IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 537/2021

Hanuman Anandrao Pendam,
Convict No. C/8026, Aged 33 years,
Occ. Nil, Confined at Central Prison, Nagpur
…. **PETITIONER(S)**

// VERSUS //

1] **State of Maharashtra**,
Through Secretary Home Department,
Mantralaya, Mumbai

2] **The Superintendent**,
Central Prison, Nagpur
…. **RESPONDENT(S)**

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Shri F.T. Mirza, learned Amicus Curiae to assist the Court with Ku. Shweta D. Wankhede, Advocate for the Petitioner
Shri M.K. Pathan, APP for the Respondent/State
Shri S.V. Sirpurkar, Advocate for the Respondent No. 2
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CORAM : V.M. DESHPANDE & AMIT BORKAR, JJ.
MARCH 16, 2022

ORAL JUDGMENT : (PER:- AMIT BORKAR, J.)

1] Heard.

2] **RULE**. Rule made returnable forthwith.

3] This is a suo motu contempt initiated in exercise of the power under Article 215 of the Constitution of India against a Contemnor Shri Anupkumar M. Kumre, Superintendent of Central Prison, Nagpur, mainly on the grounds that the Contemnor selectively chose to apply the binding precedent of this Court as regards the release of prisoners in Central Prison, Nagpur on emergency parole in wilful disobedience of the judgment of this Court in the case of **Milind Ashok Patil and Ors vs State of Maharashtra, in Criminal Writ Petition-ASDB-LD-VC No.65/2020** thereby refusing to release 35 prisoners on emergency parole though eligible and granting emergency parole to 6 prisoners though ineligible. Furthermore, in addition to the aforesaid grounds, notice was issued for making misleading statements made in the affidavit filed before this Court, though cautioned twice earlier by two Co-ordinate Benches of this Court.

4] The facts which necessitated initiation of *sou-motu* contempt proceedings, which are relevant for adjudication of the present proceedings briefly are as under:-

The State of Maharashtra on 08/05/2020 introduced Rule 19(1)(c) in the Maharashtra Prisons (Bombay Furlough and Parole) (Amendment) Rules, 2020 (for short "the said Rules") providing for the grant of emergency parole in view of the emergent Corona pandemic. One of the prisoners, namely Hanuman Anandrao Pendam, filed this Writ Petition seeking directions against the Contemnor for his release on emergency parole. In pursuance of the notice, the Contemnor filed a reply stating that the Petitioner did not surrender on his own and was required to be arrested.

5] On 03/08/2021, this Court issued notice to the Contemnor and others, pursuance of which the Contemnor filed affidavit-in-reply on 11/08/2021 justifying the rejection of the emergency parole leave of the Petitioner stating that he was absconding for 14 days after expiry of the period of furlough leave of 21 days. However, curiously, the Contemnor filed another affidavit dated 14/09/2021, taking a U-turn and stating that the Petitioner had reported on time on 16/02/2021. However, the Petitioner was directed to go to the Government Hospital for undergoing a Covid test.

6] On 27/09/2021, when this Court was about to dismiss the present Petition, the Advocate for Petitioner submitted that the Contemnor had released similar prisoners on parole though they were ineligible, but she was not having copies of such orders. She placed on record one such copy of the order. We, therefore, appointed Mr. F.T. Mirza as Amicus Curiae to assist the Court, as the Advocate appearing for Petitioner is a new entrant in the Bar. We also directed the Contemnor to file his personal affidavit giving all the details in respect of the orders passed after the policy of emergency Corona parole was introduced in a tabular form giving the details of prisoners/convicts who were released on emergency parole though surrendered late on their own as well as those brought in jail be using Police machinery and entire data in respect of the cases where he had released prisoners and rejected emergency parole under the Rules.

7] In pursuance of the said order, the Contemnor filed his affidavit dated 28/09/2021, wherein he stated that 90 prisoners were denied emergency parole as they were found ineligible as per the Rules. The Contemnor, along with the said affidavit, filed five lists which are as under:-

(i) List of 292 prisoners who were granted parole;

(ii) List of six prisoners who reported late;

(iii) List of six prisoners who surrendered on their own and were released on parole;

(iv) List of 63 prisoners released on parole; and

(v) List of 90 prisoners who were refused parole.

8] At this stage, it needs to be noted that Prisoner Suresh Bhoyer's name is mentioned in the two lists. One list shows that he reported late by seven days and another list shows that he reported on time.

9] On 30/09/2021 learned Amicus Curiae invited the attention of this Court to various judgments (unreported) of the Co-ordinate Bench of this Court and in particular the order passed in Criminal Writ Petition No. 1069/2020 wherein the Co-ordinate Bench of this Court noted the manner in which the Prison Authorities flout the orders of this Court. Therefore, we directed the Respondent No. 2 to give details of the following facts on oath.

"i. The names of prisoners who were released on emergency parole under Rules though they were not released earlier twice;

ii. The names of prisoners who were denied emergency parole under Rules on the ground that they are residents of other States;

iii. The names of prisoners who were granted emergency parole though residents of other states.

iv. The names of prisoners who were released on emergency parole and after the expiry of the period of 45 days, their parole leave was not automatically extended;

v. The names of prisoners who were released on emergency parole under Rules and after the expiry of 45 days period their parole leave was automatically extended;

vi. The number of applications that were pending for more than one month where the prisoners had sought their release on emergency parole;"

10] This Court, after comparing the anomalies in the affidavit, by the order dated 04/10/2021, directed the Contemnor to file an affidavit as to why different treatment is given to different prisoners

though they were similarly situated. For the sake of clarity, Paragraphs 1 and 3 of the order dated 04/10/2021 are reproduced herein under:-

> *"1. In pursuance of order dated 30/09/2021, the respondent No.2 has filed his affidavit dated 01/10/2021 giving list of prisoners, as directed in the said order. Annexure – I of the said affidavit give list of the prisoners, who were released under Rule 19(1)(c) of the Prison Rules, 1959, though they were not released earlier twice. It needs to be noted that in an affidavit dated 20/09/2021, the respondent No.2 by way of Annexure R-7 has given a list of the prisoners whose parole leave had been rejected under Rule 19(1)(c) of the Prison Rules, 1959 for the reason that they were not released earlier on two occasions. The comparison between the affidavits on the face of it shows that the respondent No.2 has released many prisoners but on the same ground has refused parole leave to others during the same period. It is therefore, necessary for the respondent No.2 to explain, prima facie, arbitrary exercise of power.*
>
> *2. .....*
>
> *3. The respondent No.2 shall file his detailed affidavit which shall include explanation / reasons as to why different treatment is given to different prisoners though all were similarly situated. The respondent No.2 shall explain in detail his explanation in relation to any other matter which he things relevant for adjudication of the present petition."*

11] In compliance with the order dated 04/10/2021, the Contemnor filed another affidavit on 06/10/2021 justifying his stand. In Paragraph 5 of the said affidavit, the Contemnor has stated on oath that he had carefully gone through the lists prepared by his office. Further, in Paragraph 1 of the said affidavit, he stated that he had carefully gone through the orders passed by this Court dated 30/09/2021 and 04/10/2021. He had also verified the position available on record in his office.

12] Not being satisfied by the explanation offered by the Contemnor, this Court, on 08/10/2021, issued a notice of *suo motu* contempt under Rule 9(1) of the Contempt of the Courts (Bombay High Court) Rules, 1994 to Shri Anupkumar M. Kumre. This Court, in the order dated 08/10/2021, gave the detailed reasons as to why *prima-facie* action for Contempt of Court needs to be taken against the Contemnor. The Co-ordinate Bench of this Court had warned the Contemnor from giving false information or misleading the Court while filing his affidavit. For the sake of convenience, Paragraphs 7 & 8 of the order dated 08/10/2021 read as under:-

"7. The first instance of the indicator of the arbitrariness of respondent no.2 was noted by this Court in Criminal Writ Petition No. 524/2020 in order dated 25th November 2020. (Coram: Sunil B. Shukre and Avinash G. Gharote JJ.) wherein this Court in Para no.11 has observed thus :

"The respondent no. 2 is requested to be cautious in performing of his duty and refrain from any attempt from giving false information to the Court or misleading the Court while filing his reply on affidavit in future."

