

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
Writ Petition (Crl.) Diary No. 32319/2018**

IN THE MATTER OF

ROMILA THAPAR & ORS.

...Petitioners

VERSUS

UNION OF INDIA & ORS.

...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE STATE OF
MAHARASHTRA**

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PAPER BOOK

ADVOCATE FOR RESPONDENTS : NISHANT R. KATNESHWARKAR

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I, Dr. Shivaji Panditrao Pawar, Age-32 years, Occ: Service as Assistant Commissioner of Police, Swargate Division, Pune City, Pune, (Maharashtra) today at New Delhi do hereby solemnly affirm and say as under:

1. That I am the authorized officer of the Respondent No.3 in the present Writ Petition. I am also authorized to file Counter Affidavit on behalf of Respondent No.3 as such I am well conversant with the facts and circumstances of the case and hence I am competent and authorized to swear this Counter Affidavit on behalf of the Respondent No.3.

2. At the outset I respectfully state and submit that the present writ petition is not maintainable either under Article 32 of the Constitution of India or otherwise. As stated

hereunder in detail when an investigation in accordance with the Code of Criminal Procedure commences either upon an FIR or a complaint and is underway, it is only the accused persons who can maintain proceedings before the competent courts including the constitutional courts. The present petition is purported to have been filed by five unconnected individuals with the prayer with respect to the arrest and investigation of persons mentioned in para 2 of the petition. The petitioners, who are strangers to the offence under investigation, are also praying for bail on behalf of the persons arrested during an on-going investigation strictly in accordance with the Code of Criminal Procedure after the investigating agencies having gathered requisite incriminating material against the said individuals.

3. Considering the material revealed during investigation conducted so far, the answering respondent is constrained to pray that this Hon'ble Court may be pleased to decide the issue of maintainability of the present petition at the behest of strangers as the preliminary issue and be pleased to dismiss the same only on the said ground.

4. A perusal of the entire memo of petition would show that a petition is essentially based upon –

- (i) Credentials of the persons arrested as known to the petitioners;
- (ii) Media reports with regard to the arrest of the said five persons; and
- (iii) Statements issued by 'Senior activists and Intellectuals' condemning the arrest [obviously without knowing the incriminating facts about the accused which have emerged during the investigation]

5. It is respectfully submitted that sum and substance of the petition is to the effect that five persons arrested are persons of eminence (as per the perception of the petitioners), who, according to the petitioners, cannot commit any offence and since the arrests are condemned by some "activists" and "intellectuals", this Hon'ble Court should invoke its constitutional jurisdiction under Article 32 of the Constitution and should release the said five accused persons.

6. It is unfortunate that the petitioners have not even bothered to pray before this Hon'ble Court that this Hon'ble Court should at least examine the allegations against the five accused persons named by them. The entire petition is based upon the individual perception of the petitioners [who are strangers to the investigation in question] that the

arrested persons are "all outstanding, well-known and well respected human rights crusaders" and, therefore, their arrest requires to be enquired into and they should be released on bail.

7. I respectfully state and submit that before I place the facts for kind consideration of this Hon'ble Court without prejudice to the aforesaid preliminary objection, I respectfully clarify that the State Government is committed to the protection of fundamental rights of every citizen. A mere dissenting view, difference in ideology or vehement objections to the political thinking can not only not be prohibited but should always be welcomed in any democratic country. Even if a citizen very vociferously and vehemently professes a different political or other ideology or expresses his dissent with the programmes, policies and working of the Government, cannot be and should not be a ground to curtail personal liberty of such a person/s or infringe upon any of the fundamental rights and any such infringement would definitely be violative of the cherished principles underlined in Chapter III of the Constitution.

8. It is, however, submitted that the instant case is a case in which five accused persons for whose benefit the present petition is filed are not arrested based upon any dissenting

views expressed by them or difference in their political or other ideologies. As explained in detail hereunder, during the course of an intense investigation since 08.01.2018 [the date on which the FIR is registered as pointed out hereunder], serious criminal offences are made out and incriminating material has emerged against them. This Hon'ble Court would be satisfied from the below mentioned facts that, this Hon'ble Court is not dealing with somebody's freedom of speech, freedom of conscience or freedom to hold and express views. This Hon'ble Court is dealing with persons against whom cogent evidence has so far come on record showing that they are active members of the banned terrorist organization namely, Communist Party of India [Maoist], and they are involved in not only planning and preparing for violence but were in the process of creating large scale violence, destruction of property resulting into chaos in the society as per the agenda prepared by the Communist Party of India [Maoist], which was banned as a terrorist organization in 2009. A copy of the notification dated 22.06.2009 banning the aforesaid organization is annexed herewith and is marked as **Annexure R/1**.

