that has unearthed a pile of evidence in the case and put it before the people of India.

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The answering Respondent believes that fight for the truth in Sushant Singh Rajput's death case is an ongoing fight with a long road ahead, and one in which the media plays a key role to use its skill in investigative journalism to bring key testimonies, evidence, corroborations and inconsistencies into the public domain.

13. That given the alleged manhandling of crucial evidence right at the start of the case by the previous investigating agency and the questions raised vis-a-vis the initial investigation, the answering Respondent believes that it is the urgent duty of the media to contribute in the fight for justice in the Sushant Singh Rajput death case by contributing in uncovering the truth. That in addition to certain vested interest groups going to court in an attempt to gag the media from reporting the case of Late Sushant Singh Rajput death, there are parallel attempts being made to pull down hoardings that speak of justice for Late Sushant Singh Rajput across the world so as to give a platform of escape to the prime accused and to malign Late Sushant Singh Rajput's family that is fighting for justice for the actor.

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14. I say that India's seventy-four (74) year old great democracy has seen multiple instances of the media having played a pivotal role in gathering evidence that poured into a massive campaign for justice. The Jessica Lal murder case, Nitish Katara murder case and Rocky Yadav's case, among a plethora of others are prime examples of when the media came together with the people of India in its fight for the prevailing of justice. That given an all-out attempt to gag the coverage on the Sushant Singh Rajput death case, now, the answering Respondent believes that it is high time and the need of the hour to come together to ensure that India's biggest public interest campaign is not snuffed and silenced by a vested lobby.

A. FACTS BROUGHT IN LIGHT BY THE ANSWERING RESPONDENT IN RELATION TO THE DEATH OF LATE SUSHANT SINGH RAJPUT

15. The role of Indian media has evolved in the past few years and its function is no longer limited to the mechanical reporting of events and facts but also to question the

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conduct and propriety of public figures and the State machinery. I say that criticism and comments upon the lives and actions of eminent public personalities is the life-breath of a free democracy and the same cannot be suppressed as the people have a right to know and receive information about these matters. In this regard, I say that the answering Respondent has always been at the forefront of vigilant journalism and has gained a reputation over the years for its impeccable reporting standards and quality of information disseminated among the public.

16. I say that the answering Respondent has put forth a plethora of evidence of unimpeachable character in relation to the unfortunate demise of Late Sushant Singh Rajput, which point out the grave irregularities which had taken place in the investigation conducted. The reporting of the answering Respondent has brought into public domain material facts and documents which had hitherto not been brought to the notice of investigating authorities.

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17. I say that the answering Respondent while carrying out its fundamental right of investigative journalism was aimed at bringing correct facts and truth to the larger public and highlighting material facts which has been ignored while conducting the enquiry by the previous investigative agency in relation to the unfortunate demise of Late Sushant Singh Rajput. Some of such instances are brought to the notice of this Hon'ble Court, and are briefly illustrated below:

<p>June 2020</p>	<p>THE MUMBAI POLICE FORENSIC TEAM ARRIVED ON THE SCENE OF THE DEATH 24 HOURS LATER</p> <p>The Mumbai Police had the team of forensic experts reach Sushant Singh Rajput's Bandra residence only 24 hours later.</p>
<p>28.7.2020</p>	<p>THERE ARE VIDEOS FROM THE SCENE OF DEATH - INVESTIGATION WILL BE RUINED</p>

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	<p>On 28.7.2020, the answering Respondent showed how there is a video from 14.6.2020, on the day when Late Sushant Singh Rajput was found dead. In this video, those who are purportedly the Mumbai Police in the room where Late Sushant Singh Rajput's body is and can be heard saying "<i>kahi ye leak ho gaya toh humara investigation barbad ho jayega</i>".</p>
29.7.2 020	<p>REPUBLIC QUESTIONED SANDIP SSINGH</p> <p>The answering Respondent exposed the inconsistent narrative of the self-declared close friend of Late Sushant Singh Rajput, Sandip Ssingh with tough questions on 29.7.2020, but the Mumbai Police did not question him as per his own admission.</p>
29.7.2 020	<p>THE MUMBAI POLICE DID NOT REGISTER FIR</p>

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The answering Respondent put out information of how Late Sushant Singh Rajput's family had reached out to a top Mumbai Police officer on 25.2.2020 and sought their help for protection of Late Sushant Singh Rajput.

In course of the answering Respondent's investigative journalism, it later accessed and put out the WhatsApp chats sent by Late Sushant Singh Rajput's family to then DCP Bandra Paramjit Singh Dahiya on 25.2.2020 saying "*Sushant called up my wife to rescued*" and "*He is downhill again with reports of Rhea firing all Sushant's loyal team members and putting own stooges in place*". Despite the Mumbai Police being told about a potential threat to Late Sushant Singh Rajput's life there was no FIR filed either in February 2020, or post his demise on 14.6.2020.

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29.7.2 020	THE SUICIDE THEORY WAS PUT IN QUESTION WITH REVELATIONS ABOUT A 9:30AM MISSED CALL The answering Respondent's exclusive investigation on 29.7.2020 uncovered that on 14.6.2020, at 9:30 am there was a missed call from Late Sushant Singh Rajput's own mobile phone to a close family. This missed call allegedly took place on the day, when a narrative was built to say Late Sushant Singh Rajput committed suicide.
30.7.2 020	REVEALED A POSSIBLE FINANCIAL ANGLE The answering Respondent's was able to access Late Sushant Singh Rajput's bank statements showing how his bank balance went from over 4 Crore in November to under 2 Crore in February indicating a possible financial angle.

