

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. _____2018

IN THE MATTER OF :-

1. ROMILA THAPAR
2. DEVAKI JAIN
3. PRABHAT PATTNAIK
4. SATISH DESHPANDE
5. MAJA DARUWALA

PETITIONERS

VERSUS

1. UNION OF INDIA
THROUGH SECRETARY,
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI – 110001
2. SPECIAL CELL DELHI POLICE
POLICE STATION, LODHI COLONY
NEW DELHI – 110001
3. STATE OF MAHARASHTRA
THROUGH ITS STANDING COUNSEL

RESPONDENTS

WRIT PETITION IN PUBLIC INTEREST SEEKING THE IMMEDIATE RELEASE OF ACTIVISTS RAIDED AND ARRESTED IN COMPLETE VIOLATION OF THEIR FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA

TO THE HON'BLE THE CHIEF JUSTICE AND HIS COMPANION JUSTICES OF THE SUPREME COURT OF INDIA

THE PETITIONERS RESPECTFULLY STATE AS UNDER:

1. This petition is being filed to subserve larger public interests and to prevent stifling of honest dissent so as to protect democratic values and the democracy. This petition seeks to bring on record the gross abuse of police power in the country which is intended to stifle if not kill independent voices and a differing ideology from the party in power. The impugned actions of the Pune Police is the biggest attack on freedom and liberty of citizens by resorting to high handed powers without credible material and evidence. The entire exercise is to silence dissent, stop people from helping the downtrodden and marginalised people across the Nation and to instil fear in minds of people. The timing of this action leaves much to be desired and appears to be motivated to deflect people's attention from real issues. Petitioners are seriously concerned about the erosion of democratic values and are moving this Honble Court not to stop investigation into allegations but to ensure independent and credible investigation by such persons as may be deemed fit under supervision of this Honble court. Anything short of this will damage the fabric of nation irreparably. This writ petition is thus being filed against the arrests of five

human rights activists from Delhi, Faridabad, Mumbai, Thane and Hyderabad on completely fabricated charges under various provisions of the Unlawful Activities Prevention Act (UAPA) and the Indian Penal Code, after their houses and offices were raided on the 28th of August 2018. The charges against them on the face of it appear indiscriminate, unwarranted, part of a malicious campaign to threaten human rights defenders, independent journalists, writers and thinkers in this country, from critiquing the government and its policies and an attempt to muzzle dissent. The activists who have been arrested are pro democracy workers who have been leading peaceful peaceful peoples rights based movements especially among the poor and marginalised communities, dalits and adivasis, for several years, in different parts of the country. The use of the UAPA meant for exceptional and violent activity, against such persons, when there has been absolutely no evidence of any acts of violence by these activists is deeply disconcerting and calls for an urgent intervention by this Hon'ble Court.

1 A. The petitioners are all academics and are seriously concerned with the preservation of the democratic fabric of this country. Petitioner no. 1 is India's best known historian. She is Professor Emerita at JNU where she taught for most of her career, and has twice declined the Padma Bhushan award from the Government of India. She has been elected to the British Academy and the American Academy of Arts and Sciences. Co-winner of the million dollar Kluge Prize, she has been awarded honorary doctorates by

the universities of Oxford and Chicago among others. Petitioner no. 2 is Padma Shri awardee and one of India's pioneering feminist economists. She has worked with many national bodies including the Planning Commission and the National Commission for Women, as well as several international organisations like the UNDP and the South Commission. She is a founding member of Development Alternatives for Women for a New Era (DAWN) and the Indian Association of Women's Studies (IAWS). Petitioner no. 3 is former Rhodes Scholar and an eminent economist who taught at JNU for more than three decades. He served as Vice-Chairman of the Kerala State Planning Board, and was a member of the high power UN task force on the global financial system. He is also the editor of the journal Social Scientist. Petitioner no. 4 is a well known sociologist and teaches at Delhi University. He is the winner of the Malcolm Adiseshiah Award for distinguished contributions to development studies, and served on the Government of India's expert committee on the proposed Equal Opportunity Commission. He has had visiting appointments at the University of Chicago and the EHESP, Paris. Petitioner no. 5 is a board member and senior advisor, Common Wealth Human Rights Initiative.