8. The second instance is the order passed by this Court in Civil Application No. 188/2021 in Contempt Petition No.56/2021 wherein this Court by order dated 26th February,2021 (Croam: Z.A. Haq and Amit B Borkar, JJ.) by taking a suo moto cognisance of refusal on the part of respondent no.2 to release of a prisoner on bail in spite of specific order passed by the Court. The Court observed in para no.7 that the tenor of the respondent's explanation shows that he had utterly brushed aside the directions given by the Court to release the accused therein who has overlooked the issue of personal liberty of the accused. Then Court observed that respondent no.2 could not sit in appeal over the directions given by the competent Court. If such action is tolerated, there will not be any meaning to the principle of the rule of law which is the foundation of an institution functioning in a democratic set up. That time, Court noted in earlier order referred to hereinabove and observed that the second

respondent had repeated the mistake within a span of ten weeks. Though Court accepted the unconditional apology tendered by the respondent Court was of the view that the entry about the said order should be taken in the service book of respondent no.2, so that officer of such high rank does not commit such a blunder.

Accordingly, we are informed that an entry in the service book of the respondent no.2 was taken, and this Court was communicated with the said fact by way of an affidavit."

13] During the pendency of the present proceedings, it has been informed on behalf of the Contemnor that insofar as the entry which was made in the service record of the Contemnor, is directed to be removed as per the order passed by the Hon'ble Supreme Court on 17/01/2022 in Criminal Appeal No. 1688/2021.

14] Since this Court was *prima-facie* satisfied that the Contemnor did not follow the judgment of this Court in the case of Milind Ashok Patil in its letter and spirit, and the third instance on the part of the Contemnor to mislead the Court by making contradictory and misleading statements, this Court issued notice for initiation of contempt proceedings against the Contemnor to give him the opportunity of

hearing and to comply with the breach of principles of natural justice. To make the Contemnor aware of the charge he had to face in contempt proceedings, this Court, in the order dated 08/10/2021, while issuing notice, *prima-facie,* observed in Paragraphs 12, 13 & 14 as under:-

> *"12. On close scrutiny of the various affidavits filed by respondent no.2, we noticed some glaring contradictions, which gives this Court an impression that respondent no.2 has arbitrarily exercised his power based on extraneous consideration. Page 75 to the petition is Annexure-5, which lists prisoners released on emergency parole though they surrendered late on an earlier occasion when they were released on parole. Sr. No.4 in the said list is Shri Suresh Somaji Bhoyar, who is stated to be the prisoner who has surrendered late on 15.09.2020,i.e. late by seven days. However, on Page 78, which is the list annexed by respondent no.2 himself (Annexure 6), Sr. no.53 contains the name of Shri Suresh Bhoyar, and in the last column, it is stated that Shri S.S.Bhoyar has surrendered within time. This shows an attempt of the respondent no.2 to mislead this Court by stating incorrect facts on record on oath. Considering the previous conduct as noted by this Court on earlier two occasions, it is necessary that this Court take a strict view of the contradictory statement of facts, which has a material bearing on the issue involved.*

13. This Court in the case of Milind Ashok Patil & others vs. State of Maharashtra (CWP LDVC No.65/2020) in para no.15 while holding that though the prisoner surrendered may not be released two times earlier. Still, he is entitled to be released provided he has surrendered in time on earlier two or one occasions. In Para No.15, this Court specifically observed as under:-

"However, we make it clear that if the convicts are released on 2 occasions or on 1 occasion, either on parole or furlough previously and they are late in surrendering then they are not entitled for the benefit of
the emergency parole."

This pronouncement by a coordinate bench of this Court was made on 16th July 2020. Nevertheless, in spite of this binding precedent, respondent no.2, as reflected in Chart at Page 75, released at least five prisoners out of six after the pronouncement dated 15th July 2020, holding that the prisoners who surrendered late were not entitled to emergency parole, the respondent no.2 released them on parole.

14. Though in the same judgment, this Court held that the prisoners who were not released on earlier two occasions are still entitled to be released, the respondent, as is clear from Annexure R-7: Page 91) and Sr. Nos. 62, 68, 71 and 72, 79 to 84 and 88 that the prisoners who applied for emergency parole were refused to be released on emergency

parole by respondent no.2 even after the pronouncement of the judgment of coordinate bench of this Court, in the case of Milind Ashok Patil (supra).

This shows that the respondent no.2 has no respect for the orders passed by this Court which are having precedential value and operate as a binding precedent on all the competent court authorities and quasi judicial functionaries."

15] One more reason which weighed with this Court for issuing notice for initiating action for contempt was the letter dated 10/08/2021 received by this Court from a prisoner stating that the prisoners in Nagpur prison were not communicated of their right of being released on emergency parole. This Court converted the said letter treating it as Criminal Writ Petition No. 706/2021. Therefore, this Court, *prima-facie*, observed that few selected prisoners were picked up by the Jail Authorities to communicate them about their right of being released on emergency parole under Rule 19(1)(c) of the said Rules. However, the remaining prisoners were not made aware of their rights. The relevant part of the order is in Paragraph 18, which reads as under:-

"18. One more instance of the high handed behaviour on the part of the respondent no.2 which has been pointed out by the prisoner by writing a letter dated 10th August, 2021

wherein the prisoner has stated that the prisoners in Nagpur prison were not communicated of their right of being released on emergency parole though prisoners in Pune and Nashik prisons have been released on emergency parole leave under Rule 19(1) (c). Curiously, the document supplied by Shri Ghodeswar, learned APP indicates that the prisoner whose letter is treated as Criminal Writ Petition No. 706/2021 was informed of the notification dated 8th May 2020 on yesterday the 7th October, 2021 . This communication to the Petitioner came to be issued only after handwritten application of the prisoner treated as Criminal Writ Petition as by this Court and order dated 4th October, 2021 was passed by this Court. This shows that the few selected prisoners were picked up by the jail authorities to communicate them about their right of being released on emergency parole leave in view of the notification dated 8th May 20920 and remaining prisoners who were not made aware of their right, were kept away from applying for emergency parole even after the period of one and a half years. This reflects a sorry state of affairs in Nagpur Prison."

16] This Court, while directing initiation of the proceedings for contempt, directed the Commissioner of Police, Nagpur, to appoint an Officer, not below the rank of Deputy Commissioner of Police to investigate into the affairs of granting benefit of parole to ineligible prisoners and refusing to grant of parole to the eligible prisoners.

17] After the order dated 08/10/2021 issuing notice for contempt was passed, the Contemnor filed no reply within the time stipulated under the said Rules. Therefore, this Court, on 24/11/2021, granted time to the Contemnor till 20/12/2021 with the clear understanding that if the reply is not filed on or before the said date, the Contemnor will have to remain present before the Court in person.

18] In the meantime, in pursuance of the order dated 08/10/2021, the Deputy Commissioner of Police (Detection), Crime Branch, Nagpur City filed a report dated 02/12/2021 stating as under:-

> *"During the course of enquiry it is revealed that Shri. Anupkumar Madhukarrao Kumre, Superintendent of Prison, Nagpur central jail has rejected emergency parole application of 35 prisoners despite being eligible."*

19] It is also stated in the said report that six prisoners were granted emergency parole leave though they were not eligible. The relevant portion of the said report reads as under:-

> *"It is found that these 6 prisoners had been previously released on parole or furlough but did not return in time still their applications had been considered by Superintendent of Prison."*

20] On 20/12/2021, the Contemnor failed to file the reply as per the directions of this Court in the order dated 24/11/2021, and therefore this Court on 20/12/2021 made the following observations:-

> *"3. Prima facie, we feel that Shri Kumre is bent upon delaying the proceedings even though, this Court has initiated this contempt proceeding suo-motu being satisfied that Shri Kumre is prima facie involved in the commission of contempt. After having secured three weeks's time to file his response, there is no explanation forthcoming as to why such reply is not being filed before this Court. Shri Sirpurkar, indeed points out that Special Leave Petition (S.L.P.) has been filed before the Hon'ble Supreme Court against orders dated 26.02.2021 and 25.11.2021. He states that against the order dated 08.10.2021, the S.L.P. is under preparation.*
>
> *4. The aforesaid means that all these orders were passed much before 24.11.2021 and despite this, solemn request is made for grant of three week's time to file a reply in this proceeding. Based on all this, we do get an impression that Shri Kumre is bent upon delaying this proceedings without reasonable cause.*"

