IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2775 of 2025

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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Rit Lal Yadav @ Rit Lal Rai Son of Late Ramashish Rai Resident of village- Kothwan, PS- Khagaul, Dist- Patna

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Additional Chief Secretary, Home Dept. Govt. of Bihar, Patna
3. The Director General of Police, Bihar, Patna Bihar
4. Inspector General Prison, Bihar, Patna
5. The Inspector General of Police, Patna
6. The Senior Superintendent of Police, Patna
7. The Sub Divisional Police Officer, Danapur, Patna
8. Jail Superintendent, Central jail, Beur, Patna, Bihar
9. Jail Superintendent, Central Jail, Bhagalpur, Bihar

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Advocate Mr. Gopal Krishna, Advocate Mr. Ghanshyam Tiwary, Advocate Mr. Vikas Kumar Jha, Advocate Mr. Adarsh Singh, Advocate Mr. Saloj Kumar Rai, Advocate Mr. Khalil Faizan, Advocate Mr. Harsh Kumar, Advocate Mr. Rahul Deo Varman, Advocate Mr. Abhinav Kumar, Advocate Mrs. Prinyanka Singh, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Advocate General Mr. P. K. Verma, AAG-3 Mr. Raju Patel, AC to AG Mr. Suraj Sharma, AC to AAG-3 Ms. Vertikka K. Kashyap, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 31-10-2025

Heard Mr. Y. C. Verma, learned senior counsel appearing on behalf of the petitioner and Mr. P. K. Shahi,

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learned Advocate General for the State.

2. The petitioner has approached this Court seeking following relief(s):

> *"A. A writ in the nature of Mandamus or any other appropriate writ/s, order/s, direction/s, commanding the respondents for the following: -*
>
> *i. To provisionally release the petitioner for a period of four weeks to enable him to file his nomination for contesting the election to the Bihar Legislative Assembly from the Danapur segment on 16.10.2025 before the Returning Officer of the Danapur Constituency, i.e., the Sub-Divisional Magistrate, Danapur, and to canvass for his candidature and take all necessary steps to ensure proper campaigning and canvassing related arrangements until 06.11.2025, the date of polling, and to await the declaration of results on 14.11.2025 in three cases namely Khagaul P.S. Case No. 129 of 2025, Khagaul P.S. Case No. 171 of 2025 and Khagaul P.S. Case No. 206 of 2025.*
>
> *ii. In the alternative, to allow the petitioner custody parole in the three cases referred to above for filing nomination, campaigning, and canvassing.*
>
> *B. To any other relief/s to which the petitioner is found entitled to."*

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3. Advancing his argument, Mr. Y. C. Verma, learned senior counsel appearing on behalf of the petitioner, submits that the petitioner has approached this Court seeking custody parole/provisional bail since he is in prison in connection with two cases, i.e., Khagaul P.S. Case No. 171 of 2025 and Khagaul P.S. Case No. 129 of 2025. In first case, the bail petition of the petitioner has been pending before the learned trial court and in the second case, the bail petition of the petitioner has been pending before this Court. Mr. Verma further submits that the petitioner is a sitting Member of Legislative Assembly from Danapur Constituency and he has been nominated by a National Party as its candidate in the incoming Assembly Election. Earlier the petitioner had been a Member of Bihar Legislative Council for the period 2015 to 2020. Due to social and political activities of the petitioner, a number of persons are hostile towards him. Even present ruling party bears animosity against him and as a result of such political considerations, the petitioner has been falsely implicated in several criminal cases. In most of the cases, he has either been acquitted or enlarged on bail. He has not been convicted in any of the cases. Mr. Verma further submits that the petitioner has been made accused in altogether 39 cases, in which, he has been acquitted in 28 cases

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and is on bail in 09 cases. The petitioner has been allowed to file his nomination by the orders of the learned trial court and pursuant to the orders of the learned trial court, the petitioner has already filed his nomination. Now, the petitioner has approached this Court with simple prayer that he should be allowed to campaign since the election is going to be held in his Constituency on 06.11.2025. Mr. Verma further submits that in order to succeed in an election, seeking votes through campaigning/canvassing and reaching out to the electorates are essential, and it is an inseparable parts of the democratic process. Mr. Verma further submits that right to seek votes is treated as fundamental right. It is also necessary to ensure a level playing field for a just and fair election. Right to have a free and fair election is part of fundamental rights and is treated as basic structure of the Constitution. By extension, the ability of the qualified citizens to contest and participate meaningfully in such elections is, therefore, also an essential component of that basic structure.