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30.7.2 020	<p>LATE SUSHANT SINGH RAJPUT'S TRAINER CLAIMED RHEA CHAKRABORTY WAS ADMINISTERING MEDICATION</p> <p>The answering Respondent's caught on sting camera Samee Ahmed who trained Late Sushant Singh Rajput say "<i>Rhea never used to allow me to get into that</i>" and indicated Rhea Chakraborty was potentially criminally administering him drugs without letting others intervene.</p>
31.7.2 020	<p>REPUBLIC QUESTIONED SIDHARTH PITHANI AND BROUGHT FORTH HIS INCONSISTENT NARRATIVE</p> <p>Siddarth Pithani was questioned on 31.7.2020. It was during this questioning that his inconsistent narrative came to light, first he said "<i>I wish I know what he was going through. I really wanted to know what was</i></p>

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	<p>that" and then claimed "I used to give two tablets". However, the Mumbai Police allowed him to leave the city.</p>
<p>31.7.2 020</p>	<p>THE FAMILY FRIEND TOLD THE ANSWERING RESPONDENT THAT SUSHANT SINGH RAJPUT WAS SCARED POST-DISHA SALIAN'S DEATH</p> <p>Family friend Smita Parikh on the answering Respondent's media channel at 9 pm on 31.7.2020, revealed how post manager Disha Salian's death Sushant Singh Rajput was scared. She said "<i>What happened on June 9, had upset Sushant quite a lot. Suddenly he got very scared and kept continuously telling Mitu di that 'they won't leave me. They will be after me.' I don't know who he was mentioning about. He was anxious, but not depressed.</i>" indicating depression theory circulated was in question.</p>

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31.7.2020	<p>FORMER BODYGUARD REVEALED SUSHANT SINGH RAJPUT'S STAFF WAS SYSTEMATICALLY CHANGED</p> <p>Sushant Singh Rajput's former bodyguard on camera, on the condition of anonymity, says Rhea Chakraborty changed the entire house staff and also Sushant Singh Rajput's accountant, except him.</p>
1.8.2020	<p>THE MUMBAI POLICE DID NOT EXPLAIN THE TWO AMBULANCE DISCREPANCY</p> <p>Sushant Singh Rajput died on 14.6.2020, and two ambulances were brought.</p> <p>The answering Respondent put out visuals of the same on 1.8.2020. The Mumbai Police is yet to clarify the two (2) ambulance discrepancy.</p>

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2.8.20 20	<p>THE INCONSISTENCY ON WHO REALLY BROUGHT THE BODY DOWN</p> <p>On 2.8.2020, the answering Respondent showed how there were three different versions of how the body was brought down.</p> <p>Sidharth Pithani said <i>"I took a knife, cut the cloth, and got him down."</i>, while ambulance driver, Akshay Bandgar claimed <i>"I brought the body down"</i> and his other and fellow ambulance driver, Laxman Bandgar says, <i>"Mumbai Police brought the body down."</i></p>
3.8.20 20	<p>THE INCONSISTENCY ABOUT THE BODY HANGING DIAGONALLY</p> <p>On 3.8.2020, the cook Neeraj Singh, on sting camera told the answering Respondent, <i>"He wasn't above the bed but on the side. Hewasn't</i></p>

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	<p><i>hanging straight. His body was tilted. The distance between the bed and the fan isn't that much" and yet within 24 hours said DCP Pranay Ashok, spokesperson Mumbai Police on 15.6.2020 declared "Sushant Singh Rajput has committed suicide, Mumbai Police is investigating. Police has not found any note yet".</i></p>
4.8.20 20	<p>THE POSSIBLE DISHA SALIAN DEATH CONNECTION</p> <p>The answering Respondent on 4.8.2020, put out key testimony of Sushant Singh Rajput's friend who had spoken to him on 9.6.2020 after Disha Salian died. He revealed that Sushant Singh Rajput told him, <i>"I'm planning after the last rites to bring everything before the media."</i></p>

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6.8.20 20	THE ALLEGED SILENCING OF SAMUEL MIRANDA On 6.8.2020, the answering Respondent exposed how Samuel Miranda's neighbour says " <i>They are saying that police has told them not to speak to anybody</i> " indicating the police let the key accused go free and then tried to ensure no inconsistencies are revealed by urging them to remain silent.
-	FORCIBLY QUARANTINED AN INVESTIGATING OFFICER The Mumbai Police effectively attempted to block a parallel investigation by forcibly quarantining IPS officer Vinay Tiwari who was sent from Patna to investigate the case. In fact, Bihar DGP Gupteshwar Pandey overtly said the Mumbai Cops did not cooperate with the

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	Patna Police "unsuccessfully tried to meet Mumbai DCP."
10.8.2 020	THE MUMBAI POLICE'S ALLEGED FAILURE TO SEAL TO THE SCENE OF DISHA SALIAN'S DEATH On 10.8.2020, the answering Respondent on sting camera showed how a neighbor recalling the events around Disha Salian's death says "The stains were on the ground or on the car. I went in the morning around 7-7:30. The stains were there. The place wasn't cordoned off." indicating the Mumbai police possibly allowed the scene of the death to be compromised.
14.8.2 020	CHOREOGRAPHER FRIEND SAID 5-6 PEOPLE WERE IN THE HOUSE ON 13.6.2020

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	<p>Choreographer and Sushant Singh Rajput's friend, Ganesh Hiwarkar told the answering Respondent on 14.8.2020 that he had spoken to Sandip Ssingh's aide and discovered, <i>"There were 5-6 people who were at Sushant's house on 13th June — somebody who is working with Sushant's friend told me."</i></p>
16.8.2 020	<p>THE POSSIBLE TAMPERING OF THE SCENE OF DEATH</p> <p>The answering Respondent on 16.8.2020, showcased how there are images indicating black bags may have been removed from the scene of death on the day of Sushant Singh Rajput's death by a man with a white cap and black shirt in the presence of the Mumbai Police.</p>

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16.8.2 020	THE PRESENCE OF THIRD PARTIES IN THE PREMISES OF SUSHANT SINGH RAJPUT'S APARTMENT COMPLEX
<p>The answering Respondent exposed, on 16.8.2020, how a lady in a blue shirt with white stripes, wearing black gloves rushes into the apartment premises and a man with a pink cap handed the lady with the blue shirt and white stripes a black bag, in the presence of the Mumbai Police.</p>	
<p>Following the Central Bureau of Investigation taking over the case of Sushant Singh Rajput's demise, the answering Respondent put out crucial investigative reports and potential leads as part of its reportage.</p>	
-	RHEA CHAKRABORTY WAS ALLOWED TO ENTER THE MORTUARY

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The answering Respondent showed how Surjeet Singh Rathore who was at the mortuary said "I went ahead and talked to the officers present there. I told them that Rhea Chakraborty has come and she wants to see him once. They said they will let me know. After about 10-15 minutes, I went along with Rhea Chakraborty".

Based on the above, the Maharashtra State Human Rights Commission on 7.9.2020 has sought details on Rhea Chakraborty allegedly being allowed to enter the mortuary.