21] The Contemnor ultimately filed his reply to the notice of the contempt by affidavit dated 23/12/2021. At this stage, it needs to be noted that on 23/12/2021, the Contemnor filed two independent affidavits-in-reply bearing Notarial Register Nos. 3452 & 3456. He filed an affidavit-in-reply bearing Notarial Register No. 3452 with the pursis stating that certain changes cannot be made by correcting the reply that is already filed and therefore, the Contemnor is not pressing the reply having Notarial Register No. 3452. In the said affidavit-in-reply bearing Notarial Register No. 3456, the Contemnor has stated as under:-

> *"1. At the outset, the contemner tenders his unconditional and unqualified apology to this Hon'ble Court."*

22] Simultaneously in the said affidavit in Paragraph 4, the Contemnor has stated as under:-

> *"4. …..The contemner further prays for pardon at the hands of this Hon'ble Court,* ***if it is held*** *that any act on his part infringes any direction or any order of this Hon'ble Court or of any other Hon'ble Court."*

23] In the affidavit-in-reply, the Contemnor tried to justify the observations made by the Co-ordinate Bench of this Court in Criminal

Writ Petition No. 524/2020 and Contempt Petition No. 56/2021. In Paragraph 6 (C), concerning the Petitioner Suresh Somaji Bhoyar, the Contemnor has stated as under:-

> *"6-C. …..However, the prisoner did not report back with the report of the RTPCR and straightway went to his native place from where he was required to be brought back after arresting him."*

24] The Contemnor tried to justify the discrepancy of the name of the Petitioner blaming it on the Junior Officers. It is stated as under:-

> *"6-D. ….. The contemner submits that as the said list was checked by four responsible junior officers he bonafidely believed the same to be correct. The mentioning of name of Suresh Bhoyar at two places with different remarks is a typographical error committed by the Senior Clerk preparing the same. It could be seen from the said document that the same is signed by 5 officials including the contemner."*

25] The Contemnor tried to justify the selective application of the judgment of this Court in the case of Milind Ashok Patil as under:-

> "6-*E. The contemner further submits that in so far as non compliance of the judgment passed in Milind Ashok*

Patil and others V/S State of Maharashtra, the contemner most humbly submits that there were total 2358 prisoners in the Central Prison, Nagpur, including under trials & convicts, at the relevant time. The contemner being the Superintendent was required to take care of the health of the inmates & also to look after the Covid Care Centre which was started by the Jail Authorities. There was outbreak of Corona inside the jail & therefore health of the inmates was one of the paramount considerations. The contemner himself was inside the Prison during the said Pandemic Situation during the periods 01.05.2020 to 21.05.2020 and 11.06.2020 to 26.06.2020. There was tremendous work pressure & therefore due to inadvertence, oversight & pressure of work, the benefit of the said guidelines issued by this Hon'ble Court could not be extended to some inmates. However there was no intentional and wilful disobedience on the part of the contemner of the guidelines of this Hon'ble Court, which the Petitioner is duty bound to obey and implement."

26] It is stated that the Contemnor has committed a genuine mistake, and there is no intention to defy the order of this Court and therefore prayed for lenient view in the matter.

27] During the course of the hearing, by the order dated 08/03/2022, the Contemnor was granted the opportunity to meet the findings in the report dated 02/12/2021. The relevant portion of the order reads as under:-

> *"Therefore, in order to give opportunity to the Contemnor to meet the findings in the said report of Deputy Commissioner of Police, Crime Branch, Nagpur City, we grant one week time to him to consider the said report and to take appropriate steps in relation to the same."*

28] In compliance with the said direction, the Contemnor has filed an affidavit dated 08/03/2022 wherein, for the first time, it has been stated that he was not aware of the judgment of this Court in the case of Milind Ashok Patil. The relevant portion of the said affidavit reads as under:-

> *"At the outset the contemner most humbly & respectfully submits that he was not aware about the Judgment of Hon'ble Bombay High Court, Bombay Bench passed in the matter of Milind Patil & others – VS- State of Maharashtra, as the same was not circulated."*

29] During the course of the hearing, it was pointed out to the learned Advocate for the Contemnor as to whether he wants to press the defence of lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil. The learned Advocate for the Contemnor was allowed to go out of the Courtroom to explain the Contemnor the consequences of persistence with the defence of lack of knowledge of the judgment in the case of Milind Ashok Patil if found to be false. However, learned Advocate for the Contemnor, after discussing with the Contemnor at length, made a categorical statement during the hearing that the Contemnor wants to press the defence of lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil.

30] We have heard Shri F.T. Mirza, learned Amicus Curiae, Shri S.V. Sirpurkar, learned Advocate for the Contemnor and Shri M.K. Pathan, learned APP for the Respondent/State.

31] Learned Advocate for the Contemnor made the following submissions:-

(i) The Contemnor has submitted unconditional apology at the first opportunity, and the said apology being

bonafide and sincere, the proceedings for the contempt be dropped.

(ii) The Contemnor has committed a mistake, and there was no intention of wilful disobedience of the binding precedent of this Court and lenient view of the matter be taken.

(iii) The discrepancies in the affidavits are due to the work pressure, and as the Junior Officer maintains the record, he had no intention to mislead the Court".

32] Learned Advocate for the Contemnor placed reliance on the following judgments:-

(i) Judgment in the case of **T.C. Gupta vs. Bimal Kumar Dutta and others reported in (2014) 14 SCC 446**;

(ii) Judgment in the case of **Ram Kishan vs. Tarun Bajaj and others reported in (2014) 16 SCC 204**; and

(iii) Judgment in the case of **Dr. U.N. Bora, Ex. Chief Executive Officer and others vs. Assam Roller Flour Mills Association and another reported in (2022) 1 SCC 101**.

33] Learned Amicus Curiae invited our attention to the annexures of the Application filed by the Additional Chief Secretary (Jail & Prisons), who was directed to hold a departmental enquiry against the Contemnor for denying parole to the eligible prisoners and granting parole to the ineligible prisoners. He submitted that the Contemnor, while filing his reply to Charge No. 2, has stated as under:-

> *"**खुलासा / जवाब :** - सदर दोपारोप संदर्भात सादर करण्यात येते की, मिलींद अशोक पाटील विरुध्द महाराष्ट्र शासन (CWP LDVC N0. 65/2020) मधील मा.उच्च न्यायालयाचे निर्णया संदर्भाने शासना कडुन मार्गदर्शक सुचना प्राप्त होतील याची प्रतिक्षा करीत होतो. तसेच सदर निर्णयानुसार इतर कारागृहात काय कार्यवाही करण्यात येत आहे, याबाबत माहीती घेतली असता, महाराष्ट्रातील कोणत्याही कारागृह अधीक्षकांनी यापुर्वी एकादाही संचित / अभिवचन रजेवर न गेलेल्या बंद्यांना कोविड -19 आकस्मिक अभिवचन रजेवर मुक्त केले नसल्याने आम्ही देखील यापुर्वी एकादाही संचित / अभिवचन रजेवर न गेलेल्या बंद्यांना कोविड -19 आकस्मिक अभिवचन रजेवर मुक्त केले नाही ."*