4. Mr. Verma further submits that to exercise the right to seek votes is an essential feature of a parliamentary democracy and the Hon'ble Madras High Court in the case of ***Habeeb Mohamed Vs. The Home Secretary & Ors., W.P.(MD)***

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No. 9542 of 2014, has observed that right to vote is only statutory right but right to seek votes is a fundamental right. Therefore, any step which makes the right to seek votes meaningless by keeping a candidate in custody, violates the constitutional idea of representative democracy. Mr. Verma further submits that the cases instituted against the petitioner have been registered in a malicious and mala fide manner for preventing him from exercise his constitutional and statutory right to seek votes during the election and to prevent him to participate in the democratic process. Mr. Verma further submits that due to paucity of time, the petitioner was compelled to move before this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India since elections are going to be held on 06.11.2025 and the petitioner is in custody in two cases. Under such circumstances, he has no other alternative efficacious remedy. Mr. Verma further submits that the Hon'ble Supreme Court has recognized the right of such persons for temporary release or custody parole for election purposes. Mr. Verma refers to the case of ***Mohd. Tahir Hussain Vs. State of NCT of Delhi, 2025 SCC OnLine SC 135,*** wherein one of the Hon'ble Judges having difference of opinion allowed the under-trial prisoner to participate in the election process.

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Since there has been divergent view of the Hon'ble Judges, the matter was referred to a three Judges Bench of the Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) No(s). 856/2025, decided on 28.01.2025***, wherein the Hon'ble Supreme Court allowed the said petitioner to be released for certain days under certain conditions. Thus, the said judgment upheld the idea that time limited monitored release may be permissible to reconcile for competing public interests of fair trial and democratic participation and supports the case of the petitioner for his interim release for canvassing the election process.

5. Mr. Verma next refers to the decision in the case of ***Arvind Kejriwal Vs. Enforcement Directorate, (2024) 9 SCC 577,*** wherein the Hon'ble Supreme Court granted interim bail/temporary release to enable political leader to participate in election campaigns while safeguarding ongoing investigation and trial. Mr. Verma next refers to paragraph-23.3 of the decision of Division Bench of Delhi High Court in the case of ***Abdul Rashid Sheikh Vs. NIA (decided on 25.03.2025 CRL.A. 299/2025)*** in support of his contention, which reads as under:

> *"23.3 The settled position of law is that undertrials are eligible to contest Parliamentary Elections notwithstanding that*

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they may be charged with heinous offences. Having been duly elected, the appellant was administered oath of his office, despite the fact that he is an undertrial facing serious charges. As a Member of Parliament, the appellant owes to the people of his constituency the duty and responsibility to represent them in Parliament."

6. Mr. Verma further refers to the decision of Hon'ble Supreme Court in the case of ***Subhash Prasad Yadav Vs. The Union of India & Ors. (Decided on 08.11.2024 in Special Leave to Appeal (Crl.) No(s). 15145/2024),*** wherein the Hon'ble Supreme Court considering the fact that the regular bail application of the petitioner therein was pending before the High Court, did not express any opinion on the merits of the said application and in view the peculiar facts and circumstances of the case, the petitioner therein was directed to be released on interim bail.

