

# CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

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## **STATEMENT & APPEAL TO RECALL ORDERS**

**8<sup>th</sup> May 2023**

The Campaign for Judicial Accountability & Reforms (CJAR) expresses concern at the orders passed on the 01.05.2023 and 04.05.2023 in the Recall Application filed by the Union of India in *Ritu Chhabaria v. Union Of India* WP(Crl) 60 of 2023 decided on 26th April, 2023.

The final judgment in *Ritu Chhabaria* was rendered by a bench consisting of Hon'ble Justices Krishna Murari and CT Ravikumar. It reiterated the by-now trite point of law that default bail under Section 167 of the CrPC is a fundamental right. As a corollary, it went on to hold that default bail can also be claimed in an Article 32 Petition, relying on a Constitution Bench judgment that had noted that the right to move the Supreme Court itself is a fundamental right. *Ritu Chhabaria* also went on to hold that investigating agencies cannot frustrate this right by filing incomplete chargesheets just before the expiry of the period contemplated under Section 167. CJAR has no comment to offer on whether the facts in the case justified the selection of the issues that were considered by the court in *Ritu Chhabaria*. However, the judgment is indisputably a welcome one, lays down the correct law consistent with the fundamental rights chapter of the constitution, and would be a travesty if it were eventually overturned. The main thrust of this Statement however is not in the merits of the judgment itself, but the manner in which subsequent Recall proceedings have been handled.

The Recall Application against a final judgment of the Supreme Court is clearly not maintainable and even ought not to have been registered by the Registry of the Court. The only remedy for the Union of India if it was aggrieved by this final judgment, is filing a Review Application under Article 137 of the Constitution. Such a Review Application under O47R3 of the Supreme Court Rules, if the bench is still available (with none of the judges having retired etc), ought to be listed in chambers before that same bench that passed the judgment sought to be reviewed. Even the mentioning of the so-called Recall Application, even assuming it is only a differently labeled Review Application, ought to have been made and ought to have been allowed to be made only before that same bench that delivered the judgment. Institutional integrity demands that any departure from this convention if at all ought to be done only by means of a reasoned order.

Under our constitutional scheme, the Chief Justice of India is the Master of Roster and only a first among equals. The Chief Justice's bench is not an appellate court over the final judgments and orders of other benches of the Supreme Court. The Orders passed by the Chief Justice's bench in the Recall Application, with the first one upon being mentioned by the Solicitor-General, show that the Chief Justice's bench has effectively condoned this brazen act of forum-shopping and bench-hunting by the Union. In an equally improper manner, it has acted like an appellate court, listing the Recall Application before a different bench; and directing all lower courts to defer default bail applications relying on the judgment in *Ritu Chhabria*.

CJAR hereby appeals to the benches that passed the said orders dt. 01.05.2023 and 04.05.2023 in the Recall Application, to *suo motu* and forthwith recall them - for, they clearly suffer from impropriety and lack of jurisdiction.