2. From the morning of August 28 2018 the following activists are presently known to have been arrested after raids on their homes:

i. Gautam Navalakha (Human Rights activist and journalist New Delhi). He was the President of the People's Union for Democratic Rights and has been associated with the Economic and

Political Weekly. He is a known commentator on current affairs. The state relied upon him to negotiate the safe return of persons abducted by left wing extremists in Chhattisgarh.

ii. Sudha Bharadwaj (Advocate, Bilaspur High Court, currently residing in Faridabad) Prominent cause lawyer of Bilaspur High Court who has represented workers, poor and marginal farmers and others in Chhattisgarh. She is the national general secretary of PUCL and since 2017 been teaching at the National Law University, Delhi. As a member of the Indian Association of People's lawyers, advocated Sudha Bharadwaj was vocal against the arrest of lawyers like Surendra Gadling in recent times. Sudha Bharadwaj has been a member of committees and provided legal aid and is a recognised human rights defender.

iii. Varavara Rao (Age 79, based in Hyderabad, political worker, commentator and renowned poet) He was a professor of English and Telegu literature.

iv. Arun Ferreira, (Mumbai) Practising as a lawyer since 2015 and a Human Rights activist

v. Vernon Gonsalves (Mumbai), Gold medalists from Bombay University in Commerce, accounts officer at Siemens, then lecturer of accounts in Maharashtra College, writer and columnist. His translation of Annabhau Sathe's Gold from the Grave from Marathi to English published in David Davidar's "A Clutch of Indian masterpieces".

2A. Simultaneously raids were conducted by the Pune Police at the homes/officers of activists such as Fr. Stan Swamy, adivasi rights activist based in Ranchi, Anand Teltumbde, intellectual and writer based in Goa and Susan Abraham, civil liberties lawyer and part of the Committee for Protection of Democratic Rights, Mumbai.

3. The Pune police registered an FIR no. 4/2018 dated 8th of January 2018 (P.S. Vishram Nagar, Pune), with regard to the Bhima Koregaon violence, that broke out after the Elgar Parishad conclave of Dalits and Dalit activists to mark the 200th anniversary of the Koregaon. Justice P.B. Sawant, former Judge of the Supreme Court of India and Justice Kolse Patel, former Judge of the Bombay High Court, were the organisers of the Elgar Parisad. It is undisputed that none of those who have been arrested in the most recent spate of arbitrary arrests are either specifically named in the FIR or were present at the events organised at the Elgar Parisad.

(A copy of the FIR no. 4/2018 dated, 8/01/2018 is annexed as **Annexure P1 (Pages ____ to ____)**).

(A true copy of the English translation of FIR no. 4/2018 is annexed as **Annexure P2 (Pages ____ to ____)**)

4. The police initially filed FIRs on 4th January 2018, against Hindutva leaders Milind Ekbote and Shambhaji Rao Bhide, based on eye witness accounts that they and fringe groups had incited the violence against the dalit congregation. The State government and police have not taken purposeful and decisive action against

right wing leaders Bhinde and Ekbote, who were behind the Koregaon-Bhima violence and instigated the attacks.

5. The Police instead embarked on a motivated process of arresting a large number of human activists, lawyers and journalists, who are all known for their commitment to the cause of respecting and promoting the rights of the most vulnerable and marginalised communities in particular the dalits, adivasis, women, landless labourers and the poor.

6. Thereafter in June 2018, Prof Shoma Sen from Nagpur University, Surendra Gadling, well known human rights lawyer who has been defending Prof G. N. Saibaba, Sudhir Dhawale, editor of a magazine, Rona Wilson, member of the Committee for the Protection of Political Prisoners and Mahesh Raut, anti-displacement activist, were arrested, under sections of the Indian Penal Code and the Unlawful Activities Prevention Act allegedly for inciting violence and communal enmity.