7. Mr. Verma further submits that allowing the petitioner to contest the election and not allowing him to campaign/canvass for his support would render the whole election process to be farce. It is also to be taken note of that the petitioner is not any ordinary contender, but he has been

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nominated by a National Party and since he has been in custody in connection with two cases, unless his prayer for bail is decided in those cases, there is no chance of his getting released and for this reason, he has approached this Court under its extraordinary jurisdiction under Article 226 since it is an extraordinary situation. Mr. Verma reiterates that the elections provide the occasion for people to elect their representatives and thus, the voters have their fundamental right to elect the candidates of their choice, for this reason, the persons contesting elections have a commensurate right to interact with voters, present their manifesto, articulate their views and convince the voters to vote for them. This democratic exercise is possible only if the contesting candidate is not confined to the jail and so that the voters can know his position and promises. Mr. Verma further submits that in order to allow the petitioner to effectively participate in the election process, it is essential to allow the petitioner to interact with his voters and for this reason, the petitioner be released on provisional/interim bail/custody parole for the remaining period of election process to enable him to effectively participate in the election campaign.

8. Mr. P. K. Shahi, learned Advocate General appearing on behalf of State-respondents vehemently contends

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that there is no merit in the present petition and the present petition is not even maintainable. Learned AG submits that the petitioner has been in custody in connection with Khagaul P.S. Case No. 171 of 2025 and Khagaul P.S. Case No. 129 of 2025 and he has already approached the courts concerned for grant of regular bail but this fact was not initially mentioned in the original petition, though the same has been subsequently brought on record through supplementary affidavit. When the petitioner is already before this Court in one such case seeking regular bail, the course open to the petitioner was to approach the Court for provisional bail and should not have approached this Court in this manner by filing a criminal writ petition. Learned AG further submits that the petitioner has even filed quashing petition in FIR bearing Khagaul P.S. Case No. 171 of 2025 vide Criminal Misc. No. 52594 of 2025. Learned AG further submits that the powers and jurisdiction of the High Court under Article 226 have been clearly laid out in a number of decisions of the Hon'ble Supreme Court and when there is effective statutory remedy available, no writ petition under Article 226 would lie.

9. Learned AG further submits that in the case of ***The Assistant Commissioner of State Tax & Ors. Vs. M/s***

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Commercial Steel Limited (decided on 03.09.2021, Civil Appeal No. 5121 of 2021), the Hon'ble Supreme has held that when alternative remedy is available, the power under Article 226 could be exercised only under certain exceptional circumstances. Further, the learned AG refers to the decision in the case of ***Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors., (2021) 2 SCC 427***, wherein considering the application for grant of bail under Article 226, the Hon'ble Supreme Court held that the High Court must consider the settled factors which emerge from the precedents of this Court and summarized them in Paragraphs 64.1 to 64.6 as follows:

> *"**64.1.** The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.*
>
> ***64.2.** Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.*
>
> ***64.3.** The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.*
>
> ***64.4.** The antecedents of and circumstances which are peculiar to the accused.*
>
> ***64.5.** Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.*
>
> ***64.6.** The significant interests of the*

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public or the State and other similar considerations."

The learned AG further submits that the petitioner is accused for commission of serious offences and there is every likelihood that once released, he would threaten the witnesses and voters, considering his past history.

10. The Hon'ble Supreme Court further held that these above-noted principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused and further held that the High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the CrPC.

11. Learned AG has stressed on the fact that when the petitioner is already before this Court as well as before the learned trial court seeking regular bail, there was no occasion for the petitioner to approach this Court by filing the present writ petition and refers to the decision of Hon'ble Supreme Court in the case of ***The Assistant Commissioner of State Tax & Ors.*** (supra), wherein the Hon'ble Supreme Court enumerated the exceptional circumstances under which a writ petition could be entertained, although alternative remedy might be available,

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like in the case of breach of fundamental rights, a violation of the principles of natural justice, an excess of jurisdiction or the challenge to the vires of the statute or delegated legislation.

12. Learned AG further submits that the bail applications of the petitioner are already pending for quite some time but the same were not pressed by the petitioner and the petitioner has approached this Court invoking its extraordinary remedy as he fears he might not get bail in those cases due to seriousness of accusation. Learned AG next refers to the decision of Hon'ble Supreme Court in the case of ***Anukul Chandra Pradhan Advocate Supreme Court Vs. Union of India & Ors., (1997) 6 SCC 1,*** and quoting paragraph 8 submitted that a person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The Hon'ble Supreme Court has further held that, moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable. Learned AG, thus, submits that if the Hon'ble Supreme Court has held that a prisoner could not have right to vote, canvassing

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in election being a natural corollary, could not be given a different meaning.

