IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.736 of 2023

Kuldeo Sah @ Mithun Sah ... ... Appellant
Versus
The State of Jharkhand & Another... ... Respondents
With
Criminal Appeal (D.B.) No.1208 of 2023

Kuldeo Sah @ Mithun Sah ... ... Appellant
Versus
The State of Jharkhand & Another... ... Respondents
With
Criminal Appeal (D.B.) No.1504 of 2023

Pappu Sah @ Pappu Kumar Sah ... ... Appellant
Versus
The State of Jharkhand ... ... Respondent

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. Gautam Kumar, Advocate
: Mr. Abhinav Raj, Advocate
: Mr. Ashutosh Kumar Sinha, Advocate
For the State : Mrs. Lily Sahay, A.P.P.
[in Cr. Appeal (DB) No.736/2023]
: Mrs. Nehala Sharmin, Spl. P.P.
[in Cr. Appeal (DB) No.1208/2023]
: Mrs. Ruby Pandey, A.P.P.
[in Cr. Appeal (DB) No.1504/2023]
For the Resp. No.2 : Mr. Pratyush Lala, Advocate
: Mr. Deepak Sahu, Advocate
For the Resp. No.3 : Mr. Prashant Pallav, D.S.G.I.
: Ms. Shivani jaluka, AC to DSGI

Order No. 27/Dated 24th February, 2025

Per Sujit Narayan Prasad, J.

1. These appeals originally have been filed under Section 21(4) for a direction for release of the appellants from judicial custody who have been taken into custody for the offence under Section 370/34 of the Indian Penal Code.

2. We, after calling the case diary, have decided the case on merit and rejected the prayer for bail of the appellants.

3. One of the main reasons for rejection of the prayer for bail of the appellants was that the trafficked minor victims had not been traced out even though serious efforts having been said to be taken even by constituting special investigating teams.

4. This Court has called upon the SPs of the concerned districts, taking into consideration the fact that the victim has not been recovered as yet.

5. Learned counsel representing the State, in course of argument, had submitted that all possible efforts have been taken to trace out the victim but when they have not found any further clue, have taken endeavour to get the details of Aadhar Card of the victim by making correspondences to the authority, i.e., UIDAI, through e-mail/.

6. This Court, on the prayer being made by the learned State counsel, has impleaded the authority, i.e., UIDAI, as party respondent to the present proceeding and had issued notice.

7. Mr. Prashant Pallav, learned Deputy Solicitor General of India, has appeared on behalf of the authority, UIDAI.

8. He has filed affidavits. The ground has been taken by the authority, UIDAI, that in view of the provision of Section 33(1) of the Aadhar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (hereinafter to be referred to as the Act, 2016), the details of Aadhar Care of any individual can be supplied but only under the direction of the High Court.

9. It has been submitted by making reference of the judgment passed by the Constitution Bench of the Hon'ble Apex Court rendered in the case of ***K.S.Puttaswamy (retd.) & Anr. Vs. Union of India and Others*** reported in ***(2019) 1 SCC 1*** wherein the validity of Section 33(1) and 33(2) of the Act, 2016 has been held to be valid.

10. It has been stated in the affidavit that save and except the procedure as established under the statutory command as under Section 33(1) of the Act, 2016, the details of information of Aadhar Card can be provided to the investigating agency but the requirement is two folds that regular application is to be made to the authority, UIDAI or on direction passed by the High Court in view of the amendment inserted in the provision of 33(1) of the Act, 2016 from 25.07.2019 whereby and whereunder amendment has been inserted to the effect that such information can be supplied by the authority on the direction passed by the High Court.

11. This Court, after considering the stand *inter alia* taken by the authority, UIDAI, has passed order on 11.02.2025 wherein observation has been made that why the steps are not being taken as provided under Section 33 (2) of the Act, 2016.

12. Mr. Prashant Pallav, learned Deputy Solicitor General of India, has submitted that so far as taking recourse within the fold of Section 33(2) of the Act, 2016 is concerned, as per requirement the investigating agency is to make an application before the authorized authority as per the order dated 29.12.2023 issued by the Ministry of Electronics and Information Technology, Government of India whereby and whereunder while exercising the power conferred by Sub-section (2) of Section 33 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016), the Central Government has authorized the Union Home Secretary, Ministry of Home Affairs as the Officer specially authorized for the purposes of issue of directions under the said sub-section.