34] The English translation of the said reply is to the effect that the Contemnor was waiting for the guidelines to be issued from the State Government in relation to the judgment of this Court in the case of Milind Ashok Patil. It is further stated that after having obtained the information from the other prisons of the State of Maharashtra, it was revealed that none of the Superintendents in other prisons had not

released any prisoner who had not been released earlier. Therefore, the Contemnor had not released any prisoner on emergency parole who had not been released earlier. He, therefore, submitted that not only the Contemnor had made a false statement in the affidavit dated 08/03/2022 that he did not know the judgment of this Court in the case of Milind Ashok Patil, but the fact of filing of reply, which shows knowledge of the judgment was not brought to the notice of this Court. Therefore, there is suppression of material fact. He submitted that it is only after incidental filing of the Application by the Additional Chief Secretary (Jail & Prisons) the real defence of the Contemnor in departmental proceedings has been part of the record of this proceedings. He submitted that there is intentional and wilful disobedience of binding precedent of this Court by not granting the emergency parole to the eligible prisoners and granting emergency parole to the ineligible prisoners. He submitted that the Contemnor in the earlier affidavits had not taken the stand of lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil. Therefore the defence of lack of knowledge of the judgment of this Court is an after-thought. He submitted that insofar as the defence of lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil is concerned;

the said defence is false and misleading in view of the annexures to the affidavits filed by the Contemnor himself. He invited our attention to Page Nos. 80 & 85 of the present proceeding to show that the orders of releasing the other prisoners referring to the judgment of this Court in the case of Milind Ashok Patil were received by the Contemnor on 24/08/2020 and 25/08/2020. He submitted that all orders of refusal to grant emergency parole leave to the eligible prisoners were passed after 25/08/2020. He submitted that the apology tendered by the Contemnor in his affidavit dated 23/12/2021 could not be termed as a bonafide and sincere apology. On the contrary, such an apology is a paper apology to avoid punishment in the present proceedings. He invited our attention to the contradictory stands taken by the Contemnor in his affidavits. In the affidavit bearing Notarial Register No. 3456 on Page No. 6, it had been stated by the Contemnor that the Petitioner was required to be arrested. However, the document on Page No. 72, signed by the Contemnor, shows that the Petitioner surrendered voluntarily. He invited our attention to Section 12 of the Prisons Act, 1894, to submit that it was the responsibility of the Contemnor to maintain the jail record, and he cannot shrink his responsibility on the Sub-ordinate Officer. He also invited our attention to the affidavit bearing Notarial Register No. 3452

and Paragraph 7, wherein the Contemnor, while justifying the discrepancy in the affidavit, stated that the Sub-ordinate Officials of the Contemnor signed the document. Therefore the Contemnor has signed on that document. He invited our attention to Page No. 79 of the present proceedings to show that the document is signed only by the Contemnor. He also invited our attention to Paragraph 6-E of the affidavit bearing Notarial Register No. 3456 to show that the prisoners mentioned in the Annexure R-7 of the affidavit dated 28/09/2021 at Serial Nos. 62, 68, 71, 72, 78 & 79 were denied emergency parole on the ground that they had not been released earlier, and all these orders have been passed after the judgment of this Court in the case of Milind Ashok Patil, which is dated 16/07/2020. He submitted that though explanation tendered in the affidavit bearing Notarial Register No. 3456 in Paragraph 6-E, the Contemnor was busy from 01/05/2020 to 21/05/2020 and thereafter from 11/06/2020 to 26/06/2020, the orders in relation to the prisoners mentioned above are passed after the period which the Contemnor has explained. He placed reliance on the following judgments:-

(i) Judgment in the case of **Vishram Singh Raghubanshi vs. State of Uttar Pradesh reported in (2011) 7 SCC 776**;

(ii) Judgment in the case of **L.D. Jaikwal vs. State of U.P. reported in (1984) 3 SCC 405**;

(iii) Judgment in the case of **Subrata Roy Sahara vs. Union of India and others reported in (2014) 8 SCC 470**;

(iv) Judgment in the case of **Legrand (India) Private Ltd. vs. Union of India and others reported in 2007 (6) Mh.L.J. 146**; and

(v) Judgment in the case of **T. N. Godavarman Thirumulpad vs Ashok Khot and Anr reported in (2006) 5 SCC 1**.

35] Shri M.K. Pathan, learned APP invited our attention to the judgment of the Hon'ble Supreme Court in the case of **Prashant Bhushan and another in Reference reported in (2021) 1 SCC 745**. He invited our attention to Paragraph 81 of the said judgment to submit that the Contemnor has been given enough opportunity of hearing and the contempt proceedings is a matter between the Contemnor and the Court.

36] In rejoinder, learned Advocate for the Contemnor distinguished all the judgments relied upon by the learned Amicus Curiae, stating that the said judgments do not apply to the facts of the present case as the contempt alleged in the said cases was criminal contempt which is not the case here. He again submitted that the Contemnor has accepted his mistake and has tendered an unconditional apology. Therefore, in the absence of wilful disobedience of the order, the proceedings against the Contemnor be dropped. He also invited our attention to the Paragraph 9 (c) in the case of **Legrand (India) Private Ltd. (supra)** to state that in the absence of the judgment of this Court in the case of Milind Ashok Patil being pointed out to the Contemnor, it cannot be held that the action of the Contemnor is in wilful disregard to the law laid down by this Court. He, therefore, prayed that the proceedings against the Contemnor be dropped.

37] The question with which we are concerned is not whether Contemnor's conduct is reprehensible and the consequences he should suffer. Instead, our concern is with the selective Application of binding precedent of this Court affecting the liberty of the prisoners and subversion of the rule of law.

38] The Hon'ble Supreme Court in the case of **Smt. Poonam Lata vs M.L. Wadhawan & Ors reported in (1987) 3 SCC 347** observed that release on parole is a wing of the reformative process and is expected to provide an opportunity to the prisoner to transform himself into a useful citizen.

39] The grant of parole is essentially an executive function. If the Court finds that the Government's action in rejecting the grant of parole to a prisoner has the effect of suffocating the Articles 14 & 21 of the Constitution of India, in that case, the Court must act to restore the rule of law and respect the residuary fundamental rights of the prisoners. The purpose of releasing a prisoner on parole or furlough is to reform him. When the prisoners are sent from jail to Society, their conduct is watched, and if they give a good account of themselves, the Rules provide that their sentence can be shortened. The purpose is also to give an opportunity to the prisoner to mix up with the members of his family and the Society so that he may feel that he is also a member of the Society. Keeping in view the object of said Rules, it will have to be accepted that refusal of parole should be based on definite reasons, and the right created under the Rules of 1959 has to be given effect to in its

letter and spirit. The absence of arbitrary power is the first essential ingredient of the rule of law upon which the whole Constitutional system is based. In a system governed by the rule of law, the discretion when conferred upon the Executive Authorities needs to be exercised within clear and defined limits.

40] Due to the unexpected Covid-19 situation, the Society is required to face an unprecedented situation requiring all three organs under the Constitution of India to adopt unprecedented measures. One of such measures was adopted by the Hon'ble Supreme Court of India while deciding Suo Motu Writ Petition (C) No. 01/2020 in which by the order dated 23/03/2020, a direction was issued to constitute High Power Committee in each State to determine the category of prisoners who should be released depending upon the nature of the offence, number of years to which he or she has been sentenced or the severity of the offence with which he or she is charged and is facing trial or any other relevant factor which the High Power Committee may consider. Accordingly, in compliance with the order dated 23/03/2020, the High Power Committee in the State of Maharashtra determined the category of prisoners who should be released on emergency parole or interim bail

vide its decisions dated 25/03/2020 and 11/05/2020 read with Corrigendum dated 18/05/2020.

41] The Judiciary and the Executive worked in tandem to decongest the prisons with a view to decrease the spread of the Covid-19 pandemic. The State of Maharashtra introduced Sub-Rule (c) in Rule 19(1) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959. In Clause (ii) of Sub-Rule (c) of Rule 19(1) of the said Rules, power was conferred on the Superintendent of Prisons to consider the release of the prisoner on emergency parole on the conditions stated in the said Sub Rule. However, the said power was held to be not applicable to certain offences stated in Proviso-II Sub-Rule (2). It needs to be noted that the introduction of emergency parole was under the emergent situation created by the Covid-19 pandemic. The Hon'ble Supreme Court took cognisance of the emergent situation and directed constitution of the High Power Committee in the States so that class of prisoners held to be entitled to the benefit of emergency parole can be released, resulting in decongestion of the prisons. The introduction of emergency parole was to meet the unprecedented situation with unprecedented measures. Therefore, the Authorities dealing with the

emergency parole were required to have been alive to the emergent situation of a pandemic.