13. Learned AG next refers to paragraph 6 of the decision of one of the Judges of the Hon'ble Supreme Court in the case of ***Mohd. Tahir Hussain (supra)*** wherein it has been held that right to campaign or canvass is neither a fundamental right nor a constitutional or a human right. It has further been held that the involvement of the petitioner in as many as eleven cases, dilutes and erodes his position as a law-abiding citizen and one of the Hon'ble Judges considering the facts and case law did not permit interim bail to the petitioner. Learned AG further submits that when the matter was referred to three Judges Bench in the case of ***Mohd. Tahir Hussain (supra),*** while allowing the petitioner to be released for a period of six days, the Hon'ble Supreme Court did not settle the issue whether any person has a right to campaign or canvass during election period, if he is an under-trial and is in custody and the Hon'ble Supreme Court further held that the said order releasing the petitioner therein was not to be treated as a precedent and directed the High Court to consider the application for regular bail on its own merits. Learned AG further submits that even the Hon'ble Judge who differed from the view of his companion

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Judge, and allowed the interim-release, in Paragraph-25, observed that he did not doubt the propositions of law eloquently recorded by his Brother Judge. Learned AG further submits that, moreover, the decision in the case of ***Mohd. Tahir Hussain (supra)*** was against the refusal of grant of regular bail and was not in matter arising out of refusal of release in a criminal writ.

14. So far as contention made on behalf of the petitioner about the case of ***Arvind Kejriwal (supra)*** is concerned, the facts and circumstances were entirely different and in that case it was taken into consideration that the appellant therein was the Chief Minister of Delhi and leader of one of the National Parties and was not having any criminal antecedent and it was also observed that he was not a threat to the society. But the same could not be said about the present petitioner who is in custody in the case registered under Section 111 of BNS for commission of offence of organized crime. If the petitioner is allowed to campaign/canvass under such circumstances, it would have a deleterious effect on the society in general. Learned AG further submits that the reliance placed by the learned senior counsel for the petitioner on the decisions cited hereinabove are of no help to the cause of the petitioner because

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the facts are quite different. Every case is to be assessed on the basis of its facts and circumstances and they cannot be blindly relied since proposition of law varies according to the facts and circumstances of each case. Moreover, the orders passed by the Hon'ble Supreme are mostly under Article 142 and not in normal circumstances. Learned AG further submits that this Court has to strike a balance between the statutory right of an individual to contest the election and the apprehension that his release would traumatize the persons of the locality because the petitioner is an accused in cases related to Khagaul or Danapur or its nearby locality. If the petitioner is allowed interim bail for canvassing in the said locality, the same would tantamount to endangering the lives of the citizens who have their statutory rights to vote in the said election and looking at the background of the petitioner, there is no gainsaying he would try to browbeat and threaten the voters to cast votes in his favour. Learned AG further submits that the petitioner had enough time to make an application for grant of bail/interim bail in Khagaul P.S. Case No. 171 of 2025 and Khagaul P.S. Case No. 206 of 2025, which he did not avail and now he has directly approached this Court under Article 226 of the Constitution on this eleventh hour only to frustrate the administration of justice.

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If the petitioner has already approached this Court as well as lower court seeking release on bail, he is not allowed to pursue parallel remedy by filing the present writ petition and the present writ petition is not maintainable. Learned AG further submits that the petitioner is having a long criminal history and he is not a normal politician who has been put behind bar to frustrate his aspiration. Furthermore, the first phase of the election is scheduled to be held on 06.11.2025 and election campaign would come to an end on 04.11.2025 and as such, the petitioner has sought the relief belatedly and seems to be an academic exercise.