THE CLOUD OVER THE ROLE OF SANDIP SSINGH WAS BROUGHT TO LIGHT

(a) Sandip Ssingh was seemingly giving thumbs up signs to the police at Cooper Hospital, and as per Surjeet Singh who

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	<p>was present at Cooper Hospital Sandip was telling 3-star cops present on the scene what to do.</p> <p>(b) There was a formal written, signed and stamped complaint filed in the Sushant Singh Rajput's demise case against Sandip Ssingh and the complaint was given to the Mumbai Police on 31.7.2020 addressed to DCP Abhishek Trimukhe.</p>
30.8.2 020	<p>REPUBLIC PUT OUT CHATS THAT INDICATED A POTENTIAL DRUG ANGLE</p> <p>The answering Respondent access WhatsApp chats of Rhea Chakraborty discussing narcotics, and even showed the name of Goa based businessman Gaurav Arya coming up in connection with a plausible drug nexus.</p>

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	<p>In view of the investigative journalism conducted by the answering Respondent along with other media houses, the Narcotics Control Bureau (NCB) has appreciated the efforts and cooperation of the media, and stated that they had been unearthing a lot of information in the case because of the media's cooperation. The statement of the NCB in this regard may be accessed at: https://www.youtube.com/watch?v=1hJpP_Onvwc&feature=youtu.be (from 04.05 - 04.15).</p>
	<p>THE MAN WHO CARRIED SUSHANT SINGH RAJPUT'S BODY IN COOPER INDICATE NEEDLE MARKS & BROKEN BONES THAT THE POST-MORTEM DID NOT RECORD</p> <p>The answering Respondent traced an eyewitness who carried Sushant Singh</p>

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	<p>Rajput's body in Cooper Hospital, who says he saw "marks of a needle under the sole of his feet" and on his neck, and claims Doctors at Cooper "were Constantly Saying That it Was a Case of Murder".</p>
-	<p>THE WHATSAPP MESSAGES THAT RAISE QUESTIONS ON THE SEQUENCE OF EVENTS ON 14.6.2020</p> <p>The answering Respondent accessed and aired WhatsApp messages to Sushant Singh Rajput's friend by Dipesh at 10:51 am saying "Hi sir. SSR asked me to get in touch with you regarding the (names ecommerce portal)". These messages cast a cloud over the narrative of the sequence of events on 14th June, that indicates.</p>
-	<p>CONVERSATIONS THAT INDICATE SUSHANT SINGH RAJPUT WAS LOOKING</p>

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TO PURSUE LARGE E-COMMERCE DEALS 4 DAYS BEFORE HIS DEATH

The answering Respondent accessed and put out WhatsApp chats that show how Sushant Singh Rajput's friend on 9.6.2020 at 4:42pm reaches out to him saying "*Bhai (names the ecommerce portal) is trying to reach you, whose number should I give them*" and within 8 minutes Sushant Singh Rajput responds saying "*Bhai Dipesh is with me*" indicating Sushant Singh Rajput was interested in future deals with e-commerce brands 4 days before his death.

18. I say that the answering Respondent is a media house of considerable repute in the media fraternity and therefore has the responsibility to provide comprehensive and objective information to the public. In this regard, the answering Respondent has telecasted, published and carried out discussions and debates in relation to the

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unfortunate demise of Late Sushant Singh Rajput and with the sole intention to unfurl the truth to the public at large.

19. I say that it was imperative for the answering Respondent to provide truthful account of events in relation to the demise of Late Sushant Singh Rajput inasmuch as people at large have a right to be aware and be informed about events which relate to public figures. In this regard, attention of this Hon'ble Court is drawn towards the case of ***Surya Prakash Khatri v. Madhu Trehan (2001 (92) DLT)*** wherein the Hon'ble High Court of Delhi emphasized on the above-discussed important function of the media and observed the following:

"It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set up there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and

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important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action.

The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the

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people certain desirable sentiments; and the third is to fearlessly express popular defects. It therefore turns out that the press should have the right to present anything which it thinks fit for publication."

B. INVESTIGATIVE JOURNALISM

20. As per the norms of journalistic conduct published by the Press Council of India (Edition 2010), the basic elements on investigative journalism are as follows:

- "(a) It has to be the work of the reporter, not of others he is reporting;*
- (b) The subject should be of public importance for the reader to know;*
- (c) An attempt is being made to hide the truth from the people."*

21. I say that although the norms of journalistic conduct published by the Press Council of India (Edition 2010) are not binding on the answering Respondent since the Press Council of India is in a recommendatory role and not in a binding role. However, the answering Respondent has kept with the essence of high standards

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of journalistic conduct while publishing information in relation to the unfortunate demise of Late Sushant Singh Rajput. The same is stated based on the following checks and facts:

- (a) The published information is based on facts investigated, detected and verified by the answering Respondent and not on hearsay or on derivative evidence collected by a third party.
- (b) Since the investigation in relation to the demise of Late Sushant Singh Rajput necessitates certain amount of secrecy, the answering Respondent has maintained a proper balance between openness and secrecy while placing information before the public.
- (c) None of the published information was based on half-baked incomplete, doubtful facts, not fully checked up and verified from authentic sources.
- (d) All facts have been checked and cross-checked before being published, and all published information is away from imaginary facts.

- (c) The answering Respondent has presented the findings of the investigation in an objective manner, without exaggerating or distorting, and has adopted strict standards of fairness and accuracy of facts.
 - (f) All facts had been properly checked up, both for and against the core issues, and had been distinctly and separately stated, free from any one-sided inferences or unfair comments.
 - (g) The answering Respondent published information guided by the paramount principle of criminal jurisprudence, that a person is innocent unless the offence alleged against him is proved beyond doubt by independent, reliable evidence.
 - (h) The answering Respondent published information guided on grounds of equity, ethics and good conscience.
22. I say that time is testimony of the fact that investigative journalism has unearthed matters of grave concern and

interest to the society at large. The Courts have time and again recognized the legitimacy of instances wherein investigative journalism has been pivotal to reveal issues which pertain to a larger cause and serve public interest.