13. This Court, having heard learned counsel for the authority, UIDAI, and in view of the observation as has been expressed by this Court in the order 17.12.2024 and 11.02.2025 wherein the concern has been shown in passing the aforesaid orders was of tracing out the victim

who is traceless since the year 2014, i.e., more than a decade.

14. Since the issue pertains to the human trafficking and the investigating agency is taking endeavours in tracing out the victim but they have not got any success as yet and, as such, they now intend to take recourse of the electronic means for the purpose of locating the victim.

15. This Court has shown its concern that the human trafficking has been brought under the fold of the schedule of the National Investigation Agency Act, 2008 under the fold of scheduled offence.

16. This Court has also shown its concern that the trafficking is a means for mis-utilizing them in the anti-national activities. The reference of all those orders need to be made herein which are being quoted hereunder as :-

"Order No.23/ Dated 17th December 2024

Reference may be made to the order dated 29.10.2024, which is quoted hereunder.

"Affidavits have been filed by the respondent-UIDAI.

2. Mr. Prashant Pallav, the learned DSGI appearing for the UIDAI has submitted by referring to the provision of section 31 of the Aadhaar (Targeted Delivery of Financial & Other Subsidies, Benefits and Services) Act, 2016 that there is no such provision available in the Statute to provide any details of the Aadhar Card of any individual.

3. It has been submitted that the proper course would have been to make an application before the authority of UIDAI giving therein the details and the reason for seeking the details of the suspected person for 2 whom

the allegation of trafficking leading to institution of present F.I.R under the provision of section 370/34 of the I.P.C has been levelled.

4. In response, Mrs. Nehala Sharmin, the learned Spl.P.P has submitted by referring to paragraph no.7 of the counter-affidavit dated 17.10.2024 that the S.I.T has made a requisition seeking the details from the UIDAI so as to have a clue to trace out the minor who has been subjected to trafficking and is not being traced out for last about more than 10 years, the two minors herein.

5. Mr. Prashant Pallav, the learned DSGI, upon this, has submitted that the copy of the said affidavit has not been served upon him.

6. Mrs. Nehala Sharmin, the learned Spl.PP has transmitted the copy of the said affidavit through Electronic Mode. However, it has been submitted by the learned Spl.PP that the communication of the S.I.T has also been sent to the authority of UIDAI on 28.03.2024 through official e-mail of S.I.T.

7. This Court fails to understand that when requisition has been made before the authority of UIDAI then why the appropriate decision, either way, not be communicated to the S.I.T. The authority which has been constituted for the aforesaid purpose, i.e. UIDAI, is also having the element of the public functionary and, as such, when any application, that too, by the prosecution side, i.e. herein the S.I.T, if have been made, then it was the bounded duty of the concerned authority to take a decision by making reference of the rider available in the statute, but they cannot in any circumstances keep the matter pending by not taking any decision upon the same.

8. Let the learned Spl.PP be furnished the details of the official mail to which the said communication had been sent to the UIDAI.

9. Let the further affidavit be filed by UIDAI by taking a decision on the said application.

10. In the meanwhile, as has been submitted by the learned Spl.PP, the endeavour has been taken by the S.I.T, since, as per her instruction, the S.I.T has moved today to have a clue of the traceless two minors on the date when both the minors have been subjected to trafficking.

11. Let the further update be furnished on the next date of hearing by filing appropriate affidavit to be filed by the individual who is heading the S.I.T.

12. It has been submitted by Mr. Gautam Kumar, the learned counsel appearing for the appellantsthat although he is representing the appellants, but it is rampant in the area where trafficking is in the large scale, as such, an effective measure is to be taken by the District Administration, particularly, the Police Administration to put a check upon the menaces of trafficking.

13. The learned Spl.PP, therefore, is directed to file an affidavit regarding what remedial measure has been taken to protect or put a check upon the trafficking of the minor/adults from that area.