42] In the light of the events stated above, the Division Bench of this Court in the case of **Milind Ashok Patil and Ors vs State of Maharashtra, in Criminal Writ Petition-ASDB-LD-VC No.65/2020** held that:-

> *"13. Thus, it is clear that the said amended provision is made for short period and is brought into existence for main object of reducing the overcrowding in the jail. However, while releasing the convicts on emergency parole in view of the declaration of epidemic under the Epidemic Diseases Act, 1897, it is also required to ensure that the said benefit cannot be extended to the prisoners likely to commit offence in case of temporary release i.e. habitual offenders or likelihood of absconding of such accused and in such case the emergency parole can be rejected. For ensuring this, it is provided that the convicts whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by the Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough). Therefore, the object while granting the emergency parole is to see that*

> *overcrowding in prison is reduced. However, at the same time, it is to ensure that the habitual offender or prisoners who are likely to abscond are deprived of emergency parole and therefore, the aforesaid amended rule was brought into effect. However, if such convicts are never released either on furlough or parole previously or not released on 2 occasions either on furlough or parole and therefore, there was no occasion for them to return back within time on 2 occasions and therefore, not entitled for said benefit of emergency parole, such literal interpretation may lead to absurdity and in that event, there is no occasion to invoke condition imposed under the said amended Parole Rule."*

43] The Hon'ble Supreme Court in the case of **Sunil Batra (II) vs Delhi Administration reported in (1980) 3 SCC 488** had devised a humanising strategy to guard the rights of prisoners by observing as under:-

> *"79. What we have stated and directed constitute the mandatory part of the judgment and shall be complied with by the State. But implicit in the discussion and conclusions are certain directives for which we do not fix any specific time limit except to indicate the urgency of their implementation. We may spell out four such quasi-mandates.*

1. The State shall take early steps to prepare in Hindi, a Prisoner's Handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellow-ship which Will ease tensions. A prisoners' wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

2. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity community contact and correctional strategies. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.

3. The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension- free management.

4. The prisoners' rights shall be protected by the Court by its writ jurisdiction plus contempt power.

> *To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the Court such as for example Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief."*

44] In the light of the events narrated above, we shall briefly consider the law of contempt in the facts relevant for adjudication of the present case.

45] Article 215 of the Constitution of India vests the High Court with all powers of Court of record, including the power of contempt of itself. The power to commit for contempt of even Sub-ordinate Courts has been expressly conferred under the Contempt of Courts Act. The Contempt of Courts Act does not define the word 'contempt'. However, the Hon'ble Supreme Court in the case of **Pratap Singh vs Gurbaksh Singh reported in AIR 1962 SC 1172** has adopted with approval the definition of contempt as given in Oswald Contempt of Courts III[rd] Edition, Page 6, which reads as under:-

> *"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the*

authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation."

46] In the case of **Sultan Ali vs. Noor Hussain reported in AIR 1949 Lahore 131 (F.B.)**, a Full Bench of the Lahore High Court has observed that the High Court occupies the status of highest and most superior Court and therefore it becomes incumbent upon all persons and Authorities within its jurisdiction to respect all its orders and submit to it at least in the first instance on the well known judicial principle fundamental to the Courts of justice that any disobedience will be on pain of committal for contempt.

47] The Hon'ble Supreme Court clearly explained the binding nature of judgments delivered by the High Court in the case of **East India Commercial Co. Ltd. Vs. Collector of Customs, Calcutta reported in AIR 1962 SC 1893**. The Hon'ble Supreme Court in Paragraph 29 observed as under:-

"29. ..... This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in

direct violation of the law so declared. Under Art,. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art.227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the sub-ordinate courts can equally do so, for there is no specific, provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or tribunals under its superintendence, and

> *that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."*

48] Whether the law as declared by the Hon'ble Supreme Court or by the High Court, the legal position regarding the Authorities and Tribunals sub-ordinate to the High Court shall be the same as has been held in the case of **East India Commercial Company Ltd (supra)**.

49] The Hon'ble Supreme Court thereafter reiterated the said principle in numerous cases. (**M. Padmanabha Setty vs. K.P. Papiah Setty, reported in AIR 1966 SC 1824, Kauslaya Devi Bogra vs. Land Acquisition Officer, reported in (1984) 2 SCC 324 and Bishnu Ram Borah vs. Parag Saikia reported in (1984) 2 SCC 488**)

50] One such reiteration by the Hon'ble Supreme Court is in the case of **Bharadakanta Mishra vs. Bhimsen Dixit reported in (1973) 1 SCC 446**, wherein the Hon'ble Supreme Court observed as under:-

"15. The conduct of the appellant in not following the previous, decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior Court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the Court in a particular case, similarly the deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law 'and engender harassing uncertainty and confusion in the administration of law."

51] In the case of ***State of Gujarat v. Secretary, Labour, Social Welfare & Tribal Development Dept.,*** **1982 Cri LJ 2255,** it has been held as under:-

> *"13. From these four decisions, the following propositions emerge:*
>
> *(1) It is Immaterial that in a previous litigation the particular Petitioner before the Court was or was not a party, but it law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State:*
>
> *(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding:*
>
> *(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."*

52] The next judgment in the series in line with the principle that the judgment of the High Court is binding on all Sub-ordinate Authorities and Courts is in the case of **Priya Gupta vs. Ministry of Health and Family Welfare reported in (2013) 11 SCC 404**, wherein the Hon'ble Apex Court in Paragraph 19 has observed as under:-

> *"19. It is true that Section 12 of the Act contemplates disobedience of the orders of the Court to be wilful and further that such violation has to be of a specific order or direction of the Court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the Court, is an argument which does not impress the Court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the Courts have to ensure that dignity of the Court, process of Court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the Court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the Courts have issued directions and even spelt out in their judgments, certain*

> *guidelines, which are to be operative till proper legislations are enacted. The directions of the Court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. Such distinction, if permitted, shall be opposed to the basic rule of law. "*

53] It is clear from the judicial pronouncements referred to above that the authorities and the tribunals functioning within the jurisdiction of this Court in respect of whom this Court has the power of superintendence under Article 227 are bound to follow the decisions of this Court unless, on an appeal, the operation of the judgment is suspended. It is not permissible for the Authorities and the Tribunals to ignore this Court's decisions or refuses to follow this Court's decisions on the pretext that an appeal is filed in the Supreme Court which is pending

or that steps are being taken to file an appeal. If any Authority or the Tribunal refuses to follow any decision of this Court on the above grounds, it would be clearly guilty of committing contempt of this Court and is liable to be proceeded against.

54] The judgments and orders passed by Supreme Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and Authority can ignore the law laid down by Hon'ble Supreme Court or parent High Court. Selective disobedience would create confusion in the administration of law and result in irretrievable loss of respect for the law. We have no hesitation in holding that the law declared by the higher Court in the State is binding on all Authorities and Tribunals under its superintendence. For efficient functioning and effective administration of justice, predictability and certainty are essential hallmarks of judicial jurisprudence. If the Courts command others to act according to the rule of law, it is not possible to countenance violation of the rule of law by those who are required to decide prisoners' rights.

55] It must be noted that the violations of binding precedent have been by the Contemnor. The apology tendered by him cannot be accepted by this Court inasmuch as a selective violation of the binding precedent of the Court is wilful, intentional and prejudicial affecting the rights of the poor prisoners. They have no financial capacity to challenge illegal exercise power by the Contemnor. Such selective compliance of binding precedent not only has the adverse effect on rights of poor prisoners and affects the faith of prisoners in the administration of justice but also lowers the dignity of the Court by conveying that binding precedents of this Court can be selectively circumvented so as to frustrate the very object of such law of precedent, thereby undermining the dignity of the Court. The acceptance of apology tendered by the Contemnor would amount to establishing a principle that such selective violations would not entail any consequences in law. This would encourage repetition of such selective compliance of similar nature to have no deterrent effect on authorities for committing such selective violations in future.

56] The conduct of the Contemnor in not following the previous decision of the High Court will undermine respect for law laid down by

the High Court and impair the Constitutional Authority of the High Court, similarly. We find no distinction between the deliberate conduct of selectively following the law laid down in the previous decision undermines the Constitutional Authority and respect of the High Court and disobedience of a specific order of the Court which undermines the Authority and dignity of the Court in a particular case. The latter conduct has repercussions on an individual case, and on a limited number of persons, the former conduct has a much wider and more disastrous impact. Selective application binding precedent will undermine the Constitutional Authority and respect of the High Court and is also likely to subvert the rule of law.