23. At this stage, attention of this Hon'ble Court is also garnered towards such instances wherein the investigative journalism of the answering Respondent has aided the investigating authorities to a large extent in the interest of public. The answering Respondent's investigative journalism and the persistent style of its team in asking the right questions has led to the law and order machinery waking up and taking note of the evidence that its investigative journalism has brought into the public domain. Given the precedents in impeccable standards of journalism that have been set by the answering Respondent and its team in the Sunanda Pushkar case and Sheena Bora murder case, and the role played by them in breaking the Commonwealth Games scam, the 'Kargil for Profit' scam, the Devas-ISRO scam, the Aircel Maxis Deal and the Lalit

Gate scandal among others, it is in the interest of justice and the persistence of the truth that the answering Respondent along with its team should be allowed to continue to do their investigative journalism in order to aid the law and order machinery in the case, while keeping the public duly informed. Some instances from the Sunanda Pushkar case and the Sheena Bora murder case pertaining to investigative journalism conducting by the answering Respondent is stated below:

Revelations in the Sunanda Pushkar Case

- (a) The answering Respondent's efforts in investigative journalism were instrumental in bringing out numerous inconsistencies in testimonies of Mr. Shashi Tharoor and his assistant, Mr. Narayan, that were given to the Delhi Police in the Sunanda Pushkar case, by way of the tapes that the answering Respondent had put out as evidence.

- (b) The answering Respondent had also accessed and put out a Delhi Police document that enlisted the short-comings in the Sunanda Pushkar case. These shortcomings spanned from lack of CCTV footage, to delay in collection of evidence and collecting evidence wherein the data was inexplicably wiped out.
- (c) It was the answering Respondent's team that encouraged Dr. Sudhir Gupta, the doctor who performed the post mortem of Sunanda Pushkar and a critical member of this case, to bring out fresh revelations including confessing that he was under tremendous political pressure to say that the death was "natural". Dr. Sudhir Gupta was encouraged to speak up about the true findings of the post mortem in public interest on the answering Respondent's platform, so that the agencies could use it as fresh evidence and pursue the case. This stands as strong corroboration to the narrative that the answering Respondent was in the pursuit of arriving at a fruitful conclusion to

the case by becoming the platform of truth to aid the investigation.

Revelations in the Sheena Bora Murder Case

- (d) The fact that investigative journalism by the media has aided the investigating authorities in efficient conduct of their investigation is also evident from the fact that the Central Bureau of Investigation took into consideration the interview conducted by Mr. Arnab Goswami's (Editor-in-Chief of the answering Respondent) with one of the accused, as relevant material for conducting investigation in the Sheena Bora murder case.
24. I say that investigative journalism by the media is in accord with the principles of freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution of India and is in consonance with the basic and fundamental right and duty of the media to raise and discuss issues of public concern and interest and with a view to educate and inform the masses regarding

the current affairs and events. In this regard, attention of this Hon'ble Court is drawn towards the case of **Court On Its Own Motion v. State and Ors. (2009 CrL L.J. 677)** wherein the Hon'ble High Court of Delhi had observed the following:

"We are unable to appreciate the relevance of this case, except to the extent that "investigative journalism" has been adversely commented upon. But the real questions that this decision raises are: what is the media to do in a case where investigations go on interminably? Is the media expected to remain a silent spectator during the entire period? What if the investigations are shoddy or patently one-sided or are carried out with a "sweep it under the carpet" attitude "what about the rights of the victim of a vilification campaign" is he without recourse to any remedy in law? We propose to deal with these questions at the appropriate stage...

On the basis of the case law cited before us on the issue of media ethics and conduct, infractions

thereof which tend to or constitute interference with the administration of justice so as to constitute contempt, the following norms emerge:

...It follows from the above that before a cause is instituted in a Court of law, or is otherwise not imminent, the media has full play in the matter of legitimate "investigative journalism". This is in accord with our Constitutional principles of freedom of speech and expression and is in consonance with the right and duty of the media to raise issues of public concern and interest. This is also in harmony with a citizen's right to know particularly about events relating to the investigation in a case, or delay in investigation or soft-peddling on investigations pertaining to matters of public concern and importance."

25. I say that it is a media house of considerable repute in the media fraternity wherein a team of responsible journalists only after satisfying themselves of the peculiar circumstances in which the death of Late Sushant Singh Rajput had occurred and keeping in mind

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the public uproar that ensued in relation to inaction of the relevant authorities had decided to raise and pursue the matter and broadcast debates/live shows so as to bring forth the truthful account of events before the public at large.

26. However, on the contrary, the Petitioner by filing the instant Petition under the garb of public interest litigation is not only trying to obstruct the cause of investigative journalism but is also attempting to deprive the masses of its right to be kept informed about the current affairs and events. In view of the same, I say that the instant Petition is nothing but gross abuse of the process of law and has been filed with the *mala fide* intent of intimidating and discouraging the answering Respondent from reporting and carrying out investigative journalism vis-à-vis the unfortunate and suspicious demise of Late Sushant Singh Rajput.
27. I say that the progress made by the investigating authorities in relation to the unfortunate demise of Late Sushant Singh Rajput under mysterious circumstances was a direct result of investigative journalism conducted

by the answering Respondent and other media houses. The unfortunate demise of Late Sushant Singh Rajput is a matter of public importance as he was a public figure who had an established career in the film industry and the fact that the process of law has not been followed in the investigation raised concerns about whether there have been any attempts to hide the true circumstances leading to his death from the people. The efforts in investigative journalism made by the answering Respondent and other media houses lead to a suspicion that the death of Late Sushant Singh Rajput could have been influenced by extraneous factors. Further, the answering Respondent also attempted to question the shoddy investigation carried out by the then investigating agency wherein various crucial and material points were either not considered or entirely overlooked. Therefore, if the instant Petition is not dismissed by this Hon'ble Court, the same will have grave and wide ramifications, and will serve as a death-knell for the freedom of speech/press enshrined under Article 19(1)(a) of the Constitution of India and severely impair the journalistic freedoms that the answering

Respondent is constitutionally entitled to exercise. At this stage, the answering Respondent would like to draw attention towards the case of **Court On Its Own Motion v. State (146 (2008) DLT 429)** wherein the Hon'ble High Court of Delhi had highlighted the importance of investigative journalism and the right of the media to deploy tools of investigative journalism to bring the public face to face with true facts and harsh reality and fulfil their journalistic duty. The Hon'ble High Court of Delhi in the case of **Court On Its Own Motion v. State (146 (2008) DLT 429)** had observed the following:

"The duty of the press as the fourth pillar of democracy is immense. It has great power and with it comes increasing amounts of responsibility. No doubt the media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society."

28. I say that chances of misuse of public position or power in the matter of sudden demise of Late Sushant Singh

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Rajput cannot be absolutely ruled out inasmuch the ongoing investigation may unravel names of such people who may be connected with the film industry. Accordingly, the fact that the media should not publish any information unless such information is officially released would militate against the spirit of investigative journalism and even to an extent the purpose of journalism.