7. After they were arrested, some media organisations claimed that a letter was found on activist Rona Wilson' s computer addressed to a "Comrade Prakash" and signed by "R", which apparently talked of "senior comrades" proposing concrete steps to end the Modi-era and a "Rajiv Gandhi-type" incident being planned to assassinate the Prime Minister. There has been a systematic strategy deployed by the police investigating the Bhima Koregaon violence to put out highly provocative put completely

unsubstantiated, unverified and unproven allegations through select media channels to prejudice the public opinion against those arrested. Justice Kolse Patil, retired Judge of the Bombay High Court and Justice P.B. Sawant, retired Judge of the Supreme Court, who were organisers of the Elgar Parishad, condemned this letter which was never produced as evidence in Court, as fake. They claimed that the government saw a threat in the Elgar Parishad as it mobilised people to raise their voice against the establishment and resist communal forces. The police complaint says that the 5 accused arrested in June organised and funded the Elgar Parishad that led to the Koregaon violence. But the two retired judges have claimed that they organised the event.

(A copy of the NDTV report "In Probe into Plot to kill PM, Contradictions and unverified claims, dated, 28th June 2018, is annexed as **Annexure P3 (Pages _____to _____)**).

8. It is not the case that search warrants following the raids revealed anything incriminating. It appears that based upon an FIR No.4/2018 (registered in PS Vishram Nagar Pune) regarding a cultural programme, these raid have been conducted without any of these activists arrested on the 28th of August 2018, having participating in that meeting or being named in that FIR or having being present in Bhima-Koregaon on the date of Elgar Parishad or when the violence broke out. Without any discernible coherent materials suggesting any criminal activity on their part, they have been arrested.

9. On 28th of August 2018, a fresh set of raids and arrests have been made across the country in the homes of human rights lawyers, activists, writers and human rights defenders. The only common theme amongst those raided and/or arrested is that each one of them as worked for the cause of the poor, marginalised and vulnerable communities particularly adivasis and dalits and in the process often inviting the displeasure and wrath of powerful actors including the State, Police and the private corporate sector. It is an admitted fact that none of those arrested or raided on 28th August 2018, were present at the events organised by the Elgar Parishad on 31st December 2017. It is also undisputed that there are neither named or referred to or any way linked to FIR no. 4 of 2018. The police is using the FIR not for the purposes of initiating a process of investigation but rather as a net to trap human rights defenders.

10. All those arrested on 28th August 2018 are prominent members of society, contributing through their professional skills as teachers, writers, lawyers. There is no justification whatsoever for the arrest of such persons who have strong roots in society and where there is absolutely no apprehension that they would flee or interfere with the course of justice. The singular reason for the spate of arbitrary and motivated arrests is to silence the voice of dissent, particularly those who speak for the poor and marginalised. This targeting is aimed at maligning these human rights defenders, lawyers and activists but also to malign the progressive ideas and human rights ideology that they espouse. It

is also meant to have a chilling effect on all independent minded citizens, be they journalists, lawyers, writers, academics or thinkers so that they may not critique the policies, programmes of the government and others. The investigating agency in tandem with select media houses has been putting out scurrilous, unsubstantiated, malicious and defamatory allegations against human rights defenders. In July 2018, an "explosive letter" was attributed by Republic TV to advocate Sudha Bharadwaj and through which she was sought to be maliciously linked to Maoist activity and Kashmiri separatists. Pursuant to this a legal notice of defamation was sent to the concerned TV channel. The term "urban naxals" is becoming increasingly popular among the police and such media houses, to deliberately malign and demonise the human rights activities and to incite hatred and contempt amongst the general public.

