

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4596 OF 2018

Anand Teltumbde.	]	
Occupation – Senior Professor,	]	
Chair, Big Data Analytics,	]	
Goa Institute of Management,	]	
Aged 68 years,	]	
Residing at – Goa Institute of Management	]	
Sanquelim, Goa – 403 505.	]	... Petitioner

Versus

1. State of Maharashtra,	]	
Through its Secretary for Ministry of	]	
Home Affairs, Mantralaya,	]	
Maharashtra, Mumbai – 400 032.	]	
2. Vishrambaug Police Station,	]	
Through Senior Police Inspector,	]	
Having office at – Narayan Peth,	]	
P-160, Pune – 411002.	]	
3. The Commissioner of Police,	]	
Pune, State of Maharashtra.	]	
4. Investigating Officer,	]	
ACP, Swargate Police Station,	]	
Pune.	]	... Respondents

Mr. Mihir Desai, Senior Advocate a/w Mr. Vijay Hiremath i/b
Ms.Devyani Kulkarni for Petitioner.

Smt. A. S. Pai, APP for State.

**CORAM :- B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.**
RESERVED ON :- DECEMBER 17, 2018
PRONOUNCED ON :- DECEMBER 21, 2018

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. The Petitioner has preferred this Writ Petition for quashing and setting aside the proceedings in connection with the FIR dated 08/01/2018 registered with Vishrambaug Police Station, Pune, vide C.R.No.4 of 2018. By the second prayer, the Petitioner has prayed for issuance of directions to the investigating agency not to take coercive steps against him in respect of the said FIR.

2. The FIR was lodged on 08/01/2018 at Vishrambaug Police Station for the offences punishable under Sections 153A, 505(1)(b), and 117 read with 34 of the Indian Penal Code (for short, 'IPC'). The FIR was lodged by one Tushar Damgude. According to him, he was in the business of construction. Through a social networking site, he came to know that, there was a programme at Shanivarwada on 31/12/2017 organized by Elgar Parishad. He attended the said programme/public meeting at around 2.00 p.m., on 31/12/2017. It is

mentioned in the FIR that, there were a few speakers, comperes, singers and other performers present on the stage. The first informant has stated in his FIR that, some of the performers enacted short plays, dances and songs which were provocative in nature and had effect of creating communal disharmony. He has further mentioned in the FIR that a few objectionable books and other literature were kept at the venue for sale. It was the contention of the first informant in his FIR that, a banned organization CPI (Maoist) was inciting violence. According to the first informant, members of Kabir Kala Manch spread such hatred through their songs, plays and speeches causing enmity between different communities. As a result, there was an incident of violence, arson and stone-pelting near Bhima-Koregaon causing loss of lives and public money. Accordingly, the first informant lodged his FIR with Vishrambaug Police Station naming 6 members of Kabir Kala Manch.

3. The events occurring on 01/01/2018 at Bhima-Koregaon had wide repercussions throughout the State of Maharashtra and law and order was affected at many places. The FIR

itself was registered on 08/01/2018 and the investigation was conducted. Out of 6 persons named in the FIR, one Sudhir Dhawale was arrested on 06/06/2018. Initial investigation was carried out by PI Marathe and PI Shinde of Vishrambaug Police Station till 24/01/2018. Thereafter, the investigation was taken over by ACP Shivaji Pawar, Swargate Division, Pune City. The scope of investigation was expanded, as new material started surfacing. The investigation revealed deep rooted conspiracy to create communal disharmony. Section 120B was added on 06/03/2018. Few more names surfaced as accused during investigation. Search was conducted on 17/04/2018 on the premises of accused namely Rona Wilson - resident of Delhi, Surendra Gadling - resident of Nagpur, Sudhir Dhawale and Harshali Potdar - residents of Mumbai, Sagar Gorakhe, Dipak Dhengale Ramesh Gaychor and Jyoti Jagtap - residents of Pune. The seized items were sent to Forensic Science Laboratory (for short, 'FSL'). The clone copies of the electronic material were sent by the FSL to the investigating agency for further investigation.

4. On 17/05/2018, the provisions of Unlawful Activities (Prevention) Act, 1967-Revised Act 2012 (hereinafter referred to as 'UAPA') were invoked. Sections 13, 16, 17, 18, 18(B), 20, 38 39 and 40 of the UAPA were added to the registered offence i.e. C.R.No.4 of 2018 of Vishrambaug Police Station. Surendra Gadling, Rona Wilson, Shoma Sen, Mahesh Raut, Comrade M. alias Milind Telgumbade, Comrade Prakash alias Navin alias Rituparn Goswani, Comrade Manglu and Comrade Dipu were added as accused.