15. Learned AG further submits that in the case of ***Mohd. Tahir Hussain (supra),*** there was divergent views of the Hon'ble Supreme Court and in one of the views, it has been held that in the event of interim bail being granted on the ground of canvassing in election, it will open a pandora's box and this will open up floodgate of litigation which ought not to be permitted so as to widen the scope of grant of interim bail, more particularly, when the regular bail application has been pending consideration. If right to participate, canvass and contest election is allowed to be treated as a ground for interim relief then the necessary sequel of the same would be that the accused

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person ought to be allowed to vote in the election as well, which would run counter to the provision of Section 62(5) of the Representation of People's Act, 1951. Lastly, the learned AG refers to the decision in the case of ***Vishwanath Pratap Singh Vs. Election Commission of India and Anr. (decided on 09.09.2022, Special Leave to Appeal (Civil) No. 13013 of 2022),*** wherein the Hon'ble Supreme Court quoting the decision in the case of ***Javed v. State of Haryana, (2003) 8 SCC 369,*** came to the finding that the right to contest an election is neither a fundamental right nor a common law right. It is merely a statutory right with statutory limitations.

Learned AG further submits that in the case of ***Digambar Rohidas Agawane Vs. Directorate of Enforcement and Anr., (decided on 24.10.2024 in Interim Application No. 4233 of 2024 in Bail Application No. 4054 of 2024),*** the Hon'ble Bombay High Court quoted the decision of Hon'ble Supreme Court in the case of ***Vishwanath Pratap Singh*** (supra) and held that contesting election is not a fundamental right and it is governed by statute. Thus, the learned AG submits that the present petition is devoid of merit and the same be dismissed.

16. By way of reply, Mr. Verma submits that this Court has got a very wide power under Article 226 of the

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Constitution and the said power remains unfettered. In this regard, Mr. Verma refers to the decision in the case of ***Whirpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors., (1998) 8 SCC 1,*** wherein the Hon'ble Supreme Court has held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of *habeas corpus, mandamus*, prohibition, *quo warranto* and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". The present case is not a normal case. The petitioner is a duly nominated candidate of a National Party and stakes are much higher. For this reason, the petitioner has approached this Court under Article 226 for grant of provisional bail/custody parole. The Court should further the cause of justice and not inhibit it. There is very limited time available to the petitioner and approaching this Court under criminal writ jurisdiction is only efficacious remedy available to the petitioner and filing of the present writ cannot be said to be wrong on this count. Mr. Verma further submits that considering the larger cause, the petitioner should be allowed to canvass and campaign in support

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of his candidature and the present petition is not only maintainable but should also be allowed.

17. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

18. The petitioner has approached this Court invoking the extraordinary power under Article 226 of the constitution of India seeking his release on provisional bail in order to canvass for his candidature and to take necessary steps to ensure proper campaigning. Alternative prayer has been made to allow the petitioner custody parole in the cases bearing Khagaul P.S. Case No. 129 of 2025 and Khagaul P.S. Case No. 171 of 2025. Admittedly, the petitioner has also approached this Court as well as the learned trial court seeking regular bail. In somewhat similar circumstances of the case of ***Mohd. Tahir Hussain (supra),*** the Division Bench of the Hon'ble Supreme Court took divergent views and in one of the views in paragraph-6, the Hon'ble Supreme Court held as under:

> ***"6.*** *It is important to note here that right to campaign or canvass is neither a fundamental right nor a constitutional or a human right. It is not even a right recognized under any statute. However, the petitioner is an Indian citizen and we are conscious that his rights as a citizen are to be protected.*

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> *Nonetheless, the involvement of the petitioner in as many as eleven cases including the present one, one pertaining to PMLA and nine in relation to Delhi riots of 2020, dilutes and erodes his position as a law-abiding citizen."*

19. Further, considering the issue before it that whether a purpose based interim bail can be granted to contest the election or for canvassing as the petitioner himself was one of the candidates, the Hon'ble Supreme Court held that in the event interim bail is made permissible on the ground of contesting elections, it will open a Pandora's box inasmuch as in this country election in some form takes place throughout the year and the accused persons in jail may take undue benefit of it and even if they are not serious in contesting elections, they would move interim bail application for the purposes of participating in the election knowing fully well they are likely to lose or are not serious contenders. This will open a flood gate of litigation which ought not to be permitted so as to widen the scope of grant of interim bail, more particularly when the regular bail application is pending consideration. In the aforesaid decision of ***Mohd. Tahir Hussain (supra),*** a three Judges Bench decision of the Hon'ble Supreme Court in the