11. It is also pertinent to point out the arbitrary, illegal and reckless nature of the arrests. The police is using, rather abusing, FIR 4/2018 to arrest any human rights defenders, without providing any evidentiary link between the persons arrested or raided and the FIR. It is noteworthy that in the arrest of both Gautam Navlakha and Sudha Bhardwaj the Arrest Memos are signed by persons who were brought as part of the entourage of the Pune Police as so called "independent and respectable persons" to authenticate the Arrest Memos. The seizure memos were prepared in Marathi and again signed by panchs who were brought by the Pune Police as part of their entourage. The

aforesaid FIR on which these arrests are based is also in Marathi and no translation was provided to the activists arrested. Neither Gautam Navlakha or Sudha Bharadwaj are conversant with Marathi.

12. In this regard, the Delhi High Court has granted interim relief to Mr. Gautam Navlakha in a Habeas Corpus Petition [Writ Petition (Cri.) 2559/2018] by staying the order of transit remand passed by the Court of the Chief Metropolitan Magistrate on 28/08/2018. This petition is listed for further consideration on 29/08/2018 at 2:15p.m before the Hon'ble Delhi High Court.

13. Further the Punjab and Haryana High court passed an order directing that the competent court shall ensure compliance with the law prior to granting transit remand and that Sudha Bharadwaj shall be kept at her residence under the supervision of the local police station till then. The matter is now listed before the Hon'ble High Court for 30th August 2018. Despite this order, a brazen attempt was made by the Pune Police team to take Sudha Bharadwaj out of the city in breach of the order. In a midnight hearing, the CJM, Faridabad ordered that "the matter is subjudice before the Hon'ble High Court and it will be prudent to wait for the orders of the Hon'ble High Court where the case is listed for 30/08/2018 with direction to the SHO Surajkun to keep the detainee Sudha Bhardwaj, at her home Badarpur Border from where she was arrested under supervision."

14. As stated earlier, many of these arrested persons are known to have spoken up for the legitimate constitutional rights of those accused by the State. Many of these persons are also known to have been interlocutors on behalf of the State at times of need. However a relentless campaign has been led by the present government to malign and threaten human rights workers. These activists arrested in June and on 28th August, are all outstanding, well known and well respected human rights crusaders. Their writings, advocacy for the rights of the poor and oppressed and fight for civil rights in this country, tirelessly for many years together, has been selfless. They are being systematically targeted and maliciously charged

15. Many statements by senior activists and intellectuals have been issued condemning the arrests of these persons on false charges. One such statement by the Indian Writers Forum, signed by many prominent writers, activists and intellectuals of this country such as Arundhati Roy, Romila Thapar, Bezwada Wilson and others, issued on the 28th of August 2018, on the day of these arrests, condemns "the attempt to distract the public from this real conspiracy with a fabricated one. We condemn the crushing of dissent. We stand in solidarity with all those who speak for our fellow citizens rights."

(A copy of the Statement from the Indian Writers Forum, dated 28th August 2018, is annexed as **Annexure P4 (Pages_____to _____)**)

16. Earlier, Amnesty International and Human Rights Watch, had also issued statements to end politically motivated use of counterterrorism law and had stated that the arrests and detention of Dalit and Adivasi rights activists for alleged terrorism-related offences appear to be politically motivated.

(A copy of the statement issued by Amnesty International India, dated 25th June 2018 is annexed as **Annexure P5 (Pages _____ to _____)**).

17. If such liberal and dissenting voices are silenced in this way by arresting them under draconian provisions of law made for terrorists, constitutionalism and the very democratic fabric of this country will not survive. The normal argument that these are criminal cases in which there will be no interference by writ will not, it is respectfully stated apply as this is a situation where the UAPA is apparently being misused against human rights activists.

18. Furthermore, if such persons are arrested by linking them with old and pending FIRs, then the liberty of every thinking citizen is in peril. Therefore, this Court's intervention is called for.

19. The petitioners have not filed any other petition seeking the same reliefs.

GROUND

A. Because arrests of these very well known human rights activists and dissenting voices on the basis of an

investigation into Bhima Koregaon events which they did not attend and had nothing to do with is clearly malafide and an attempt to silence dissenting voices and intimidate human rights activists in the country. The arrests and raids on them clearly violates fundamental rights guaranteed to law abiding citizens under article 14 and 21 of the Constitution of India.