5. On 22/08/2018, a few more persons were shown as accused. They were Vara Vara Rao, Arun Ferreira, Vernon Gonsalves, Sudha Bharadwaj and Gautam Navlakha. For the first time, the present Petitioner was mentioned as an accused. One Stan Swamy - resident of Ranchi was mentioned only as a suspect and not as an accused. Out of these, at present, Vara Vara Rao, Arun Ferreira, Vernon Gonsalves, Sudha Bharadwaj are in judicial custody. On 15/11/2018, charge-sheet was filed in the Court of Addl. Sessions Judge, Pune, against Surendra Gadling, Rona Wilson, Sudhir Dhawale, Shoma Sen and Mahesh Raut.

6. This is the relevant background of the case. In this background, the Petitioner has filed the present Petition for the reliefs mentioned hereinbefore.

7. The Petitioner has set out his educational qualifications and achievements in his academic and professional career in the petition. The Petitioner holds degrees in Engineering and Business Management from reputed universities. He is also conferred D.Litt. (Honouris Causa) by Karnataka State University, Mysore. He has held high positions in the corporate world and at present, he is a Senior Supervisor, Big Data Analytics at Goa Institute of Management. It is mentioned in the Petition that the Petitioner regularly writes and speaks on issues of caste, peoples' struggles, public policies, etc. He is regularly invited by many foreign universities for delivering lectures. In the Petition, he has categorically denied the allegations that he is associated with Communist Party of India (Maoist) (hereinafter referred to as 'CPI(M)'). Similarly, he has also denied that he has nexus with the Bhima-Koregaon incident. According to the Petitioner,

he is residing at Goa Institute of Management, Sanquelim, Goa with his wife and he is falsely implicated in the present FIR.

8. We have heard Mr. Mihir Desai, learned Senior Counsel for the Petitioner and Smt. A. S. Pai, learned APP for State. The Investigating Officer has filed Affidavit dated 05/12/2018 in response to the Petition mentioning the progress of investigation. The material which could not be revealed in the Affidavit since the investigation was in progress, was produced in a sealed envelope for perusal of the Court. The Petitioner has filed Rejoinder to the Affidavit filed by the Investigating Officer.

9. Apart from submitting that the Petitioner is innocent and is falsely implicated and that there was no material against him, Mr.Desai dealt with the Affidavit filed by the Investigating Officer in his submissions. As already mentioned, charge-sheet is already filed against some of the accused and therefore, same documents and material are forming part of the charge-sheet. This material is referred by both the parties to advance their submissions.

10. The investigating agency has heavily relied on the material seized during the raid conducted on various premises connected with different accused. According to the Investigating Officer, different documents were found to have been copied in the respective memory devices of the computers and laptops. According to the Investigating Officer, the accused persons were not only the active members of CPI(M) but they took active part in executing the sinister design of destabilizing the society. It is thus quite clear that the scope of investigation is considerably widened and is not restricted to the Bhima-Koregaon incident dated 01/01/2018. According to the Investing Officer, the accused were working as active members of a banned terrorist organization and these accused were not merely representing a dissenting opinion or a different ideology.

11. The Affidavit of the Investigating Officer mentions 5 documents. These documents form part of the charge-sheet which is already filed. These documents and the submissions made on behalf of the Petitioner in respect of these documents are as follows :

(A) Letter from Prakash to Anand :-

According to the Investigating Officer, this letter is drafted on 06/04/2018. A copy of the same is annexed by the Petitioner himself to his rejoinder at Ex.D. The letter mentions 'Anand's visit to Paris for Human Rights Convention to be held on 9th and 10th April 2018. The letter ended with exhortations to their intellectual comrades to keep the fire ablaze. Mr.Desai submitted that the name Anand mentioned in the letter does not mean that it was addressed to the present Petitioner. Mr.Desai submitted that the source of this letter was doubtful and this material was hardly incriminating showing any connection of the Petitioner with the banned organization.

