

STATEMENT OF FACTS

1. Ozala is a developing country with one of the highest populations in the world and a population density of 1500 persons per square kilometre. Since almost one-third of Ozala's territory is constituted by an uninhabitable desert, most of its population resides in its seven eastern states, known popularly as the seven sisters. The State of Aspar is the eastern most state of Ozala and shares its longest territorial border with Yada.
2. 80% of the population in Ozala belongs to the Gamus tribe, 10% to the Lopasis tribe and the remaining 10% is constituted by people who do not identify with either tribe. On the other hand, Lopasis is the majority tribe in Yada. The Great Temple of Aspar is widely believed to be the birthplace of the founder of the Vishlip sect of Lopasis.
3. Following the outbreak of the COVID-19/ Coronavirus pandemic, Yada was one of the first countries to be affected. The authoritarian government in Yada immediately suppressed media reportage of the outbreak and continued its international affairs including air travel as usual. It did not share information of the severity of the virus and the fact that it was communicable from human to human. However, reports of further spread of COVID-19 started coming from different countries which had large incoming travellers from Yada. Various countries, thereafter, imposed travel restrictions and compulsory thermal scanning at airports after arrival from an international destination.

4. Ozala acted promptly and started conducting thermal scanning of incoming passengers at international airports from 10 March, 2020, when it only had 15 cases. From 12 March, 2020 incoming flights from certain affected countries with more than 2000 cases were stopped, which did not include Yada since it officially (as per its declarations) only had 60 cases. The Government of Aspar issued the 'Aspar Epidemic Diseases COVID 19 Regulations, 2020' on 13 March, 2020 wherein the term "*Epidemic Disease*" was defined as COVID-19. The said Regulations, *inter alia*, prohibited all gatherings of more than 15 persons within the State. However, the Government of Ozala had not placed many restrictions on travel within the country. On the same day, the Code of Criminal Procedure, 1973 was amended and Section 439A was introduced.

5. On 13 March, 2020 four citizens of Yada arrived in Aspar from Yada for the annual congregation at the Great Temple of Aspar. These four persons included Ms. Quantisa, believed to be the reincarnation of the founder of the sect, who was to preside over the opening ceremony on 14 March, 2020. All requisite permissions from the State Government of Aspar for the event had been taken prior to the outbreak of COVID-19 in January, 2020.

6. One day before their scheduled departure to Ozala, certain officials in Yada suggested that the four persons cancel their visit to Ozala as Ms. Quantisa showed flu-like symptoms. However, these officials were prevailed upon by the others who believed that a sudden cancellation of the visit would send a negative international signal and would be detrimental to the spread of the beliefs of the sect. Though she agreed to be tested for COVID-19 on the day of departure, Ms. Quantisa was firmly of the belief that her flu-like

symptoms were not a reason for worry since she, being a regular practitioner of Cosmic Meditation, could never be affected by COVID-19. On their flight to Aspar, she took anti-pyretic drugs and cleared the airport screening.

7. The opening ceremony of the congregation on 14 March, 2020 was attended by 58 visitors, who were all from the seven sister states. Though the police was present at the event to provide security, they expressed no objection to the ceremony as social gatherings of more than 15 people were still commonplace all over the state – despite official orders to the contrary.
8. During the ceremony, Ms. Quantisa was seated on the stage. To everyone's shock, Ms. Quantisa began her address by lambasting people who thought she might be suffering from COVID-19. She claimed that it was incredulous for such people to harbour such beliefs, since it was common knowledge that she practiced Cosmic Meditation. She told all attendees that if they drank 'holy water' from her hands, their immunity against the disease would become stronger. Her views were readily accepted amongst attendees, as they believed that she was a credible source of information as she had a graduate degree in science. The ceremony was concluded with all the attendees walking to the stage and drinking holy water from the hands of Ms. Quantisa.
9. The four citizens of Yada were to depart for Yada that very evening. However Ms. Quantisa had to be urgently hospitalised and could not leave because she developed high fever and started facing breathing problems. The other three persons returned to Yada. On