C. FREEDOM OF PRESS AND RIGHTS OF MEDIA

29. In the preamble to the Constitution of India, the liberty of thought and expression of citizens have been secured. The Constitution of India affirms the right to freedom of expression, which includes the right to voice one's opinion, the right to seek information and ideas, the right to receive information and the right to impart information. I say that the central government and the Court therefore are required to create conditions in which all the citizens of India can effectively and efficiently enjoy the aforesaid rights.

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30. I say that Article 19 of the Constitution of India includes the freedom of press, which includes the right to question, criticise, and engage in uninhibited debate. Therefore, in India, freedom of the press is implied from the freedom of speech and expression guaranteed by Article 19(1)(a). The freedom of the press is regarded as a "species of which freedom of expression is a genus".
31. I say that the freedom of press and rights of media and journalists are cherished rights guaranteed under the Constitution of India which have time and again been recognized by the Hon'ble Supreme Court in a catena of judgments. The said inalienable rights are inherent under the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India also form basis for investigative journalism. The freedom of speech occupies a preferred position in the hierarchy liberties giving succor and protection to all other liberties. The liberty to express opinions and ideas without hindrance plays significant role in the development of a society and is one of the most important fundamental liberties guaranteed against

State's suppression, regulation and/or censorship. I further say that liberty includes the right to acquire information and disseminate such information. Further, it includes the right to communicate information through available media network without any interference.

32. I say that the Hon'ble Supreme Court in ***Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors. v. Union of India (AIR 1986 SC 515)***, while discussing the purpose of constitutional provisions that safeguard the freedom of speech and expression, particularly when it comes to the media and press has held as follows:

"In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions

without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years governments in different parts of the world have used diverse methods to keep press under control. They have followed carrot-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of

pressure is one of using force against the press. Enactment of laws providing for pre censorship, seizures, interference with the transit of newspapers and demanding security deposit imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalization of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with freedom of press. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it is, therefore the primary duty of all the national Courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate."

33. In a democratic nation like India, commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched and must have a direct nexus with the expression. I say that in the said Petition, the Petitioners have miserably failed to demonstrate that there is any anticipated danger or any such attempt thereof that warranting the curtailment of freedom expression of the answering Respondent.
34. It is pertinent to mention that freedom of press has also been recognized in international covenants under Article 19 of Universal Declaration of Human Rights, 1948 and the Article 19 of International Convention on Civil and Political Rights, 1966. This right has also been recognized under Article 10 of the European Commission on Human Rights, 1950.
35. It is a cardinal principle of law that freedom of expression constitutes one of the essential foundations of a free



democratic society and guarantees not only dissemination of information and expression of ideas and beliefs that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.

36. The Hon'ble Supreme Court in the case of **Romesh Thapar v. The State of Madras (AIR 1950 SC 124)** has laid emphasis on the freedom of speech of the press, and stated that this freedom lies at the foundation of all democratic organizations, for without free political discussion, there can be no public education which is quintessential to the proper functioning of a democracy and held that,

"Turning now to the merits, there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. "Liberty of

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circulation is as essential to that freedom as the liberty of publication."

(...)

Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech and of the press is essential for the proper lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risk of abuse. But the framers of the Constitution."

37. I say that free and healthy press is indispensable to the functioning of a true democracy and in a democratic set up there has to be an active and intelligent participation of the people in the affairs of their community as well as the State. In the regard, the High Court of Delhi in ***Shashi Tharoor v. Arnab Goswami and Anr.*** (AIR

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2019 (NOC 134) 43) discussed the importance of the right of the press and held that,

"It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence. In fact, presumption of innocence and a fair trial are at the heart of criminal jurisprudence and in a way important facets of a democratic polity that is governed by rule of law."

38. Furthermore, attention is also drawn towards **Union of India (UOI) and Ors. v. Association for Democratic Reforms (AIR 2002 SC 2112)** wherein the Hon'ble Supreme Court had observed that one-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information, which includes freedom to hold opinions.

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39. I say that a proper balancing of the freedom of press and laws consistent with the democratic way of life ordained by the Constitution of India is necessary to preserve the freedom of press, and that freedom of speech and of the press lays at the foundation of all democratic organizations, and without free political discussion, no public education, so essential for the proper functioning of the process of democracy, is possible. I say that the Courts have a duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge or curb the exercise of that freedom. Further, that freedom of speech encapsulates the right to circulate one's independent view based on facts, controversial as it may be, and not to simply join in a chorus or resonate with the popular opinion or with the opinion of the State's machinery. Therefore, it may not be wrong to state that controversial facts that may be published in relation to the unfortunate demise of Late Sushant Singh Rajput may stand covered within the right to uninhibited freedom of speech conferred by Article 19(1)(a) of the Constitution of India.

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D. CHILLING EFFECT ON THE MEDIA

40. I say that it is quite a well settled law that any blanket ban or gag order in the form of injunction restraining the broadcast of true facts will impinge upon the people's right to know and will have a chilling effect on the right to free speech of the media. I say that grant of any relief(s) in the instant Petition against the media houses, including the answering Respondent, will have a detrimental and deterrent effect on the functioning of media and the free flow of information to the masses, and further shall have a stifling and chilling effect on the functioning of media. In this regard, attention of this Hon'ble Court is drawn towards the case of ***S. Khushboo v. Kanniammal and Ors. (AIR 2010 SC 3196)*** wherein the Hon'ble Supreme Court had clarified that if an individual vehemently disagrees with views expressed in the news media, then they have every opportunity to contest such views through the news media itself, or any other public platform. However, the law should not be used in a manner that has chilling effects on the

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"freedom of speech and expression". In this aspect, it was held,

"In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the Appellant's remarks. If the complainants vehemently disagreed with the Appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the "freedom of speech and expression."

41. That beside the afore-mentioned, the Hon'ble Supreme Court in ***Shreya Singhal v. Union of India (UOI)*** (AIR 2015 SC 1523), while discussing the chilling effect and overbreadth of provisions that curtail the freedom of speech and expression, has held that virtually any view expressed on any matter may cause annoyance, inconvenience or may be grossly offensive to some. This does not however justify curtailing the liberty to express

such opinions nevertheless, thereby causing a total chilling effect on free speech. In observations of the Hon'ble Supreme Court in the case of **Shreya Singhal v. Union of India (UOI) (AIR 2015 SC 1523)** are as follows:

"Each one of these things may be grossly offensive, annoying, inconvenient, insulting or injurious to large sections of particular communities and would fall within the net cast by Section 66A. In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total."