B. Because the use of the draconian UAPA against these peace loving activists who have no history of indulging in any violence or instigating any violence, is clearly malafide and an attempt to brow beat and intimate them and other similar people. That the targeting and persecution of political and ideological opponents/adversaries through abuse and untenable use of legal processes runs contrary to the core tenets of the 'rule of law', which governs our society. Ideological and political persecution by the state is recognised as a violation of the rights of individuals under the Constitution of India and also under international human rights law, including in the International Covenant on Civil and Political Rights, which India had ratified in 1976.

C. Because the arbitrary, motivated arrests and rampant misuse of special laws like the Unlawful Activities Prevention Act (UAPA) to muzzle free speech, dissent and political expression, will not only violate the Fundamental Rights of the persons arrested, but also have a chilling effect on all citizens, who will be unable to enjoy their Articles 19 and

21 fundamental rights to the fullest, in fear of similar repercussions to their life and liberty.

- D. Because the freedom of speech and expression is guaranteed to every citizen of India, including the right to dissent and disagree, and persecution at the hands of the State for exercising the said right is a gross abuse of the Constitutional protection accorded to the Fundamental Rights under Article 19.
- E. Because the issue of *locus* has been broadened over the years by the Hon'ble Supreme Court in the jurisprudence of Article 32, as detailed in *Janata Dal vs H.S. Chowdhary* (1992) 4 SCC 305, and the present Petitioners are *bonafide* petitioners filing this petition in public interest, and are covered by the broad scope of Article 32.
- F. Because political acts of the Executive cannot be allowed to trample over Part III rights under the Constitution, in the garb of lawful action against criminal acts. The veil of lawfulness adorned by such acts of political persecution and vendetta needs to be pierced to unravel the real motivation and intent behind such arbitrary and *malafide* State action.
- G. Because it is undisputed that none of the arrested persons are named or linked in any way with the FIR, nor were any of the arrested persons present when the Bhima Koregaon

events took place, for which they have been wrongly and arbitrarily arraigned by misusing the provisions of the law.

- H. Because, in any event, the arrested persons are all very respected and well known persons with deep roots in society, and there is no need for them to be detained in custody. It is settled law that arrest should only be made as the last resort and should not be used to arbitrarily deny the right of an individual to his personal liberty and dignity, which is guaranteed under Article 21 of the Constitution. In *Dr. Subhash Kashinath Mahajan vs State of Maharashtra and Anr.* (2018) 6 SCC 454, it was held.
- I. Because "Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."
- J. Because this Hon'ble Court has in the past referred to the state of lawlessness to which our society is descending, and the current state of affairs is evidence for the abject lawlessness in society, wherein State action itself is arbitrary, *malafide* and contrary to legal principles and practices.
- K. Because it is well settled that the right to constitutional remedies under Article 32 is a justiciable right in itself, and the proceedings pertaining to some of the arrested persons

in some High Courts will not be a bar to the present petition filed in public interest under Article 32.

PRAYERS

It is therefore prayed that this Hon'ble Court be pleased to grant the following prayers:

i) Issue an appropriate writ, order or direction, an independent and comprehensive enquiry into arrest of these human rights activists in June and August 2018 in connection with the Bhima Koregaon violence.

ii) Issue an appropriate writ, order or direction, calling for an explanation from the State of Maharashtra for this sweeping round of arrests;

iii) Issue an appropriate writ, order or direction, directing the immediate release from custody of all activists arrested in connection with the Bhima Koregaon violence and staying any arrests until the matter fully investigated and decided by this court

iv) Pass any such other order as may be deemed appropriate.

Petitioner Through:

(PRASHANT BHUSHAN)
Counsel for the Petitioners

Drawn & Filed On: 29th August 2018
New Delhi