

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4425 OF 2018

Gautam P. Navlakha.
Aged about 65 years,
Flat No. 2, R-3 Nehru Enclave
New Delhi 110019.

..Petitioner.

Versus

State of Maharashtra
Through Vishrambaug P. S.
(FIR No. 4 of 2018.)

..Respondent.

Dr. Yug Mohit Chaudhry with Ms. Ragini Ahuja for the Petitioner.
Mrs. A. S. Pai, APP for the Respondent-State.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ

Arguments concluded on : July 26, 2019.
Judgment pronounced on : September 13, 2019.

Judgment [Per Ranjit More, J.] :

1. The Petitioner has invoked the jurisdiction of this Court under Article 226 of Constitution of India and section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings of FIR bearing CR. No.4 of 2018 registered on 8th January 2018 with Vishrambagh Police Station, Pune qua him.
2. The subject FIR was registered on on 8th Janaury

2018 on the basis of complaint of one Tushar Ramesh Damgude, initially for the offence punishable under sections 153A, 505(I) (b), 117 read with section 34 of the Indian Penal Code, 1860 with Vishrambagh Police Station, Pune. On 24th January 2018, investigation of this FIR was transferred to Assistant Commissioner of Police, Swargate in pursuance of the directions given by Commissioner of Police.

. The FIR proceeds on the lines that Tushar Damgude (first informant) came to know through social networking sites that there is programme at Shaniwarwada on 31st December 2017 organised by Elgar Parishad. He attended the said programmne / public meeting at around 2.00 p.m. on 31st December 2017. It is stated by the informant that there were few speakers, singers, comperes and other performers present on the stage; some of the performers enacted short-plays, dances and songs which were provocative in nature and had the effect of creating communal disharmony. It is stated in the FIR that few objectionable books and other literature were kept at the venue for sale. It is also alleged in the said FIR that banned organisation-CPI(Maoist) was inciting violence. The allegation is also made that members of Kabir-Kala Manch

spread hatred through their songs, plays and speeches causing enmity between different communities and as a result thereof, there were incidents of violence, arson and stone pelting near Bhima-Koregaon causing loss of lives and public money.

. The events occurring on 1st January 2018 at Bhima-Koregaon had the wide repercussions throughout the State of Maharashtra and the law and order was affected at many places. In the subject FIR, six persons were named as accused, namely, Sudhir Dhawale, Sagar Gorakhe, Harshali Potdar, Dipak Dhengale, Jyoti Jagtap and Ramesh Gaychor. After investigation was taken over by ACP, Swargate, Pune, the scope of investigation was expanded as new material started surfacing. The investigation revealed deep rooted conspiracy to create communal disharmony. Accordingly, section 120-B was added on 6th March 2018.

. Search was conducted on 17th April 2018 on the residential premises and work places of Rona Wlison of Delhi, Surendra Gadling of Nagpur, Sudhir Dhawale and Harshali Potdar of Mumbai, Sagar Gorake, Dipak Dhengale, Ramesh Gaychor and Jyoti Jagtap of Pune. The seized items were sent to Forensic Science Laboratory. The close copies of the electronic

material were sent by the FSL to the investigating agency for further investigation.

. On 17th May 2018, the provisions of Unlawful Activities (Prevention) Act, 1967 were invoked. Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the said Act were added to the subject FIR. Surendra Gadling, Rona Wilson, Shoma Sen, Mahesh Raut, Comrade M @ Milind Telgumbade, Comrade Prakash @ Niavin @ Rituparn Goswami, Comrade Manglu and Comrade Dipu were added as accused.

. On 22nd August 2018, more persons were added as accused, namely, Vara Vara Rao, Arun Ferreira, Vernon Gonsalves, Sudha Bharadwaj and present petitioner. One Stan Swamy resident of Ranchi was mentioned only as a suspect and not as an accused. Out of these persons, at present, Vara Vara Rao, Arun Ferreira, Vernon Gonsalves, Sudha Bharadwaj are in judicial custody. On 15th November 2018, charge-sheet was filed in the Court of Additional Sessions Judge, Pune against Surednra Gadling, Rona Wilson, Sudhir Dhawale, Shoma Sen and Mahesh Raut.

. The Petitioner along with four others came to be arrested on 28th August 2018 from their houses in Delhi at about

2.15 p.m. and was immediately taken to the Court of Chief Judicial Magistrate, Saket, Delhi, who granted two days transit remand to Pune police. On the very same day, a habeas corpus petition bearing Criminal Writ Petition No.2559 of 2018 came to be filed on behalf of the Petitioner in Delhi High Court. At about 2.45 p.m., on the very same day, the Delhi High Court directed that the Petitioner will not be moved from Delhi till further orders. Further on the same day, at 4.00 p.m. the Delhi High Court stayed the afore-stated transit remand order and directed the house arrest of the Petitioner until next morning when the matter was fixed. On 29th August 2018, five academicians filed a PIL bearing Criminal W.P. D.No32319 of 2013 in the Hon'ble Supreme Court praying for Court monitored SIT. This writ petition / PIL was fixed for hearing in the same afternoon and coincidentally it was being heard as the Petitioner's habeas corpus petition was being heard in Delhi High Court. The Supreme Court extended the interim protection granted to the Petitioner by Delhi High Court from 28th August 2018 and directed the Respondents to file reply. On 28th September 2018, the Supreme Court by majority of 2:1 declined to order a Court monitored investigation but extended the house arrest (earlier

ordered on 29th August 2018) for a further period of four weeks to enable the Petitioner to pursue appropriate remedies by way of quashing petition, discharge or bail or proceedings for habeas corpus.