42. I say that news channels and media houses are a powerful tool for dissemination and receipt of information for any citizen. Therefore, unrestricted access to broadcast by news channels are crucial for satisfaction of a person's right to freedom of speech and

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expression guaranteed under the Constitution of India. I say that the purpose of the press is to advance public interest by publishing facts and opinions, and without the same a democratic electorate will be left incapable of making responsible judgments.

43. In view of the above, I say that grant of relief that would have the effect of a gag order on the answering Respondent as well as other similarly placed Respondents would not only impose a muzzle on the voice of the public, the media, but also have a long-term chilling effect inasmuch as such an order would carry precedential value and could potentially influence the decisions of Courts that may be faced with a similar challenge in the future, thereby further curtailing the freedom of press and media.

E. RIGHT OF THE ANSWERING RESPONDENT TO PROVIDE PUBLIC WITH ACCESS TO TRUE AND CORRECT FACTS

44. I say that the public have the right to information in relation to public figures. Therefore, it is not only in the

fitness of things but a necessary concomitant of democratic functioning, that the lives of public figures is subjected to scrutiny. Further, I say that the answering Respondent is a responsible media house and deemed it reasonable and essential to raise questions concerning the peculiar circumstances around the unfortunate demise of Late Sushant Singh Rajput under mysterious circumstances. I say that the answering Respondent, as a responsible media house, only highlighted the obvious questions that remained, and continue to remain, unanswered in relation to the mysterious circumstances around the demise of Late Sushant Singh Rajput.

45. I say that by way of telecasting, publishing and carrying out discussions and debates, the answering Respondent is providing information in relation to the unfortunate demise of Late Sushant Singh Rajput under mysterious circumstances. I say that such reporting by providing the real on-ground situation was done in public interest and in an exercise of undertaking the journalistic right to inform

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46. I say that the role of Indian media is to expose the malaise which plagues the Indian system in different spheres, thereby stalling the progress as expected in a country which adheres to the rule of law and the highest standards of criminal jurisprudence. Accordingly, such duty bestowed upon the media houses and their right to freedom of speech cannot be curtailed merely on the basis of bald allegations and vague aspersions of conducting media trial and creating false sensationalism as alleged by the Petitioner in its Petition. I say that the instant Petition has been filed with an oblique and ulterior motive and is a misguided attempt to muzzle media channels and the dissemination of true facts to the public. The instant Petition has been filed with the *mala fide* intent of intimidating and discouraging the answering Respondent from reporting and carry out investigative journalism vis-a-vis the unfortunate demise of Late Sushant Singh Rajput.

47. The answering Respondent not only denies the bald allegations of sensationalizing the death of Late Sushant Singh Rajput and adversely impacting the ongoing

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investigation as alleged by the Petitioner but also bring to the attention of this Hon'ble Court, the observations laid down in the case of **Sunil Baghel & Ors. v. State of Maharashtra and Ors, (Criminal Writ Petition No. 5434 of 2017)** wherein this Hon'ble Court while quashing a gag order against the media houses observed the following:

25 A perusal of the impugned order shows that the learned Judge was essentially swayed by the sensationalism of the said case. Sensationalism, by itself, cannot be the sole ground for banning the media from publishing, posting and/or reporting proceedings. Similarly, mere allegation that there is an apprehension that justice will not be done in a given case or that there are general allegations of surcharged atmosphere alone would not suffice. The Court has to see whether the apprehension/doubt is reasonable or not and the basis for such an apprehension. Learned counsel for the

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respondent-accused have not been able to show any basis for such apprehensions.

F. RIGHT OF PUBLIC TO ACCESS TRUE AND CORRECT FACTS

48. I say that public access to information ensures overall fairness in the functioning of the justice system. In this regard, it may not be wrong to state that the answering Respondent by publishing reports and carrying out discussions and debates has been providing public the access to facts in relation to the unfortunate demise of Late Sushant Singh Rajput.

49. I say that the right of public access also emanates from Section 327 of the Code of Criminal Procedure, 1973 (CrPC) which reaffirms the principle of 'open trial' and access of public towards such open trials or criminal trials. It is a settled principle that public access is essential if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice. I further say that discussions and debates are required to be conducted openly, fairly and fearlessly to

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ensure that machinery like the police and other public servants are not being misused by parties with *mala fide* intentions. In this context, the Hon'ble Supreme Court in ***Kehar Singh & Ors. v. Delhi (State Administration)*** had observed that:

"Public access to a criminal trial helps to ensure the fairness of the proceeding. The presence of public and press encourages all participants to perform their duties conscientiously and discourages misconduct and abuse of power by judges, prosecutors and other participants. Decisions based on partiality and bias are discouraged, thus protecting the integrity of the trial process. Public access helps to ensure that procedural rights are respected and that justice is applied equally.

Closely related to the fairness function is the role of public access in assuring accurate fact-finding through the improvement of witness testimony. This occurs in three ways. First, witnesses are discouraged from committing perjury by the presence of members of the public who may be

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aware of the truth. Second, witnesses like other participants, may be encouraged to perform more conscientiously by the presence of the public, thus improving the overall quality of testimony. Third, unknown witnesses may be inducted to come forward and testify if they learn of the proceedings through publicity. Public access to trials also plays a significant role in educating the public about the criminal justice process. Public awareness of the functioning of judicial proceedings is essential to informed citizen debate and decision making about issues with significant effects beyond the outcome of the particular proceeding. Public debate about controversial topics, such as, exclusionary evidentiary rules, is enhanced by public observation of the effect of such rules on actual trials. Attendance at criminal trials is a key means by which the public can learn about the activities of police, prosecutors, attorneys and other public servants, and thus make educated decisions about how to remedy abuses within the criminal justice system.

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Finally, public access to trials serves an important 'sunshine' function. Closed proceedings, especially when they are the only judicial proceedings in a particular case or when they determine the outcome of subsequent proceedings, may foster distrust of the judicial system. Open proceedings, enhance the appearance of justice and thus help to maintain public confidence in the judicial system."

50. In view of the above, it may not be wrong to state that mention that the public at large has the right to access information and be kept informed about a country's political, social, economic and cultural life events including events related to a public figure so as to enable intelligent participation from the society as a whole and such right of the public cannot/ought not be curtailed by any person by seeking a restraining order against publishing/media houses and other information sources.