14. As prayed for, list these matters on 4.12.2024.

2. Mr. Prashant Pallav, learned DSGI, in pursuant thereto has submitted that in view of the judgment passed by the Constitutional Bench of the Hon'ble Supreme Court in the case of K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. reported in (2019) 1 SCC 1, particularly at para nos. 403, 405, 407, 408, 772, 779, 780 and 781, whereby and where under, by way of an amendment in the statutory command as conferred under Section 33 (1) of the UAID Act, provision has been made to make an application before the Court. Therefore, submission has been made that it would be proper for the prosecuting agency to make an application in the light of the provision as contained under Section 33(1) of the Act for the purpose of passing appropriate direction so as to provide the details of the Aadhar Card of the missing child. 3. Upon this, learned Spl.P.P. Mrs. Nehala Sharmin has submitted that she will make an application for passing

appropriate order for tracing out the missing male child, who is traceless since 2014. Learned State Counsel, has, therefore sought for time. 4. Mr. Gautam Kumar, learned counsel for the appellants has submitted that the prayer for bail of the appellants has already been dealt with vide order dated 19.02.2024 by dismissing the same. However, the trial is going on in which prosecution evidence has already been closed but there is no further progress in the trial in the garb of pendency of the instant appeals. 5. We want to make it clear that the present appeals, which have been filed for consideration on the issue of bail of the appellants, have already been decided by this Court vide order dated 19.02.2024 and the present appeals are pending only for the purpose of issue of tracing out the male child who is missing since 2014 and for which this Court has also called upon the State to file an affidavit on the basis of which S.I.T. has been constituted. The affidavit has been filed wherein it has been stated that although the trafficked child of the present appeal has not been traced out but during the tracing out process, several other trafficked children have been recovered. 6. However, as prayed for by learned State counsel, let the matter be listed on 9th January, 2025. 7. Let the copy of the said application, which is to be filed with an affidavit, be filed well in advance so that learned DSGI may also be able to file response before the next date."

25/Dated: 11.02.2025

1. Affidavit has been filed on behalf of UIDAI.

2. Learned counsel for the UIDAI by placing the same, has submitted that in view of the rider created under Section 33 (1) of Aadhaar Act, 2016, wherein, the requirement to furnish the information including identity information or authentication records is only to be made available after providing an opportunity of hearing to both the Aadhaar number holder and UIDAI number.

3. We have considered the import of Section 33 of Aadhaar Act, 2016, in entirety.

4. Section 33(1) speaks with respect to providing the details of Aadhaar Card having with the proviso that before providing

the information including identity information or authentication records, an opportunity of hearing is to be given to the Aadhaar Card holder and the authority, i.e., UIDAI.

5. Sub-section (2) thereof provides that the details of Aadhaar Card can be provided with the permission of the authority, i.e., not below the rank of Secretary to the Govt. of India.

6. The purport of Aadhaar Card has been interpreted by the Hon'ble Apex Court in the case of K.S. Puttaswamy (Retd.) & Anr. Vrs. Union of India & Ors., reported in (2019) 1 SCC 1, wherein, the validity of Section 33(1) and (2) of the Act, 2016 have been considered.

7. We have no quarrel upon the said ratio and the purport of aforesaid provision but we are concern, as to how, the child who have been subjected to trafficking, are to be traced out.

8. The details of Aadhaar Card of the victim child has been supplied to UIDAI by the Investigator so as to trace out the location of the victim children through their mobile phones, if they are using.

9. It is the plea of the Investigator that they are not getting any clue and whatever mechanism is to be followed that is only the effort will be in dark and in that direction, we have taken decision to also consider the issue of tracing out the children by making an effort to get the mobile number and for that, the best mechanism would be to have the Aadhaar Card of the children.

10. Since, the question of trafficking of children whose details of Aadhaar Card is to be provided to the Investigator as per requisition made by them but herein, the difficulty as per the statutory mandate is that the Aadhaar Card holder is also to be provided with an opportunity of hearing as per proviso to Section 33(1) of the Act, 2016.

11. The Legislation has taken care of for seeing the instances where the Aadhaar Card holder is not traceable who is involved in any terrorist activities leading to national security then how the situation will be dealt with and for that reason, the provision has been made under sub-section (2) thereof.

12. The said provision confers power upon the authority, UIDAI to seek permission from the competent authority of the Central Government not below the rank of Secretary.

13. The purpose is obvious that there cannot be any compromise with the national security and if any terrorist is to be traced out or his location is to be located, then how, sub-section (1) of Section 33 can be made applicable and for that reason, sub-section (2) has been inserted with Section 33 of the Act, 2016.

14. Here, we are dealing with the case of an offence which is under schedule to the National Investigation Agency Act.

15. The racket is involved in the issue of trafficking and the said racket is to be traced out and for that purpose, clue is required to get the information about the trafficked children.

16. The activities of traffickers are also said to be issue of national security since they are dealing with the future generation, i.e. the young children of the nation jeopardizing the national interest.