9. I state and submit that the following persons along with the one absconding underground accused, as a part of well-thought out criminal conspiracy and being active members of the banned Communist Party of India [Maoist], arranged a public meetings under the banner of 'Elgaar Parishad'. It appears clearly that "Elgaar" is a corrupted version of "Yalgaar" which means "the attack". The said meeting was held on 31.1.2.2017 at Shaniwarbada between 2 pm to 10 pm through a frontal organization called 'Kabir Kala Manch'.

10. It may be relevant to mention at this stage that on 1st January of every year is celebrated as 'Vijay Diwas' in Pune. All throughout the recent history, such celebrations on 1st January in Pune have always been peaceful and symbolic celebrations without any intent to disharmonize the society and remain restricted to paying homage to the valour of Mahar regiment who successfully participated in the war against Peshwas

11. I respectfully state and submit that as pointed out hereinabove on 31.12.2017 [that is to say a day prior to the Vijay Diwas namely 1.1.2018], the aforesaid Elgaar Parisad came to be organized to play with the sentiments of a particular community as emerged during the investigation conducted subsequently.

12. I state and submit that one Tushar Ramesh Damgude lodged an FIR on 8.1.2018, a true translated copy of which is enclosed hereto and marked as **Annexure R/2**.

The following persons are named in the FIR-

- 1) Sudhir Dhawale
- 2) Sagar Gorakhe
- 3) Harshali Potdar
- 4) Dipak Dhengale
- 5) Jyoti Jagtap
- 6) Ramesh Gaychore & others

It may be relevant to note at this juncture and it would be relevant to place on record at this stage that the said five persons are not the individuals being indicted in the FIR for the first time but some of them have past criminal antecedents and were imprisoned for criminal offences also.

13. I state and submit that out of the aforesaid six persons named in the FIR, only one person is arrested namely Sudhir Dhawale in the said offence.

14. I state and submit that the investigation progressed based upon which section 120 B of the IPC was added on 6.3.2018 and two more persons were found to be suspected

accused namely – Surendra Gadling R/o Nagpur and Rona Wilson R/o Delhi.

15. I respectfully state and submit that considering the material / document found during the investigation conducted up to April, 2018, the investigating agencies conducted searches on 17.4.2018 at the residential premises and work places of the following individuals:

- 1) Rona Wilson, R/o Delhi
- 2) Surendra Gadling, R/o Nagpur
- 3) Sudhir Dhawale and Harshali Potdar, R/o Mumbai
- 4) Sagar Gorakhe, R/o Pune
- 5) Dipak Dhengale, R/o Pune
- 6) Ramesh Gyachore and Jyoti Jagtap, R/o Pune

16. I respectfully submit at this juncture that considering the nature of the offence and the potential of the accused persons to make allegations against the investigating agencies on the ground that they are the “activists” and, therefore, were “hounded”, the investigating agency decided to videograph the entire procedure of conducting the search right from the time the agency knocked at the doors of the respective individuals till the material recovered were seized, sealed, and punchnamas were drawn in the presence of individual punchas. Even the microchip containing the said

videography was also sealed in the presence of the Puchas and recorded in the Punchnama.

The material part which was recovered from the said persons were the documents found in their respective computers / laptops / pendrives / memory cards etc. Different documents were found to have been copied in the respective computers / laptops / pen drives / memory card / devices. On different dates which is reflected in the FSL report as the seized items were immediately sent by the investigating agency to Forensic Science Laboratory.

17. The Forensic Science Laboratory received the seized material and gave "clone copies / mirror images" to the investigating agency so as to ensure that pendency of report of FSL does not hamper the investigation.