. On 1st October 2018, Delhi High Court quashed the Petitioner's arrest holding that it was in violation of Article 22 of the Constitution of India as well as section 167 read with sections 57 and 41(1)(a) of the Code of Criminal Procedure, 1973, and ordered the Petitioner's release from the house arrest. In pursuance of the liberty granted by the apex Court to the Petitioner, the present petition is filed.

. On 19th October 2018, the petition was placed before this Court for admission. Learned APP sought time. The Petitioner's counsel gave no objection provided that the Petitioner is protected from the arrest. The learned APP made a statement that the Petitioner is already protected from arrest till 26th October 2018 in view of the order made by the apex Court and there is no question of granting ad-interim relief at that stage. We accordingly adjourned the writ petition to 26th October 2018. On 26th October 2018, again the petition was adjourned, however, ad-interim order granted earlier was

continued.

. On 1st November 2018, the petition was placed for admission. Since the order passed by Delhi High Court In Criminal Writ Petition No. 2559 of 2018 was challenged in the Apex Court by filing SLPs and the Apex Court had issued notices therein and the question about the sufficiency of material against the accused was involved in SLP No. 8616 of 2018, we deferred hearing on the present writ petition till 21st November 2018. The ad-interim relief was continued from time to time and the petition was finally heard on 26th July 2019 and the order was reserved.

3. In the backdrop of facts mentioned above, the Petitioner has filed the present writ petition for the reliefs mentioned hereinabove. The Petitioner claims to be a journalist of long standing, associated with the Economic and Political Weekly and other well regarded publications. The Petitioner also claims to be the human right activist for decades and his outspoken views on political issues are claimed to be well within the constitutional guarantee of free speech. The Petitioner also claims that he was called upon by the State to assist in securing the release of officials abducted by the left wing extremists in

2011. The Petitioner further claims that he has been an open critic of left wing extremist violence.

4. Dr. Choudhary, learned counsel for the Petitioner would submit that the FIR does not disclose any offence under the provisions of UAPA Act, muchless any such involvement of the Petitioner in any other offence. He submitted that the Petitioner had nothing to do with either Elgar Parishad or the organisation of the event on 31st December 2018, either as a member of the said Parishad or as a participant in the event. He also submitted that neither the Petitioner was present nor involved in the violence that took place in Bhima Koregaon on 1st January 2018; therefore, the subject FIR is manifestly unjust and is liable to be quashed qua the Petitioner.

5. Dr. Choudhary further submitted that references in the computer of a third party are being used against the Petitioner, which is not legally permissible. He submitted that in what context these references have come up is deliberately obfuscated, whether the electronic record refers to him or is authentic or not is in question. He also submitted that mere reference by name, is insufficient for adding someone in the FIR. Dr. Choudhary however accepted that the authenticity of the

material is a matter of trial. He would submit that the Petitioner is one of the public spirited interlocutor who has not minced his words in criticizing the extremist violence. He also submitted that investigating agency is using the criminal law to target the legitimate political activity. He lastly submitted that even if the allegation made in the FIR are taken at face value, they do not make out case against the Petitioner and therefore the subject FIR deserves to be quashed qua the Petitioner.

6. The State has opposed the writ petition by filing reply of Shivaji Pawar, ACP, Swargate Division, Pune, who is the investigating officer in the subject crime. Mrs. Pai, learned APP heavily relied upon the material recovered from the Petitioner and other co-accused, and submitted that the Petitioner is found to be working and is an active member of a banned terrorist organisation, namely, Communist Party of India (Moist) and the said organisation by no stretch of imagination can ever be considered representing the dissenting opinion or as an organisation professing different ideology. Mrs. Pai further submitted that the material collected during investigation clearly show that the Petitioner is involved in selecting and

encouraging cadres to go underground in struggle area. The Petitioner was also found providing strategic inputs in furtherance of the objective of armed rebellion as per the strategic document of the banned terrorist organisation. She submitted that apart from this material, there is other relevant material pertaining to the Petitioner and the same cannot be disclosed at this stage of investigation, when the investigation is still in progress. Mrs. Pai, however, placed those documents before us for our perusal in a sealed envelope.