17. There might be chances of involvement of such children in terrorist activities leading to threat upon the national security and by that, the Act will come under the fold of Section 15 of the U.A.(P) Act, 1967.

18. As such, this Court is of the view that why emphasis is being given by the authority of the provision of sub-section (1) of Section 33 of the Aadhaar Act, 2016 and why the efforts are not being taken by taking recourse as provided under sub-section (2) of Section 33 of the Aadhaar Act, 2016.

19. Learned counsel appearing for the respondent-UIDAI, in view of the above, has sought for a week time to seek instruction on the aforesaid.

20. Accordingly and as prayed for by the learned counsel for the respondent-UIDAI, list these matters on 19.02.2025."

17. Although we have shown our concern regarding taking recourse of the provision of Section 33(2) of the Act, 2016 but we are of the view that procedure will be time consuming and when the matter is before the Court for the

purpose of passing an order upon the UIDAI to supply the details of Aadhar Card which has already been requisitioned by the investigating agency by making due correspondences before the competent authority of UIDAI, hence, consideration is required to be made as to whether the provision as contained under Section 33(1) of the Act, 2016 can be exercised for the purpose of doing substantive justice which is the efforts to be taken in aid to the investigating agency to trace out the victim who is traceless since the year 2014.

18. This Court, before answering the aforesaid issue, is of the view that if any law has been made out by the Parliament or the State Legislature, the same is for the purpose of doing substantive justice and the law cannot come in the way of doing substantive justice.

19. It needs to refer herein the legal Maxim ***Salus populi (est) suprema lex,*** means that the welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully and judicially, reference in this regard may be made to the Judgment rendered by the Hon'ble Apex Court in the case of ***Lala Ram(DEAD) by Legal Representative and Ors v. Union of India and another*** **, (2015) 5 SCC 813.**

20. Further, it is the fundamental principle in view of the fact that the laws are handmaid for the substantive

justice, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***ECGC Ltd. v. Mokul Shriram EPC JV, (2022) 6 SCC 704.*** For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> "25. The Division Bench held as under : (Indian Oil Corpn. case [Indian Oil Corpn. v. Orissa Sales Tax Tribunal, 2009 SCC OnLine Ori 353] , SCC OnLine Ori paras 24-25)
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> > "24. -------- The rules of procedure are intended to advance justice & not to defeat it. 'Procedural law is intended to facilitate & not to obstruct the course of substantive justice.' [vide Hoosein Kasam Dada (India) Ltd. v. State of M.P. [Hoosein Kasam Dada (India) Ltd. v. State of M.P., (1953) 1 SCC 299 : 1953 SCR 987 : AIR 1953 SC 221] ; Garikapati Veeraya v. N. Subbiah Choudhry [Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] ; GaneshTrading Co. v. Moji Ram [Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91] ; Harcharan v. State of Haryana [Harcharan v. State of Haryana, (1982) 3 SCC 408] ; and Shiv Shakti Coop. Housing Society v. Swaraj Developers [Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659]"

21. Further, there is no dispute that the validity of the Act, 2016 has been the subject matter before the Hon'ble Apex Court in the Constitution Bench, in the case of ***K.S.Puttaswamy (retd.) & Anr. Vs. Union of India and Others*** (Supra). The validity of Section 33(1) as also 33(2) of the Act, 2016 was challenged on the pretext that the privacy of any individual citizen of the country cannot be put in danger. The same has been answered by Hon'ble

Apex Court, as would be evident from paragraph 403, 405, 407, 408, 772, 779, 780 and 781.For ready reference the aforesaid relevant paragraph are being quoted as under:

> **403.** A close look at sub-section (1) of Section 33 would demonstrate that the sub-section (1) is an exception to Section 28(2), Section 28(5) and Section 29(2) of the Act. Those provisions put a bar on the disclosure of an information thereby protecting the information available with Uidai in respect of any person. However, as per sub-section (1), such information can be disclosed if there is an order of a court which order is not inferior to that of a District Judge. This provision, therefore, only states that in suitable cases, if court passes an order directing an Authority to disclose such an information, then the Authority would be obliged to do so. Thus, an embargo contained in Sections 28 and 29 is partially lifted only in the eventuality on passing an order by the court not inferior to that of the District Judge. This itself is a reasonable safeguard. Obviously, in any proceedings where the court feels such an information is necessary for the determination of controversy that is before the court, before passing such an order, it would hear the parties concerned which will include the person in respect of whom the disclosure of information is sought.
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> **405.** Adverting to sub-section (2) of Section 33, it can be seen that this provision enables disclosure of information including identity information records in the interest of national security. This provision further states that the Authority is obliged to disclose such information in pursuance of a direction of an officer not below the rank of Joint Secretary to the Government of India specially authorised in this behalf by an order of the Central Government. Proviso thereto sub-section (2) puts an additional safeguard by prescribing that every direction issued under this sub-section shall be reviewed by an Oversight Committee consisting of the Cabinet Secretary and the Secretaries to the Government of India in the Department of Legal Affairs and the Department of Electronics and Information Technology before it takes effect.