57] We are very clear, and we have no doubt in our minds that when a decision of this Court concludes a point, all Sub-ordinate Authorities within the territory of this State and subject to the supervisory jurisdiction of this Court are bound by it and must scrupulously follow the said decision in letter and spirit.

58] In the facts of the present case, we cannot countenance the submission on behalf of the Contemnor that he had committed a mistake

due to the pressure of work. In the ordinary course, the Court may not initiate proceedings under the Contempt of Courts Act or hold the Contemnor guilty of contempt if there is a solitary instance of disobedience of the binding precedent. In the present proceedings, it is an undisputed fact that as many as 35 prisoners who were eligible for being released on emergency parole were denied that right. Strictly speaking, the binding precedent in the case of Milind Ashok Patil has been disobeyed 35 times by the Contemnor in spite of clear knowledge. Moreover, it is also an undisputed fact that six prisoners were released on emergency parole even though they were not eligible as per the judgment of this Court in the case of Milind Ashok Patil. Therefore, we are of the considered view that at least in 41 cases, the Contemnor has intentionally disobeyed the binding precedent of this Court.

59] The defence raised by the Contemnor is that he was not aware of the judgment of this Court in the case of Milind Ashok Patil. We cannot accept the said submission due to the following reasons:-

(i) The Contemnor had filed his reply before the Disciplinary Authority. The relevant extract is already reproduced in Paragraph 33 of the judgment. In the said

reply, he has clearly stated that he was aware of the judgment of this Court in the case of Milind Ashok Patil. However, he was getting information from the other prisons in the State of Maharashtra as to whether the other prisons had been released, such as prisoners who had not been released earlier at any point in time. He stated that since such prisoners were not released in other prisons, he had not released the prisoners in the Nagpur prison. It needs to be noted that this reply was brought on record not by the Contemnor but by the Additional Chief Secretary (Jail & Prisons) in the Application filed seeking an extension of time to complete the disciplinary enquiry. Therefore, falsity in defence of lack of knowledge has seen the light of the day as only a matter of coincidence. Had Additional Chief Secretary (Jail & Prisons) not filed an Application for extension of time, truth in defence of the Contemnor would not have seen the light of the day. We are, therefore, of the considered view that the defence raised by the Contemnor about lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil is *ex-facie* false as a matter of fact.

(ii) The second reason for not accepting the defence of lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil are the documents that are part of the affidavit dated 28/09/2021 filed by the Contemnor himself. Page Nos. 80 and 85 of the present proceedings are the final writs issued by this Court in Criminal Writ Petition Nos. 315/2020 & 314/2020 contain the seal of the office of the Contemnor dated 24/08/2020 & 25/08/2020, which bear Inward Nos. 8289 & 8297 respectively. The said writs are addressed to the Contemnor by his designation. The judgment of this Court wherein this Court has referred and relied on the judgment in the case of Milind Ashok Patil is part of a final writ that the Contemnor has received. With the result, we have no manner of doubt that, as a matter of fact, at least on 24/08/2020 and thereafter on 25/08/2020, the Contemnor was aware of the judgment of this Court in the case of Milind Ashok Patil.

(iii) The third reason for not accepting the defence of lack of knowledge of the Contemnor of the judgment of this Court in the case of Milind Ashok Patil is filing of earlier affidavits where there is no whisper about lack of knowledge of the judgment of this Court in the case of Milind Ashok Patil. On the contrary, all the earlier affidavits proceed on the foundation that the Contemnor had knowledge of the judgment of this Court in the case of Milind Ashok Patil. However, due to pressure of work and due to inadvertence, compliance to the judgment of this Court was not made.

60] Learned Advocate for the Contemnor placed reliance on Clause (c) of Paragraph 9 of the judgment in the case of **Legrand (India) Private Ltd.** to submit that in the facts of the present case, the attention of the Contemnor was not invited to the legal position. Therefore, it cannot be said that there was wilful disobedience of the judgment of this Court. In view of reply before Disciplinary Authority admitting knowledge and in view of the findings recorded above that at least on 24/08/2020 and 25/08/2020, the Contemnor was as a matter of fact

made aware of the judgment of this Court referring to the judgment of this Court in the case of Milind Ashok Patil. We are therefore unable to accept the submission on behalf of the Contemnor that attention was not invited to the legal position. We, therefore, reject the said submission on behalf of the Contemnor.

61] Learned Advocate for the Contemnor submitted that there was no wilful disobedience on the part of the Contemnor while passing the orders rejecting parole of 35 prisoners and granting parole to 6 prisoners. We are unable to accept the said submission in view of the reply which is filed by the Contemnor before the Disciplinary Authority, which has been extracted in the earlier part of the judgment where the Contemnor, while defending Charge No. 2, has stated that he was waiting for the information from the other prisons in Maharashtra and since in the other prisons the similar prisoners were not released, he was unable to release 35 prisoners. Since we have already held that the Contemnor was made aware of the judgment of this Court in the case of Milind Ashok Patil on 24/08/2020 and 25/08/2020 and all 41 orders either granting or refusing to grant emergency parole are undisputedly after 25/08/2020, it is not possible to accept the submission on behalf of

the Contemnor that there was no wilful disobedience. Annexure-1 to the affidavit-in-reply dated 01/10/2021 shows that the Contemnor has passed an order on 24/08/2020 releasing the Petitioner in Criminal Writ Petition Nos. 314/2020 & 315/2020. This shows that the Contemnor was aware of the judgment of this Court in the case of Milind Ashok Patil. In our considered view, the reply before the Disciplinary Authority shows wilful disobedience on the part of the Contemnor not to follow the binding precedent of this Court at least 41 times. Had the case been in relation to a singular or small number of prisoners, which could have been regarded as a mistake, but having conscious knowledge about the judgment and passing 41 orders either refusing or granting emergency parole because other prisons have not followed the binding precedent, is nothing but wilful disobedience of the binding precedent of this Court. Therefore, we cannot accept the submission on behalf of the Contemnor that there was no wilful disobedience on the part of the Contemnor.

62] Learned Advocate for the Contemnor next submitted that the Contemnor had tendered unconditional apology at the first instance, and the said apology is bonafide and sincere. As noted above, this Court, by the order dated 08/10/2021, had issued notice initiating proceedings

under the provisions of the Contempt of Courts Act. The Contemnor thereafter failed to file the affidavit-in-reply within the time prescribed under the Rules. This Court, by the order dated 24/11/2021, directed the Contemnor to file a reply, and in default, he was directed to remain present before the Court on or before 20/12/2021. Even on 20/12/2021, the reply was not filed, and therefore the Co-ordinate Bench of this Court observed that the Contemnor is indulging in delaying the proceedings. Ultimately, the Contemnor filed his reply on 23/12/2021. On 23/12/2021, the Contemnor filed two replies. One bears Notarial Register No. 3452, and another bears Notarial Register No. 3456. While filing a reply in relation to the Notarial Register No. 3452, the Contemnor filed a pursis stating that there are typographical mistakes in the earlier affidavit. Therefore, he may be permitted to withdraw the earlier affidavit. Undisputedly, there is no Application seeking permission to withdraw the said affidavit. In the affidavit bearing Notarial Register No. 3452 dated 23/12/2021, the Contemnor has stated as under:-

> *"1. ….. The contemner unconditionally tenders his apology on conclusion arrived by this Hon'ble Court that the contemner has committed any contempt."*

63] In our opinion, such apology in the facts of the present case cannot be termed as bonafide and sincere, particularly in view of the averments made thereafter by the Contemnor. It is true that in the affidavit bearing Notarial Register No. 3456 in Paragraph 1, the Contemnor has stated as under:-

> *"1. At the outset, the contemner tenders his unconditional and unqualified apology to this Hon'ble Court."*

64] The said apology in the facts of a particular case can not be termed as an unconditional apology when read along with the averment made in Paragraph 4, which takes away the effect of unconditional apology. The averment in Paragraph 4 reads as under:-

> *"4. …..The contemner further prays for pardon at the hands of this Hon'ble Court,* ***if it is held*** *that any act on his part infringes any direction or any order of this Hon'ble Court or of any other Hon'ble Court."*

65] Now, it is necessary to examine whether the apology tendered by the Contemnor is bonafide in the light of the attendant circumstances and whether it will be in the interests of justice to accept

the same. Tendering an apology is not an iron-cast rule of dropping contempt proceedings. It is a well-settled principle of law that for being accepted, an apology should be tendered at the initial stage of the contempt proceedings provided that the contemptuous act has not made a scar on the dignity or authority of the Court and has not interfered with the administration of justice. The expression 'bonafide and sincere apology' in the context of contempt proceedings needs to be examined in the facts and circumstances of each case. The attendant circumstances, the conduct of the Contemnor, and regret on the part of Contemnor are certain relevant considerations which would weigh with the Court while deciding the issue of accepting the apology. Where a person had persistently disregarded the Authority of the Court and has continued with his illegal act in violation of the binding precedent of this Court, in the facts of the case, it will be difficult for this Court to accept even unconditional apology even if made in the inception of the proceedings.