18. It is respectfully submitted that the material found from the computers / laptops / pendrives / memory cards of the aforesaid accused persons was shocking and clearly implicating the aforesaid persons not only as active members of CPI [Maoist] but clearly reflected an on-going sinister design of having committed and in the process of committing criminal offences having the potential of destabilizing the society. The contents also clearly reflect the preparation, planning and coordination not only amongst the

aforesaid persons but with others [subsequently arrested] to carry out a violence, planned ambush / rebellion against the "enemy" (which is our country and its security forces).

19. I beg to place the said material found from the computers / laptops / pendrives / memory cards which were recovered from the custody and possession of the respective accused and pray that this Hon'ble Court be pleased to go through some sample material (which forms part of the case diary) which would be sufficient to remove any impression created that "political dissenters" who are the "intellectuals" are being hounded and the voice of dissent is being suppressed. It would become amply clear that they are found to be committing and were planning and preparing for a series of criminal offences in connivance and conspiracy with other persons.

20. I state and submit that based upon the said investigation addition of section 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the Unlawful Activities [Prevention] Act came to be made on 17.5.2018 against the following individuals:

- 1) Surendra Gadling, R/o Nagpur
- 2) Rona Wilson, R/o Dehi
- 3) Shoma Sen R/o Nagpur
- 4) Mahes Raut R/o Nagpur and Gadchiroli

- 5) Comrade M. alias Milind Teltumbade [underground]
- 6) Comrade Prakash alias Navin alias Rituparn Goswami
R/o Assam [underground]
- 7) Comrade Manglu [underground]
- 8) Comrade Dipu and other underground members.

21. I state and submit that based upon the investigation conducted till the aforesaid date, following persons were arrested on 06.06.2018

- 1) Surendra Gadling, R/o Nagpur
- 2) Rona Wilson R/o Delhi
- 3) Sudhir Dhanwale

The following persons were not only arrested but they were also searched on 6.6.2018

- 1) Shoma Sen R/o Nagpur
- 2) Mahesh Raut R/o Nagpur and Gadchiroli

22. I state and submit that the aforesaid searches against the two persons were also conducted in a similar fashion as elaborated hereinabove, namely, detailed videography from beginning to the end so as to obviate any subsequent allegation as an afterthought by the accused persons. The material seized which were again essentially in the form of electronic material in the computers / laptops / pen drives /

memory cards was sent to FSL which gave "clone copies" to the investigating agency for further investigation.

23. I state and submit that based upon the aforesaid material recovered from the searches of the aforesaid persons [which is a part of the case diary and which would be placed for consideration and perusal of this Hon'ble Court in a sealed cover], the following persons were also clearly found to be a part of the criminal conspiracy and their role was not merely peripheral role but they were found to be playing a very vital role in the criminal offences committed and / or planned by others. Based upon the said incriminating material, the following persons came to be arrested on 28.8.2018 and searches were conducted at their residential/work places in a similar fashion, under videography in presence of individual Punchas who were Government officers.

- 1) Vara Vara Rao R/o Hyderabad
- 2) Arun Ferreira R/o Thane
- 3) Vernon Gonsalves, R/o Mumbai
- 4) Sudha Bhardwaj R/o Faridabad
- 5) Gautam Navlakha R/o Delhi

24. At the outset I beg to respectfully point out that the present petitioners have termed the aforesaid five persons

as “outstanding well known and well respected human rights crusaders”. In this context it may be pointed out that one of the accused viz. Vernon Gonzalesz, was convicted by the Special Court, Nagpur, under the provisions of the UAPA for his involvement in Maoist activities.

25. While examining the facts mentioned hereunder, I respectfully urge this Hon'ble Court to keep one fact in mind [which can be demonstrated from the material recovered] that all individual mentioned hereinabove are found to be working and are active members of a banned terrorist organization called Communist Party of India [Maoist]. The said organization by no stretch of imagination can ever be considered representing the dissenting opinion or as an organization professing different ideology.

26. The material gathered from others based upon which the five accused persons named hereinabove are arrested, clearly show that they were involved in selecting and encouraging cadres to go underground in ‘struggle area’, mobilizing and distributing money, facilitating selection and purchase of arms, deciding the rates of such arms and suggesting the routes and ways of smuggling such arms into India for its onward distribution amongst the cadres. Some of them have suggested training and laying of booby traps

and directional mines. They are also found to be providing strategic inputs in furtherance of the objective of armed rebellion as per the strategic document of the banned terrorist organisation namely Communist Party of India [Maoist].