Further, such a direction is valid only for a period of three months from the date of its issue which can be extended by another three months.

407. We may point out that this Court has held in *Ex-Armymen's Protection Services (P) Ltd.* v. *Union of India* [*Ex-Armymen's Protection Services (P) Ltd.* v. *Union of India*, (2014) 5 SCC 409] that what is in the interest of national security is not a question of law but it is a matter of policy. We would like to reproduce the following discussion therefrom : (SCC p. 416, paras 16-17)

> "*16.* What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in *Secy. of State for Home Deptt.* v. *Rehman* [*Secy. of State for Home Deptt.* v. *Rehman*, (2003) 1 AC 153 : (2001) 3 WLR 877 (HL)] : (AC p. 192-C, para 50)
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> '*50.* ... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.'
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> *17.* Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

408. Even in *K.S. Puttaswamy* [*K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1] , this Court has recognised data retention by the Government which may be necessitated in the

public interest and in the interest of national security. We may also usefully refer to the *PUCL* v. *Union of India* [*PUCL* v. *Union of India*, (1997) 1 SCC 301] . In that case, action of telephone tapping was challenged as serious invasion of individual's privacy. The Court found that Section 5(2) of the Telegraph Act, 1885 permits the interception of messages in circumstances mentioned therein i.e. "occurrence of any public emergency" or "in the interest of public safety". The Court explained these expressions in the following manner : (*PUCL case* [*PUCL* v. *Union of India*, (1997) 1 SCC 301] , SCC pp. 313-14, para 28)

> "*28*. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said section. "Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone-tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India, etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone-tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public

emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person."

772. Sub-section (1) of Section 33 contains an ample restriction in respect of any disclosure information which can be done only in pursuance of an order of the court not inferior to that of a District Judge. The restriction in disclosure of information is reasonable and has valid justification. The authority whose duty is to safeguard the entire data has to be heard before passing an order by the court which amply protects the interest of a person whose data is to be disclosed. An order of the court not inferior to that of a District Judge for disclosure of information itself is an ample protection to that, for no unreasonable purpose data shall be disclosed.

779. We are satisfied that the provision fulfils threefold test as laid down in *Puttaswamy case* [*K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1] . There are no grounds to declare Section 33 as unconstitutional.

780. We also need to advert to one of the submissions of the petitioner that permitting disclosure of information for police investigation violates the protection against self-incrimination as provided under Article 20 clause (3). It is true that under Section 33 the court may order for disclosure of information even for a police investigation. But information so received in no manner can be said to violate the protection given under Article 20(3). The basic information which are with Uidai are demographic and biometric information. In this context, reference is made to the eleven-Judge Constitution Bench judgment of this Court in *State of Bombay* v. *Kathi Kalu Oghad* [*State of Bombay* v. *Kathi Kalu Oghad*, AIR 1961 SC 1808 : (1961) 2 Cri LJ 856] . The Constitution Bench had occasion to consider clause (3) of Article 20 of the Constitution. In the above case, from the accused who was charged under Sections 302/34 IPC, during the investigation prosecution has obtained three specimen of handwriting which were compared by his handwriting which was part of the evidence. A question was raised as to the admissibility of

the specimen of handwriting, it was contended that use of specimen of handwriting violated protection under Article 20(3). This Court in para 16 laid down the following : (AIR pp. 1816-17)

"*16*. In view of these considerations, we have come to the following conclusions:

(*1*) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(*2*) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not "compulsion".

(*3*) "To be a witness" is not equivalent to "furnishing evidence" in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(*4*) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression "to be a witness".