66] This Court while considering acceptance of an apology in the light of contemptuous conduct, need to examine the extent to which the binding precedent of this Court had been selectively applied. The defiant acts on the part of the Contemnor affected the residual liberty of

41 prisoners. In our opinion, the apology tendered by the Contemnor has been made only to avoid the punishment.

67] This Court, while considering acceptance of an apology in the light of the contemptuous conduct, need to examine the extent to which the binding precedent of the Court has been selectively applied, irresponsible acts on the part of the Contemnor and the degree of interference in the administration of justice, affecting the liberty of a person. If tendered at the outset, an apology has to be bonafide and sincere; otherwise, it will allow a person to lower the dignity of the Court with impunity. Sanctity of the rule of law, which has been held to be the basic structure of the Constitution, needs to be maintained, whatever be the consequence. It is a fundamental duty of a Constitutional Court to preserve the rule of law. An apology that has been tendered with the ulterior motive of escaping the consequences of such selective application binding precedent of this Court cannot be permitted. The Court needs to distinguish between cases where tendering of an apology is sufficient, and cases where inflicting punishment on the Contemnor is necessary. Selective application of binding precedent by an Authority strikes at the root of the administration of justice.

68] Simultaneous tendering of a justification and apology would be inconsistent with the concept of an apology. It is expected of a person tendering an unqualified apology not to render justification for the contemptuous conduct. Normally tendering of an apology is an act of remorse to purge the guilt of offence by the Contemnor. It cannot be permitted to be used as a universal formula to frustrate the action under the Contempt of Courts Act, particularly in cases where a person's liberty is affected by selective application of the rule of law.

69] A useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of **Ministry of Information and Broadcasting, In re [(1995) 3 SCC 619]** where the Hon'ble Apex Court, while declining to accept an apology tendered by the Contemnor observed that any conduct that is designed to or is suggestive of challenging the crucial balance of power devised by the Constitution is an attempt to subvert the rule of law and is an invitation to anarchy. It is held that the institution entrusted with the task of interpreting and administering the law is the judiciary, whose view on the subject is made legally final and binding on all till it is changed by a higher court or by

permissible legislative measures. Under a Constitutional Government, such final authority has to vest in some institution; otherwise, there will be chaos. With these observations, the Court declined to accept the apology of the Contemnor.

70] It would be profitable to place reliance on another judgment of Hon'ble Supreme Court in the case of **All Bengal Excise Licensees' Assn. v. Raghabendra Singh [(2007) 11 SCC 374]** where the Hon'ble Apex Court, while declining to accept an apology, punished the Contemnors for disobeying the orders of the Court. The Hon'ble Apex Court observed that the contemnors were senior officers and were expected to know that under the constitutional scheme of the country, the orders of the Court have to be obeyed implicitly and that orders of the Supreme Court or any Court cannot be trifled with. The Hon'ble Supreme Court, while recording a finding that the officers had acted deliberately to subvert the orders of the High Court, observed: (SCC p. 400, Paragraph 41)

> *"41. All Respondents 1-4 are senior and experienced officers and must be presumed to know that under the constitutional scheme of this country orders of the High Court have to be obeyed implicitly and that orders of this*

> *Court—for that matter any court should not be trifled with. We have already found hereinabove that they have acted deliberately to subvert the orders of the High Court evidently. It is equally necessary to erase an impression which appears to be gaining ground that the mantra of unconditional apology is a complete answer to violations and infractions of the orders of the High Court or of this Court. We, therefore, hold them guilty of contempt of Court and do hereby censure their conduct. Though a copy of this order could be sent which shall form part of the annual confidential record of service of each of the said officers, we refrain from doing so by taking a lenient view of the matter considering the future prospects of the officers. As already stated, the officers shall not indulge in any adventurous act and strictly obey the orders passed by the courts of law. The civil appeal stands allowed. Though this is a fit case for awarding exemplary costs, again taking a lenient view, we say no costs."*

71] In the present case, we are satisfied that this Court should not extend the mercy of discharging the Contemnor by accepting his apology. It would amount to encouraging similar behaviour of selectively applying binding precedent by adopting pick and choose a policy.

72] Learned Advocate for the Contemnor placed reliance firstly upon the judgment of the Hon'ble Supreme Court in the case of **Ram Kishan (supra)** wherein the Hon'ble Supreme Court has held that since a contempt action is like a quasi-criminal proceeding, the degree of satisfaction for the Court to hold a person for guilty of commission of contempt would be beyond a reasonable doubt. It has been held that the word wilful means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It has been held that it excludes casual, accidental, bonafide and unintentional acts or genuine inability. It has also been held that even if there is disobedience of an order, such disobedience is the result of some compelling circumstances under which it was not possible for the Contemnor to comply with the order, the Contemnor cannot be punished. In the facts of the present case, the reply filed by the Contemnor to the Charge No. 2 before the Disciplinary Authority, the act of suppressing said reply from this Court and false defence of lack of knowledge of the binding precedent of this Court show that violation of binding precedent laid down by this Court was intentional and conscious. Moreover, the facts in the case of **Ram Kishan (supra)** where wilful disobedience was alleged was in relation to non-payment of salary.

Such a situation cannot be equated with 35 prisoners whose residual fundament right under Article 21 of the Constitution of India has been violated.

73] Insofar as the judgment in the case of **T.C. Gupta (supra)** is concerned, the Hon'ble Apex Court held that explanation to Section 12 of the Contempt of Courts Act, makes it clear that an apology tendered by a contemnor should not be rejected merely on the ground that it is qualified or conditional so long it is made bonafide. However, we have already recorded a finding that the apology tendered by the Contemnor is not bonafide. Therefore the judgment of the Hon'ble Supreme Court in the case of **T.C. Gupta (supra)** does not apply to the case of the Contemnor.

74] Learned Advocate for the Contemnor next relied upon the recent judgment of the Hon'ble Supreme Court in the case of **Dr. U.N. Bora, Ex. Chief Executive Officer (supra).** He has invited our attention to Paragraph 8 wherein the Hon'ble Supreme Court has explained wilful disobedience by observing that merely because a subordinate official acted in disregard of an order passed by the Court, liability cannot be

fastened on a higher official in the absence of knowledge. It is also observed that when two views are possible, the element of wilfulness vanishes as it involves a mental element. In the facts of the present case, as we have already held that the Contemnor had conscious knowledge about the judgment of this Court in the case of Milind Ashok Patil on 24/08/2020, the said fact was acknowledged before the Disciplinary Authority while giving reply to the Charge No. 2. Therefore the Contemnor cannot take benefit of the judgment of the Hon'ble Supreme Court in the case of **Dr. U.N. Bora, Ex. Chief Executive Officer (supra).**

75] At this stage, it would be useful to refer to the judgment of the Hon'ble Supreme Court in the case of **L.D. Jaiswal (supra),** reliance on which is placed by learned Amicus Curiae. The judgment starts with the following observations:-

> "*We are sorry to say we cannot subscribe to the 'slap-say sorry and forget' school of thought in administration of contempt jurisprudence, Saying 'sorry' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.*"

76] Learned Amicus Curiae also invited our attention to the judgment of the Hon'ble Supreme Court in the case of **Vishram Singh Raghubanshi (supra)** wherein the Hon'ble Supreme Court has observed as under:-

> *"20. This leads us to the question as to whether the facts and circumstances referred hereinabove warrant acceptance of apology tendered by the appellant.*
>
> *21. The famous humorist P.G. Wodehouse in his work "The Man Upstairs (1914)" described apology :*
>
> *"The right sort of people do not want apologies, and the wrong sort take a mean advantage of them."*
>
> *An apology means a regretful acknowledgement or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. An apology should be unquestionable insincerity. It should be tempered with a sense of genuine remorse and repentance and not a calculated strategy to avoid punishment.*

22. Sub-Section (1) of Section 12 and Explanation attached thereto enables the Court to remit the punishment awarded for committing the contempt of Court on apology being made to the satisfaction of the Court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it bona fide. There can be cases where the wisdom of rendering an apology dawns only at a later stage.

23. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in contempt of Court. An apology can be accepted if the conduct for which the apology is given. It can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of genuine contrition. It should be sincere. An apology cannot be accepted if it is hollow; there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as a paper apology.

27. This Court has clearly laid down that apology tendered is not to be accepted as a matter of course, and the Court is not bound to accept the same. The Court is competent to reject the apology and impose the punishment, recording reasons for the same.

> *The use of insulting language does not absolve the Contemnor on any count whatsoever. If the words are calculated and intended to cause any insult, an apology if tendered and lack penitence, regret or contrition, does not deserve to be accepted."*

77] The Hon'ble Supreme Court, after referring to the judgments in the cases of **L.D. Jaiswal (supra)** and **T. N. Godavarman Thirumulpad (supra)** observed that an apology tendered is not be accepted as a matter of course, and the Court is not bound to accept the same. The Court is competent to reject the apology and impose punishment recording the reasons for the same. In view of the reasons which we have stated in the earlier part of the judgment, we are of the opinion that the apology tendered by the Contemnor is not bonafide and sincere.

78] Learned Amicus Curiae also invited our attention to the judgment in the case of **Subrata Roy Sahara (supra)** and in particular, Paragraph 17, which reads as under:-

> *"17. There is no escape from, acceptance, or obedience, or compliance with an order passed by the Supreme Court, which is the final and the highest Court,*

> *in the country. Where would we find ourselves, if Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the Government or instrumentality concerned, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far fetched. In view of the functional position of the Supreme Court depicted above, non-compliance with its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning. It would be a mayhem of sorts."*

79] On an overall view of the precedent relied upon by the Contemnor and the learned Amicus Curiae, we are satisfied that this Court should not extend the mercy of discharging the Contemnor by

accepting his apology as it would amount to encouraging his behaviour of selectively applying binding precedent of this Court. This is not the solitary instance, but earlier Co-ordinate Benches of this Court have cautioned the Contemnor by observing not to indulge in misleading the Court. In spite of such caution, it appears that the Contemnor has filed affidavits before this Court making false statements and giving incorrect information on several occasions, which we have noted earlier. At the cost of repetition, we must mention that on the earlier date of hearing, the Advocate for the Contemnor was made aware of the consequences of the statement made in an affidavit dated 08/03/2022 wherein the Contemnor had feigned ignorance to the judgment of this Court. During the course of the hearing, the Advocate was allowed to go out of the Courtroom to make Contemnor aware of the consequences of making a false statement in an affidavit. In spite of granting sufficient time, the Contemnor persisted with his defence of being not aware of the judgment of this Court in the case of Milind Ashok Patil, which we have found to be false in view of the documents on record. The conduct for which the apology has been tendered cannot be ignored without compromising the dignity of the Court. We, therefore, hold the

Contemnor guilty of wilful disobedience of the judgment of this Court in the case of Milind Ashok Patil.

80] At this stage, the Contemnor who is present in the Court was made aware of he being held guilty under the provisions of the Contempt of Courts Act and was asked in vernacular language which, according to him, he understood, his submissions on the point of punishment. Therefore, he stated that his Advocate should make submissions regarding the quantum of punishment. Accordingly, Shri Sirpurkar submitted that considering the overall facts and circumstances of the case, leniency be shown to the Contemnor.

81] While awarding a sentence on the Contemnor, the Court does so to uphold the majesty of law and not with an idea of vindicating the prestige of the Court. It is really to see that the unflinching faith of people in Courts remains intact. This Court is conscious of the legal position that sentence of fine should be rule and imprisonment is an exception. In the facts of the present case where 35 poor prisoners were denied their residual fundamental right under Article 21 of the Constitution of India, most of whom could not afford to challenge the

denial of emergency parole. Per contra, six ineligible prisoners were released on emergency parole for reasons best known to him. In spite of caution by two Co-ordinate Benches not to mislead this Court by filing false affidavits, the Contemnor has pleaded false defence of lack of knowledge. The reply before Disciplinary Authority shows that the Contemnor has intentionally disobeyed binding precedent 41 times.

82] Section 12(1) of the Contempt of Courts Act provides that the maximum amount of fine may extend to two thousand rupees. It is well settled that the inherent power to punish for contempt is provided in Article 215 of the Constitution of India which states that every High Courts shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. This Constitutional power is an absolute power which cannot be abridged by any statutory law. This power contemplated by Article 215 of the Constitution of India cannot be abridged or controlled by any statute and so, no limitation as contemplated by Section 12 of the Contempt of Courts Act, 1971 can be read in the exercise of that power. When the High Court exercises its powers derived from Article 215 of the

Constitution of India, the Contempt of Courts Act 1971, could only be regarded as laying down the procedure to be followed.

83] Therefore, in facts of the present case, we are imposing a fine of Rupees Five Thousand in exercise of the power under Article 215 of Constitution of India deriving support from observations in the recent judgment of the Hon'ble Supreme Court in the case of **Re: Vijay Kurle and Others reported in 2020 SCC OnLine SC 407** which is affirmed in **Prashant Bhushan, In re (Contempt Matter),(2021) 1 SCC 745; Prashant Bhushan, In re (Contempt Matter),(2021) 3 SCC 160**, wherein in Paragraph 36, it is observed as under,

> *"36. A careful analysis of the Constitution Bench decision leaves no manner of doubt that Section 15 of the Act is not a substantive provision conferring contempt jurisdiction. The Constitution Bench finally left the question of whether the maximum sentence prescribed by the Act binds the Supreme Court open. The observations made in Para 38 referred to above clearly indicate that the Constitution Bench was of the view that the punishment prescribed in the Act could only be a guideline and nothing more. Certain observations made in this judgment that the Court exceeded its jurisdiction in Vinay Chandra Mishra's case*

(supra) by taking away the right of practice for a period of 3 years have to be read in the context that the Apex Court held that Article 129 could not take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate. These observations, in our opinion, have to be read with the other observations quoted hereinabove, which clearly show that the Constitution Bench held that "Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself'. The Court also held that Section 15 is not a substantive provision conferring contempt jurisdiction. Therefore, it is only a procedural section, especially in so far as suo moto contempts are concerned. It is thus clear that the powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act. Therefore, the only requirement is to follow a procedure that is just, fair and in accordance with the rules framed by this Court."

84] Therefore, we pass the following order:-

(a) The Contemnor Anupkumar Kumre is held guilty of committing wilful disobedience of the binding

precedent of this Court in the case of Milind Ashok Patil.

(b) The Contemnor Anupkumar Kumre shall undergo simple imprisonment for seven days. In addition, the Contemnor shall pay a fine of Rs. Five Thousand, in default, he shall undergo simple imprisonment for a further seven days.

(c) At this stage, learned Advocate for the Contemnor prays for suspension of the sentence. Accordingly, considering the facts of the case, we suspend the sentence of imprisonment and fine for a period of 10 weeks.

(d) We express our gratitude for the valuable assistance rendered by learned Amicus Curiae Shri F.T. Mirza, Advocate.

85] Criminal Writ Petition No. 537/2021 stands **disposed of** in the above terms. **Accordingly, Rule is made absolute in the above terms.**

86] This Criminal Writ Petition be listed on 04/07/2022 for compliance of Clause (c) in Paragraph 20 of the order dated 08/10/2021 passed by this Court.

(JUDGE) **(JUDGE)**