(B) Letter to Com. Surendra from Com.M dated 08/06/2017 :-

This letter makes reference to 'Upcoming AGM meet in October'. According to the Investigating Officer it is mentioned in the letter that 'Com. Anand' had given good suggestions to involve students for this meet which was to be conducted on the theme of 50th

Anniversary of Naxalbari Movement. It is mentioned in the affidavit of the Investigating Officer that this AGM was the short form of Anuradha Ghandy Memorial Meet. Anuradha Ghandy was a Central Committee Member of the Banned Terrorist Organization CPI (M) and a Trust was formed in her name. Organizing said programs directly amount to promoting and advocating the ideology of the banned terrorist organization. In response to this document Mr.Mihir Desai has reiterated that 'Comrade Anand' mentioned in the letter could not have meant that the name was that of the Petitioner. He submitted that in any case, merely making few good suggestions for the event would not indicate any activity which would fall under any of the offences either under IPC or UAPA.

(C) Letter to Sundarshan from SG :-

According to the Investigating Officer, SG stood for Surendra Gadling, who is one of the accused. There is a reference to Central and State forces and they are portrayed as enemies in the said letter. Again in this letter there is a reference to one 'Com. Anand', who was personally overseeing all the matters related to one study

circle involving the students. According to the Investigating Agency, through this study circle feeling of hatred was spread. Mr.Mihir Desai submitted that again this letter cannot be connected with the present Petitioner and cannot be termed as material against him.

(D) Letter to Prakash from R. dated 23/12/2017 -:

As per the Investigating Officer, this letter was written by one of the accused Rona Wilson to Prakash. The letter mentions reports of fake encounters near Gadchiroli. A Fact Finding team was to be formed in the organization. The letter mentions that “Anand had agreed to co-ordinate the whole thing”.

(E) Party Funds received from CC -:

This document was recovered from laptop of accused Rona Wilson, which mentioned that “Anand T. had received 90 T from Surendra (Through Milind).”

This, according to Investigating Officer, shows that the said Anand was recipient of funds from the banned organization.

12. All the above mentioned documents form part of the charge-sheet which is already filed and they are produced before us by the learned APP Mrs.A.S. Pai in a compilation of documents. Though admittedly these documents are not recovered from any electronic device of the Petitioner, according to the Investigating Agency, there is a clear reference to the Petitioner in these documents, where he is referred as “Anand, Com. Anand or Anand T.”

13. Mr.Mihir Desai, Learned Senior Counsel heavily criticized reliance of the Investigating Agency to connect the Petitioner with the present crime. He submitted that firstly the procedure involved in recovering these documents is not proper. There is no authenticity to these documents and they can never be connected with the present Petitioner. He further submitted that in all these documents, the reference to the name Anand cannot unerringly mean that such reference was made to the Petitioner. We have perused these documents and contents of these documents reveal that there is a definite design to commit acts which fall under various sections of UAPA.

14. The crucial question is whether the present Petitioner is in any way connected with such documents and whether there is any other material against the Petitioner which justifies the Investigating Agency's stand that the Petitioner is actively involved in the crime.

15. Mr.Desai invited our attention to the article which was given for publication on 31/12/2017 and which was published on 02/01/2018. This article is annexed to the Petition as Annexure 'A'. The tenor of this article runs contrary to the views expressed in 'Elgar Parishad'. This article mentions that it was the Petitioner's opinion that the battle between Peshwas and British had taken place when the soldiers had fought merely for their employers. The caste of soldiers was never an issue. This view is contrary to the majority views expressed in 'Elgar Parishad'. Mr.Desai therefore submitted that the Petitioner can never be linked directly or indirectly for instigation if any, leading to Bhima-Koregaon incident. As we have mentioned earlier, the scope of investigation was not restricted to the Bhima-Koregaon incident, but the activities leading to the incident and

subsequent activities as well are the subject matter of the investigation. Therefore the Petitioner's connection with the banned organization will have to be seen in the light of the material collected by the Investigating Agency, though he may have propagated a different view in respect of the battle between the British and the Peshwas.

16. Mr.Mihir Desai invited our attention to the raid conducted by the Investigating Agency at the house of the Petitioner on 28/08/2018 at Goa. From the Panchanama on record it appears that the Investigating Agency had indeed gone to the residence of the Petitioner when nobody was present in the house. The keys were brought by the watchman from the store room and the raiding party had entered his house. The Panchanama shows that the raiding party merely went inside and came out. It is difficult to understand why the half hearted raid was conducted by the investigating agency. In any case nothing was seized or recovered at that time. The Investigating Agency is relying on the documents recovered during the raid conducted on the premises of other accused.