7. We have perused the material against the Petitioner as disclosed from the charge-sheet filed against other accused as well as material given to us in a sealed envelope. The documents which are relied upon by the prosecution and as disclosed in the charge-sheet filed against other accused are as under :

[I] Letter to the Petitioner from Sudarshan :-

This letter is written by Sudarshan to the Petitioner. Sudarshan is none other than KatkamSudarshan @ Anand, Secretary of Central Regional Bureau and central committee member of CPI (Moist). This letter reveals the role of Petitioner in all open work activities and fact

finding missions those are given by CPI (Moist) party all over the country. The purpose of fact finding mission is to mar the image of State machinery in public at large and to reduce the faith of public in the State machinery. The fact finding missions are funded by CPI(M) party which is evident from the letters recovered from the laptop and desktop of Rona Wilson and Surendra Gadling, which is annexed at page 20 of the compilation. This letter is recovered from the computer of the Petitioner and Rona Wilson, both.

[II] Report on the Petitioner :-

Though this report seems to be critical in nature with respect to the Petitioner, this report is written by one of the members of CPI(M) criticising the other. The report elaborates the deep rooted involvement of the Petitioner with CPI(M) party. The report also discloses that the Petitioner was in Kashmir as per the directions of the party; the Petitioner's role in mass organisations and overt activities is self explanatory from the contents of this report.

[III] Letter to Comrade Manibai from Comrade Anantwa :-

In this letter, the writer appreciates the efforts of Surendra Gadling, Varavara Rao, Rona Wilson, Arun, Sudhir and other comrades for successfully organising the 50th anniversary of the Nexalbari movement. It is

further mentioned in this letter that the responsibility of fact finding mission in Jammu and Kashmir is given to the Petitioner and Comrade Varunda. The prosecution contends that Comrade Manibai is Dandakaranya Special Zonal Committee Member of CPI(M). The contention is supported by the entry in serial no.2 on page no. 51 of the compilation.

[IV] Letter from S/S to Comrade R :-

In this letter, writer mentioned the efforts of Sudha and Stan to conduct work of persecuted prisoners solidarity committee after the arrest of Comrade Prashant [He is the convicted accused in Gadchiroli (Saibaba) case, who was looking after the persecuted prisoners solidarity committee organisation. It is clear from this letter that Surendra, the Petitioner, Rona and Sudha have direct access and communications with the Central Committee Members and senior leaders of the CPI(M).

[V] Letter from Sudha to Prakash :-

This letter is regarding the minutes of meeting conducted at Nagpur on 19th March 2017 with respect to present petitioner and Sudha Bhardwaj has mentioned that the Petitioner and one another are in contact with separatist from Jammu and Kashmir. This letter also corroborated the references of the Petitioner in the documents recovered from the other accused in present matter.

[VI] Strategy and Tactics of Indian Revolution :-

This is one of the important documents of the CPI(M). In this document, they have quoted the strategy and tactics based upon the protracted peoples' war. In order to understand the role of the Petitioner it is important to understand the role and responsibility entrusted with the urban cadres in this document. Document discloses the importance of urban movement and in this context, the letters received and sent by the Petitioner are to be read.

8. Above documents relied upon by the prosecution are placed on record and in fact they are part of the charge-sheets filed against other accused. These documents are recovered from the electronic devices of the Petitioner and others. Apart from this material, Mrs. Pai has placed for our perusal further investigation papers in a sealed envelope which cannot be disclosed to the Petitioner at this stage since investigation is in progress and disclosure will result in impeding the progress of investigation. We, therefore, refrain ourselves from recording any comments thereupon.

9. Having considered the documents referred to

above and submitted for our perusal by the learned APP in a sealed envelope, we are satisfied that the investigating agency has material to connect the Petitioner in the subject crime. The investigation is still in progress. Considering the nature and magnitude of the conspiracy, in our opinion, the investigating agency is required to be given sufficient time to unearth the evidence against the Petitioner especially when the scope of investigation is not restricted to Bhima-Koregoan incident but activities leading to the incident and subsequent activities as well are the subject matter of investigation. On the basis of material placed before us for our perusal, we are of the considered opinion that this is not the case where the registration and investigation of the crime is without any basis or case of complete absence of material against the Petitioner. Therefore, we cannot accede to the prayers of Petitioner. Petition is without any merit and the same is accordingly dismissed.

10. By way of precaution, we make it clear that the observations herein in this order are *prima facie* in nature and made for the limited purpose of deciding the issue raised in this

writ petition, and the trial Court or any other Court shall not be influenced by the observations made in this order.

11. The report submitted by the learned APP in a sealed envelope shall be returned to the learned APP.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]

. At this stage, Dr. Choudhary, the learned counsel for the Petitioner seeks extension of the interim relief granted by this Court during the pendency of writ petition. Request is opposed by the learned APP. However, in the interests of justice and in order to enable the Petitioner to approach the higher Court, we extend the interim order granted in this matter earlier for the period of three weeks from today. We make it clear that after the expiry of the period of three weeks, the interim order will ceased to operate.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]