(*5*) "To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(*6*) "To be a witness" in its ordinary grammatical sense means giving oral testimony in court. Case law has gone

> beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.
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> (*7*) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."
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> **781.** From what has been held in the above case, it is clear that "to be a witness" is not equivalent to "furnishing evidence" in its widest significance. The use of information retained by Uidai given by the order of the court under Section 33 cannot be said to be violating the protection as contained under Article 20(3). Thus, Article 20(3) is not violated by disclosure of information under Section 33. In view of the foregoing discussion, we hold that Section 33 is constitutional.

22. The Hon'ble Apex Court, while dealing with the issue, has taken into consideration the larger issue of maintaining the privacy of an individual.

23. It has been observed therein that the provision as contained under Section 33(1) of Act,2016 has been held to be valid.

24. The issue which we are considering is the efforts which are being taken by the investigating agency in tracing out the victim who is not being traced out since sometime in the year 2014.

25. It appears from the various affidavits filed on behalf of the investigating agency that even though several raids/searches have been made in the different parts of the

country but no whereabouts of the victim has been found out as yet.

26. The investigating agency, in order to take the further steps, has made an application before the UIDAI in view of the provision of Section 33(1) of the Act, 2016. The authority of the UIDAI has expressed that applicability of the provision of Section 33(1) of the Act, 2016 which is coming in their way in providing the details as per the copy of the Aadhar Card supplied to them along with the requisition made by the Investigating Officer which has also been appended with the interlocutory application being I.A. No. 126 of 2025 filed in Criminal Appeal (DB) No. 1208 of 2023.

27. We are of the view that the concern of the authority of the UIDAI with respect to the rider having been put under Section 33(1) of the Act, 2016 cannot be said to be unfounded.

28. We are conscious with the legal proposition that a thing is to be done in pursuance to the law as established and nobody can be allowed to travel in deviation to the statutory provision, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of **State of Uttar Pradesh vs. Singhara Singh and Ors., AIR (1964) SC 358**, wherein it has been held as under:

> 25. "....its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted...."

29. Further, the Hon'ble Apex Court in the case of **Babu Verghese and Ors. vs. Bar Council of Kerala and Ors., (1999) 3 SCC 422**, has reiterated the same view wherein it has been held at paragraphs 31 & 32 as under:

> "31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under: "[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all." 32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-judge bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a statutory principle of administrative law."

30. But simultaneously it is also to be seen as to whether, in such circumstances where the Investigating Officer is still to take an effective measure to trace out, the direction can be passed by the High Court in view of the requirement as put under Section 33(1) of the Act, 2016?

31. So far as the opportunity of hearing which is the condition precedent as provided under Section 33 of the

Act, 2016, the question which has been taken note by this Court in its earlier order dated 11.02.2025 that the victim is traceless then how can the opportunity of hearing is to be given. Therefore, in such circumstances, the statutory provision does not mean that the same is to be considered in the adversity of the interest of the concerned victim and, here the concept of doing substantive justice is to be taken care of.

32. Since we have already expressed our view that law is for doing substantive justice and we are dealing with the issue of the victim who has not been traced out having been traceless since sometime in the year 2014 and, as such, for the purpose of doing substantive justice towards the parents, more particularly, the victim who is traceless for more than a decade, this Court is of the view that the power which is to be exercised by the High Court as provided under Section 33(1) of the Act, 2016 is required to be exercised.

33. The intent of the Act, 2016 as per its preamble is to have the details of an individual so that by allotting a particular number as contained in the Aadhar Card, all details of an individual is to be traced out. The said aspect of the matter has not been held to be ultra vires by the Hon'ble Apex Court but simultaneously the crux of the judgment which has been passed by the Hon'ble Apex

Court in the case of ***K.S.Puttaswamy (retd.) & Anr. Vs. Union of India and Others*** (supra) is to maintain the balance equally, i.e., by maintaining the issue of privacy.

34. Here the factual aspect which cannot be disputed, i.e., the issue of victim who is to be traced out and if the Aadhar Card details will be furnished to the Investigating Agency, there might be chance of recovery of the victim.

35. This Court, therefore, is passing the direction upon the authority of the UIDAI to supply the details as per the requisition made by the Investigating Agency under the sealed cover forthwith.

36. Accordingly, I.A. No. 126 of 2025 stands disposed of.

37. The matter is being posted after four weeks for filing the affidavits updating the issue of the efforts taken to trace out the victim.

38. List this matter on 26.03.2025.

39. Let the written order be communicated by Mr. Prashant Pallav, learned Deputy Solicitor General of India to the authority of UIDAI.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

Birendra/**A.F.R.**