G. APPLICABILITY OF THE CABLE TELEVISION NETWORK (REGULATION) ACT, 1995 (CABLE TV

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**ACT) AND THE CABLE TELEVISION NETWORK
RULES, 1994**

51. I say that it is well aware of the provisions of the Cable Television Network (Regulation) Act, 1995 (**Cable TV Act**) and Cable Television Network Rules, 1994 (**Cable TV Rules**) and the stipulations stated therein. I say that all its publications and media debates are in consonance with the provisions contained in the Cable TV Act and Cable TV Rules including but not limited to the prescribed programme code prescribed thereunder (**Programme Code**) and do not violate the same as falsely alleged by the Petitioner.
52. I say that apart from casting vague aspersions in the instant Petition regarding alleged violation of the Cable TV Act and Cable TV Rules by the Respondent, the Petitioner has miserably failed to demonstrate as to how violation of any provision or rule as contained in the Cable TV Act or Cable TV Rules is made out by the Petitioner. It is pertinent to mention that in the entire Petition, the Petitioner has not advanced any averment that indicates contravention of any specific provisions of

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the or Programme Code as contained in the Cable TV Act and Cable TV Rules but has instead resorted to simply alleging violation of the entire Cable TV Act and Cable TV Rules by the answering Respondent without any substantiation at all. I say that being one of the most reliable leading media houses in the country, the answering Respondent takes practices of ethical journalism very seriously. However, it is pertinent to mention that the answering Respondent is not a member of the News Broadcasters Association, New Delhi (NBA) i.e, Respondent No. 3 in the instant Petition. Accordingly, any code of ethics and broadcasting standards framed / issued by the NBA do not apply to the answering Respondent.

53. I further say that reporting in relation to the demise of Late Sushant Singh Rajput and bringing out valuable and material facts pertaining to the same before the public eye ought not be considered as violation of provision of Cable TV Act and Cable TV Rules inasmuch as the same has been done within the domain of legitimate investigative journalism and with the sole

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objective of bringing the truth out in the open before the public eye. The answering Respondent's pursuit of its legitimate journalistic duty and justice cannot be wrongfully painted and portrayed as a *mala fide* act and labelled as a violation of the relevant statutes and regulations in place for the time being, with all of which the answering Respondent has always cautiously and strictly complied.

H. NON-MAINTAINABILITY OF THE WRIT PETITION

54. At the outset, I say that the instant Petition is not maintainable and liable to be dismissed inasmuch as the Petitioners have no *locus standi* to seek the preventive relief of temporary postponement of news reporting by way of telecasting, publishing, republishing reports/articles and/or carrying out discussions/debates in relation to the demise of Late Sushant Singh Rajput. This is because the Petitioners are neither the accused persons nor aggrieved persons whose right to fair trial have been allegedly curtailed in any manner by any publications made by the answering Respondent. I say that the instant Petition is bereft of

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any such contention in this regard and the Petitioners have abhorrently failed to demonstrate in the instant Petition as to how they are either the accused person or aggrieved person whose right to fair trial has been allegedly curtailed in any manner by any publications made by the answering Respondent or other media houses.

55. I say that the Hon'ble Supreme Court in Para 43 of the ***Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)*** decision has made it crystal clear that preventive relief of postponement of publication may be availed by any accused or aggrieved person who apprehends that a particular publication has real and substantial risk of prejudicing the proper administration of justice or the fairness of his/her trial. However, in the instant case, it is pertinent to mention that none of the Petitioners are directly or indirectly related to the case of death of Late Sushant Singh Rajput and thus cannot be deemed to be either the accused or aggrieved persons in light of relation to the case of death of Late Sushant Singh Rajput. Attention of this Hon'ble

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Court is drawn towards Para 43 of the **Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)** judgment which has been reproduced below for ease of reference:

“(v) Right to approach the High Court/ Supreme Court

43. *In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/ her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/ broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned*

principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralizing device (balancing test) would not be an unreasonable restriction and on the contrary would fall within the proper constitutional framework.'

56. In view of the afore-mentioned extract, and considering the fact that the Petitioners are neither accused persons nor aggrieved persons and are altogether unrelated to the death of Late Sushant Singh Rajput, and whose right to fair trial has not been curtailed by any publication made by the answering Respondent or other media houses, it may not be wrong to state that the Petitioners have no *locus standi* to seek preventive relief of postponement of publication in terms of the judgment laid down in **Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)**. I say that the

question of any publication made in relation to the demise of Late Sushant Singh Rajput posing any real and/or substantial risk of prejudicing the proper administration of justice or the fairness of trial against the Petitioners does not arise at all. Accordingly, I say that the remedy to seek preventive relief of postponement of publication is not available to the Petitioners.

57. I say that the Petitioners, even after being aware of the fact that they are neither the accused persons nor aggrieved persons in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)** and have no *locus standi* to prefer the instant Petition, have nonetheless preferred the instant Petition which deserves to be dismissed at the very threshold. I say that the conduct of the Petitioners in filing the instant Petition and their misplaced sense of reliance on the judgment of the Hon'ble Supreme Court in the case of **Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)** makes it clear that the instant Petition is more in the nature of 'publicity

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interest litigation" or "proxy interest litigation" instead of public interest litigation. That insofar as the aspect of "locus standi" is concerned, attention of this Hon'ble Court is drawn towards the case of **R & M Trust v. Koramangla Residents Vigilance Group (2005 (3) SCC 91)**, wherein the apex court while discussing the aspect of "locus standi" in public interest litigations observed the following:

"It was also contended by the learned counsel for the Appellant that the appellant had no locus standi to file this petition as the present association is neither representative association nor a registered body. Therefore, the Court should not have entertained the PIL on behalf of such unregistered and unrecognized body. It is true locus in such Public Interest Litigation is very relevant factor & Court should always inquire into the locus of person before entertaining such petition. We have already observed above that Public Interest Litigation should be entertained in very rare cases."

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58. That besides having no *locus standi*, the instant Petition is also not maintainable and ought to be dismissed on account of the fact that the same has been filed on the premise of "disputed questions of fact". I say that it is well settled by numerous judicial precedents that when a petition involves "disputed questions of fact", the Courts must ordinarily be cautious and exercise restraint in entertaining such a petition under Article 226 of the Constitution of India. It is stated that although mere existence of "disputed questions of fact" does not in itself preclude a Court from entertaining a petition under Article 226 of the Constitution of India, however the Courts must exercise their discretion and show restraint in entertaining petitions under Article 226 of the Constitution of India if they require elaborate evidence to be adduced and the claim is based substantially upon consideration of evidence both oral and documentary of a complicated nature.