17. Mr.Desai further submitted that the Petitioner was arraigned as one of the accused by the end of August 2018 and this Court granted interim protection on 15/10/2018 and yet in the meantime, the Investigating Agency did not call the Petitioner for the investigating purpose, neither seized anything from him. This submission does have some force. However, the material which is already on record in the form of charge-sheet and the other material collected during the investigation which is produced before us, cannot be ignored.

18. Mr.Desai further submitted that even identity of one Prakash in some of the documents referred by the Investigating Agency, is doubtful. He invited our attention to the Judgment passed by the Sessions Court in case of one Saibaba. In that prosecution, the said Saibaba was convicted and was sentenced. He is in jail since March 2017. The Judgment in this case mentions that Saibaba was using pseudonym “Prakash”. Therefore if he was in jail since March 2017, he could not have written the letters which are referred to by

the Investigating Agency. Mrs.Pai submitted that these persons kept changing their identities and took different pseudonym and in this case Saibaba had taken a pseudonym as “Chetan” since year 2012. She has annexed such communication at page No.16 of the compilation of documents, which she has furnished.

19. Mr.Desai submitted that the Petitioner is not named in the FIR. The Petition mentions categorically that he was in Goa in the last week of December 2017 and first week of January 2018. It is the case of Petitioner that there is absolutely nothing to show that the Petitioner either organized any funds or helped in any way in Elgar Parishad. According to the Petitioner, he is targeted by the Police Officer because of his writings and his prominence. He is involved maliciously by the police.

20. To counter all these submissions advanced on behalf of the Petitioner, the learned APP Mrs.Pai relied on the documents which we have already referred to hereinabove. Apart from these documents, Mrs.Pai produced for our perusal further relevant investigating papers

which could not be disclosed to the Petitioner and other accused at this stage; since the investigation is in progress and disclosure of details of such material would seriously hamper progress of investigation. We refrain ourselves from mentioning such material at this stage. However, we are satisfied that the Investigating Agency has some material to establish the identity of the Petitioner as Anand or Com. Anand as referred to in the aforementioned documents forming part of the charge-sheet. The stand of the Petitioner that he was in Goa in the last week of December 2017 and first week of January 2018 is also belied by this material. The investigation is still in progress. Considering the nature and magnitude of the conspiracy, the Investigating Agency is required to be given sufficient opportunity to unearth the evidence against the accused. We are satisfied that at this stage there is sufficient material against the Petitioner with the Investigating Agency and the allegations against him are not baseless.

21. Mr.Mihir Desai has relied on a few judgments. One of these Judgments is of Hon'ble Supreme Court in the case of ***Arup Bhuyan Vs. State of Assam, reported in (2011) 3 Supreme Court***

Cases 377 and the second is in the case of *Indra Das Vs. State of Assam, reported in (2011) 3 Supreme Court Cases 380*. In these Judgments it is held that mere membership of a banned organization will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence. In the instant case, the allegations and material against the Petitioner travel beyond the mere allegations of being a member of banned organization. His participation and active role is spelt out in the material collected by the Investigating Agency. The veracity of such material would be a subject matter of the trial.

22. Mr.Desai further relied on the judgment of the Hon'ble Supreme Court in the case of *Common Cause and Others Vs. Union of India & Ors., reported in (2017) 11 Supreme Court Cases 731*, wherein it was held that the incriminating material in the form of loose sheets of papers will not constitute evidence. Such material which is not maintained in regular course of business is not reliable. In the instant case, the incriminating material is procured from the electronic device of different accused and it is sent for forensic

examination. This is not the stage at which we can give a finding on the evidentiary value of such material.

23. Thus, considering the rival submissions and the material produced before us, we are of the opinion that this is not a case where there is no incriminating material against the Petitioner. It is also not possible to record a finding that implicating the Petitioner as one of accused is a malafide exercise of powers on the part of Investigating Agency. The offence is serious. The conspiracy is deep rooted and has extremely serious repercussions. The Investigating Agency must be allowed to have sufficient opportunity to collect evidence. The investigation is in progress.

24. We do not find that this is a case which requires our interference at this stage. With the result, the present Criminal Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)

(B. P. DHARMADHIKARI, J.)

1. At this stage, learned Counsel for Petitioner seeks continuation of interim order between parties for a period of three weeks more, so as to enable Petitioner to approach Honourable Apex Court.
2. Request is being strongly opposed by learned APP.
3. However in the circumstances of case we grant request as prayed for. The operation of this order is stayed for period of three weeks. This interim arrangement shall cease automatically thereafter.

(SARANG V. KOTWAL, J.)

(B. P. DHARMADHIKARI, J.)