- 16 March, 2020, Ms. Quantisa tested positive for COVID-19. Upon their return to Yada, the other three persons who had accompanied her also tested positive for COVID-19.
10. The government was slow to react to the first COVID-19 case in the eastern states. The government started tracing the attendees of the congregation on 19 March, 2020 and was able to trace all attendees by 20 March. All the attendees and several police officers who were deployed at the event tested positive for COVID-19.
 11. Fortunately, despite being tested positive for the virus, there were no deaths amongst any of the police officers/attendees or their contacts that were traced by the Government. Two persons out of the attendees (both aged above 80 years) were critically ill and required ventilator support. Despite the odds, they managed to survive. Nobody was affected further by these persons.
 12. At the behest of certain Gamus politicians, criminal law was set into motion and a First Information Report was registered against Ms. Quantisa for offences under Section 188, 270, 325 and 308 of the Ozalan Penal Code, 1870 read with Section 3 of the Epidemic Diseases Act, 1897 on 22 March, 2020. She was arrested from the hospital on the same day and she fully recovered within a week. Investigation revealed that Ms. Quantisa had received a message confirming that she had tested positive for COVID-19 on 14 March 2020 - immediately after the ceremony - but Ms. Quantisa had not informed any person regarding this message.
 13. Upon conclusion of investigation, a Chargesheet/ Final Report came to be filed on 26 April, 2020. Since normal functioning of trial

courts has been suspended due to the pandemic, charges have not been framed in the matter and trial has not commenced till date.

14. On 10 May, 2020 Ms. Quantisa filed a bail application before the High Court of Aspar *inter alia* arguing that it is settled law that bail is the rule and jail is the exception. To allay apprehensions of her fleeing from justice, she undertook to surrender her passport and reside at the Great Temple of Aspar until the conclusion of her trial. The High Court rejected the application by placing reliance on Section 439A of the Code of Criminal Procedure, holding that there are no reasonable grounds for believing that she is not guilty of an offence related to spreading COVID-19. The Court further held that it could not reach a finding that she was not likely to commit an offence while on bail, especially given her public stature and her presence on social media. The High Court further noted that she was accused of a heinous offence and ought not to be released on bail. Ms. Quantisa has now challenged the rejection of her bail before the Supreme Court.

15. Ms. Quantisa was advised that the '*twin conditions*' introduced under Section 439A were an anathema to any criminal justice system. Thereafter, she filed a Writ Petition before the Supreme Court challenging the constitutionality of such '*twin conditions*' of bail on the ground that the burden of proof cannot be reversed to keep a presumably innocent person in indefinite custody. She contended that it would be impossible for any accused person to establish their innocence in bail proceedings, more so before they were even granted the opportunity to cross-examine witnesses or lead defence evidence.

16. The Supreme Court of Ozala, exercising its extraordinary powers, has clubbed Ms. Quantisa’s appeal against the dismissal of her bail application by the High Court of Aspar and her Writ Petition challenging the constitutionality of ‘*twin conditions*’ of bail. The matter has been listed for final hearing before a nine-judge bench of the Supreme Court and the following issues have been framed:
- i. Whether the additional conditions for grant of bail under Section 439A of the Code of Criminal Procedure that require a court to be satisfied that there are “*reasonable grounds for believing that a person is not guilty of an offence*” and that the person “*is not likely to commit any offence while on bail*” violate fundamental rights guaranteed under the Constitution of Ozala?
 - ii. Whether Ms. Quantisa is entitled to be released on bail?

NOTES FOR COUNSELS

- Counsels for the Petitioners will present arguments on behalf of Ms. Quantisa.
- Counsels for the Respondents will present arguments on behalf of the Union of Ozala and the State of Aspar.
- Ozala is a constitutional republic that follows the common law system.
- Ozalan constitution guarantees the same set of fundamental rights to persons as Part III of the Indian Constitution. The Seventh Schedule of the Ozalan Constitution and the Seventh Schedule of the Indian Constitution are in *pari materia*.
- Ozalan Penal Code, 1860 and the Indian Penal Code, 1860 are in *pari materia*.
- Ozalan Code of Criminal Procedure, 1973 and the Code of Criminal Procedure, 1973 in India are in *pari materia*, except for Section 439A which reads as follows:

“439A - Notwithstanding anything contained in this Code, no person accused of an offence under Section 3 of the Epidemic Diseases Act, 1897 relating to deliberately spreading COVID-19 shall be released on bail or on his own bond by any court unless:

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any similar offence while on bail.”

- Section 439A of the Ozalan Code of Criminal Procedure, 1973 was passed during regular legislative business and by a three fourth majority.