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case of ***Anukul Chandra Pradhan Advocate Supreme Court (supra)*** has been quoted, which reads as under:

> *"**8.** There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police force and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. In*

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> *view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable."*

In the same vain, the Hon'ble Supreme Court held that canvassing in an election can be done in many ways such as through newspapers, social media, pamphlets, writing letters and it is not necessary that it should be in the physical form such as by holding meetings and by personal contact. Further, with regard to canvassing and campaigning, in Para-18, the Hon'ble Supreme Court held as under:

> ***"18.*** *This apart, the thrust of the argument is that an interim bail for canvassing is necessary for effectively contesting the election. It is well known that a person contesting election has to nurture his constituency for years together and canvassing for ten or fifteen days would not suffice the purpose. If he has earned a good reputation and his services are recognized by the people, the canvassing in the last days would not be very material. It is also well accepted that a large number of people*

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in the past have contested elections sitting behind the bars and they have won without being released for the purposes of canvassing. Therefore, there is no special circumstance in the case of the petitioner to grant him interim bail for that purpose. Most of the times, the campaigning is done by the party or its workers and if one person in the party or the leader or even the candidate is debarred from canvassing, it does not in any way affect the legal right."

20. It is also apposite to take note of the observation of the Hon'ble Supreme Court that the citizens of India deserve a clean India, which means clean politics as well and for the said purpose, it is necessary that people with tainted image, especially those who are in custody and had not been granted bail and those who are undertrial, even if out of jail, be restricted in some way or the other from participating in the election. The people of India should be given a choice to elect people with clean image and antecedents and considering all these facts, the Hon'ble Supreme Court held that interim bail was not permissible for the purposes of contesting election much less for campaigning. As divergent views came in the decision of the Division Bench, having regard to the differing views, the matter was referred to three Judges Bench but the

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issue could not be settled as the petitioner therein confined his prayer only to the extent of release on custody parole for a few days and in the peculiar facts and circumstances, the Hon'ble Supreme Court directed for release of the petitioner in police protection for six days upon deposit of expenses with further certain conditions. However, it was made clear that the said order could not be treated as a precedent.

Prior to that, in the case of ***Anukul Chandra Pradhan Advocate Supreme Court (supra),*** the Hon'ble Supreme Court held in Paras- 9, 10 and 11 as under:

> *"**9.** It may also be mentioned that the nature of right to vote has been held to be a statutory right and not a common law right because of which it depends on the nature of right conferred by the statute. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64] (SCR at p. 236), the Constitution Bench held:*
>
> *"The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it."*
>
> ***10.** In Jumuna Prasad Mukhariya v. Lachhi Ram [(1955) 1 SCR 608 : AIR 1954 SC 686] (SCR at p. 610), the Constitution*

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Bench reiterated:

"… The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute."

11. *In Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691] (SCC at p. 696), the law on the point was restated thus: (SCC paras 7, 8)*

"7. The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64] and Jagan Nath v. Jaswant Singh [1954 SCR 892 : AIR 1954 SC 210] . We proceed to state what we have gleaned from what has been said, so much as necessary for this case.

8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to

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be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

21. In the case of ***Anukul Chandra Pradhan Advocate Supreme Court (supra)***, reliance has been placed to the case of ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, (1952) 1 SCC 94,*** a Bench of six Judges, wherein it has been settled that the right to vote or stand as a candidate for election is a statutory right and must be subject to the limitations imposed by it. The relevant portion is quoted for refernece:

"29. *The points which emerge from this decision may be stated as follows:*

(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a Special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

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22. It is also apt to take note of what the Hon'ble Supreme Court held in paragraph-5 in the case of ***Vishwanath Pratap Singh (supra)*** which reads as under:

> ***5.*** *We find that the writ petition before the High Court was entirely misconceived and so is the present special leave petition. The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. In Javed v. State of Haryana, (2003) 8 SCC 369, this Court held that:—*
>
> *"22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or*

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holding, an elective statutory office.