59. I say that since the Courts are bestowed with absolute discretion when it comes to entertaining writ petitions that involve "disputed questions of fact", such a plenary

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power has to be exercised by the Courts only in exceptional circumstances. As held by the Hon'ble Supreme Court in the case of ***Popatrao Vyankatrao Patil v. The State of Maharashtra (Civil Appeal No. 1600 of 2020)***, a Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that exceptional circumstances that warrant the exercise of this power exist. I say that in the present case, no such exceptional circumstances have been made out by the Petitioner thereby warranting interference by this Hon'ble Court under Article 226 of the Constitution of India despite the fact that the instant Petition is founded on "disputed questions of fact" pertaining to the demise of Late Sushant Singh Rajput. I say that such "disputed questions of fact" pertaining to the demise of the Late Sushant Singh Rajput can only be put to rest by a competent trial court having appropriate jurisdiction and cannot be tried by this Hon'ble Court under summary proceedings in terms of Article 226 of the Constitution of India. That in view of the same, the answering Respondent reiterates that the instant Petition is not only non-maintainable but is also an

abuse of process of law and therefore deserves to be dismissed.

60. That apart from the above, I say that the Petitioner has also relied on the order dated 09 October 2008 (**said Order**) issued in the case of **Surat Singh v. Union of India Ministry of Law and Justice (W.P.(C) No. 316/2008)** for the purpose of establishing maintainability of the instant Petition which is absolutely incorrect and misleading. I say that reliance on the said Order is not only misplaced but also misleading inasmuch the directions contained in the said Order (for restraining media from publishing materials which has the effect of hampering the investigation process) were passed due to the fact that certain publications made by certain print media groups were *prima facie* found to be in contempt/violation of the previous order of the Hon'ble Supreme Court dated 22 July 2008. I say that the directions issued under the said Order were passed in view of the *prima facie* contempt/violation of court order dated 22 July 2008 by the concerned parties and it was not the case wherein

the apex court in a public interest litigation was specifically dealing with the question and aspect of issuing restraining orders against media houses. I say that in the instant case, this Hon'ble Court is not dealing with the aspect of any contempt/violation of any previous order of any Court of record committed by the answering Respondent. I say that the answering Respondent has neither published any material which is in violation/contempt of any order of any court of record nor has the Petitioners alleged the same and therefore any reliance on the said Order for the purpose of establishing maintainability and parity is totally misplaced and misleading.

61. Furthermore, I say that the facts and circumstances which led to the issuance of the said Order are completely different from the facts and circumstances involved in the instant case. I say that in the case of ***Surat Singh v. Union of India Ministry of Law and Justice (W.P.(C) No. 316/2008*** the restraining orders on concerned media houses was issued as the case was related to a minor girl who was murdered and was

therefore not in a position to defend her honour. However, such is not the position in the instant case inasmuch as firstly the instant Petition is not filed by any accused person or aggrieved person in relation to the death of Late Sushant Singh Rajput case, and whose right to fair trial is not being curtailed in any manner by any publication made by the answering Respondent. Secondly, it is not case wherein the accused or the aggrieved person in relation to the death of Late Sushant Singh case are not in a position to defend themselves or their right to fair trial.

62. That lastly, I say that the reliance of the Petitioners on the Hon'ble Supreme Court's judgement in ***Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)*** is also misplaced for the reason that the observations and limitations laid down by the Court under Article 19(1)(a) of the Constitution of India were in relation to contempt law and in relation to publications that may amount to contempt of a Court of record. However, in the present case, it may not be wrong to state that the answering Respondent has not violated

any direction of any Court of record in so far as the same relates to the case of demise of Late Sushant Singh Rajput and which may tantamount to contempt of Court. The aforementioned is amply clear from Para 45 of the **Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)** which has been reproduced below for reference:

45 "(...) *What constitutes an offending publication would depend on the decision of the court on case to case basis. Hence, guidelines on reporting cannot be framed across the Board. (...)*

In the circumstances, we have expounded the constitutional limitations on free speech under Article 19(1)(a) in the context of Article 21 and under Article 141 read with Article 129/Article 215 which preserves the inherent jurisdiction of the Courts of Record in relation to contempt law. We do not wish to enumerate categories of publication amounting to contempt as the Court(s) has to examine the content and the context on case to case basis (...)

63. In view of the same, I say that the law laid down by the Hon'ble Supreme Court in **Sahara India Real Estate**

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Corporation Limited v. SEBI ((2012) 10 SCC 603) may not be entirely applicable in so far as the facts and circumstances of the present case is concerned. I say that in the instant case, there is no element of contempt involved at all inasmuch as the answering Respondent has neither published any material which is *sub-judice* before any Court of record nor is it flouting any directions given by any Court of record in so far as the same relate to exercising restraint in publishing materials pertaining to the demise of Late Sushant Singh Rajput. I say that it a settled proposition of law that every case has to be decided based on its own facts and circumstances inasmuch as even minor differences in facts may make a lot of difference in the precedential value of the decision.

64. That on perusal of the aforementioned paragraph in *Sahara India Real Estate Corporation Limited v. SEBI ((2012) 10 SCC 603)*, it may not be wrong to state that the Hon'ble Court has also clarified that each case has to be looked at in accordance with the facts and circumstances involved, while deciding whether a

particular publication is offending or not. Therefore, any general guidelines insofar as they pertain to regulation of the publications, cannot be formed across the board.

65. I say that a similar prayer has been sought in a petition filed before the Hon'ble Supreme Court of India namely ***Reepak Kansal v. Union of India W.P. (Civil) No. 762 of 2020***, including restraining the respondents in the said petition from broadcasting news/debates and interfering in the administration of justice. In this regard, it is pertinent to mention that the Hon'ble Supreme Court *vide* its order dated 07 August 2020 has issued notice to all the named respondents in the said petition.

66. In view of the afore-mentioned and considering the fact that the matter is already *sub-judice* before the Hon'ble Supreme Court, it is most humbly submitted that this Hon'ble Court for the time being may exercise restraint in issuing any orders in the instant Petition inasmuch as the same may overlap with the proceedings already pending before the Hon'ble Supreme Court.

In view of the aforementioned averments and supporting case laws relied in respect thereof, I say that instant Petition filed by the Petitioner is non-maintainable, devoid of merits and ought to be dismissed at the very threshold with exemplary costs.

Solemnly affirmed at Mumbai)
On this 09 day of September 2020) Affiant

Identified by Me

Before Me

Advocate for Respondent No. 8