23. Reiterating the law laid down in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218] and Jagan Nath v. Jaswant Singh [AIR 1954 SC 210 : 1954 SCR 892] this Court held in Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691] : (SCC p. 696, para 8)

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

Thus, there is no doubt that the right to canvass and campaign for getting elected in an election is not a fundamental right. It is only a statutory right on which restriction can be imposed by statutes.

23. Coming back to the facts of the present case, the petitioner is in custody in connection with two cases, i.e., Khagaul P.S. Case No. 129 of 2025 registered for the offences under Section 308(5), 111(2), 111(3), 339 and 3(5) of BNS and

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Khagaul P.S. Case No. 171 of 2025 registered for the offences under Sections 111(4), 111(6), 111(7) of BNS. The issue before this Court, in the given facts and cricumstnaces, is whether the petitioner has got a right to seek release on interim bail in order to canvass in support of his candidature and campaign for himself. The answer would be an emphatic ‘no’. When the right of a citizen to vote is restricted by statutory provisions, the right of a candidate to canvass for his candidature could not be put on any higher pedestal than the right of a common citizen. It goes without saying that this Court is a *sentinel on the qui vive*. This court is for protection of rights of any person against the State as well as any private person who tries to infringe any such rights. But, this power of the Court could not be stretched and read to mean that in each and every case, the Court should intervene. When there is no breach of any fundamental right or even any statutory rights, there is little scope for this Court to come to the help of the petitioner as the petitioner has been continuing in custody under procedure established by law.

24. The petitioner could not claim his case to be on similar footing to the cases of other persons referred by Mr. Verma who had been allowed interim bail because facts and circumstances have been different for all such persons in the

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authorities cited by learned senior counsel for the petitioner. In the present case, the petitioner has to stand on his own legs in support of his case. He could not get sustenance from the authorities where the facts are not similar. In the case of the petitioner, he is having antecedent of a number of cases and he has been suffering incarceration in two cases and he is already before this Court as well as before the learned trial court seeking regular bail. As submitted by the learned AG that the petitioner has ample time to seek bail in those cases or to make the same prayer before the court concerned for his release on interim bail. But the petitioner chose not to do so rather he approached this Court under Article 226 of the Constitution at the very last moment. But for release of a person under Article 226, the Hon'ble Supreme Court has explained the circumstances in the case of ***Arnab Manoranjan Goswami (supra),*** in Paragraphs-64.1 to 64.6, which have already been referred here-in-before.

Prior to that, in case of ***Whirpool Corporation*** (supra), the Hon'ble Supreme Court held in Para-14 as under:

> ***"14.*** *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an*

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effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(Emphasis supplied)

In the case of ***The Assistant Commissioner of State Tax & Ors. (supra),*** the Hon'ble Supreme Court has held in Paragraph 11 as under:

"11. *The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can*

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be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation."

25. On combined reading these decisions, it is clear that when alternative remedy is available, the power under Article 226 could be exercised under certain conditions/contingencies and none of these conditions are present in the case of the petitioner. Therefore, the petitioner has approached this Court under some misconceived notion. If the petitioner was already before this Court by filing of bail petition and also before the learned trial court seeking regular bail, an equally efficacious remedy was available to the petitioner but he did not pursue the said remedy.

26. Moreover, considering the antecedent and background of the petitioner and pressing demand of the time that the Indian polity should be purged of criminal elements, the prayer of the petitioner could not be acceded to. A balance should be struck between the rights of citizens who deserve a clean India and rights of undertrial prisoners in custody who

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want to participate in the election process. Obviously the balance will tilt in the favour of common citizens. The people of India should be given a choice to elect people with clean image and antecedents and hence, this Court is of the considered opinion that allowing a person with criminal antecedents of serious nature, would not be in larger interest of the society and would not further the cause of democratic institutions.

27. Therefore, having regard to the facts and circumstances in totality, I am not inclined to entertain the present writ petition and finding no merit, the present writ petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

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