27. It is respectfully submitted that the house arrest merely restricts the physical movement of the accused but he can always ensure, not only destruction of evidence elsewhere, but can alert other potential accused while sitting in his home. The arrest of accused persons in fact situation like this is also for the reason that they are required for custodial interrogation and prevented from not only destructing further evidence, but giving the leads to other accused persons to whom the investigating agencies could have reached.

28. I respectfully submit that a substantial damage must have been done by the accused while in house arrest which would be prejudicial to the further investigation of such serious offences.

29. I respectfully submit that this Hon'ble Court may be pleased to vacate the order passed earlier and be pleased to specifically permit the investigating agency to take them in police custody and interrogate them in accordance with law.

Hence this Counter Affidavit.

Dr. Shivaji Panditrao Pawar
Deponent

VERIFICATION

I, the above named deponent, do hereby verify that the contents of para 1 to para 29 of above Affidavit are true and correct to the best of my knowledge and belief and no material has been concealed there from.

Solemnly affirmed on this 5th day of September, 2018
at New Delhi.

Shivaji Panditrao Pawar
Deponent

ANNEXURE-R-2

I Tushar Ramesh Damgude, 37 Years, Business-Construction, R/O-Sr.No.-70, Santosh Nagar, Katraj, Pune 411046, Mobile No-9850065423.

In my personal attendance the statement given is that I resides at the above mentioned address along with my family since 20 years. I have completed my education as Master of Arts (History).I am conducting a business in the name of Rau Enterprises since 004 years.

I have read the post on a facebook that in the last week of December on 31st December 2017,Elgar Parishad will be held at Shaniwar wada, Pune. On 31/12/2017 at around 2 pm I was present alone for the Elgar Parishad on the ground of Shaniwarwada, Pune. At around 16.00 hrs the anchor Sagar Gorakhe, Sudhir Dhawale to explain the motive of the programme, Singer and actor Jyoti Jagtap, Ramesh Gaychor and other also as a speakers Jignesh Mewani, Umar Khalid, Vinay Ratansingh, Prashant Dontha etc. were present on stage. The entire ground of the Shaniwarwada accommodated by the crowd attending Elgar Parishad. I have read the information about Kabir Kala Manch and its members through social media and news paper. So I know each member of Kabir Kala Manch.

While anchoring the Elgar Parishad Sagar Gorkhe ,along with other subjects quoted that, "Bhima koregaon ne dilay dhada, navi peshwai masanat gada, Udwa thikrya thikrya rai ga, gadun taka peshwai ra...sainika garaj tila thokyachi...." Repeatedly uttered such provocative slogans which promoted enmity in the society.

After that some more speakers delivered their speeches. Ramesh Gaychor, Jyoti Jagtap who are singers and actors along with other 6 to 7 persons of Kabir Kala Manch again performed," Udwa thikrya thikrya rai ga, gadun taka peshwai ra...garjana sidhnakachi...ali navyane peshwai ra...garaj tila thokyachira... sainika garaj tila thokyachi...."the song in the form of dance, and street act which abeted enmity in the society.

According to schedule of the programme in the second session while presenting the intention of the programme Sudhir Dhawale uttered the inflammatory speech, "Jab Julm ho to Bagawat honi chahiye shahar mein, Jab Julm ho to Bagawat honi chahiye shahar mein, aur agar bagawat na ho to behtar he ke, ye raat dhalane se pehle ye shahar jalkar rakh ho jaye, ye satra hein, ye satra ki title hi, apne aap mein ladhai k aeilan hein, ye nayi peshwai ko hamko shamshan ghat mein, Kabrastaan mein dafnana hein." Which lead to hatred in the society, at the same time

other speakers have also delivered provocative speeches at the place of programme objectionable and provocative books were kept for sale. As soon as the programme ended I left the place.

As every year on 01/01/2018 at Bhima Koregaon mass of people gathered to honour the vijay smarak. But, in the Elgar Parishad of 31/12/2017 organised at Shaniwarwada, Pune by the members of Kabir Kala Manch Sudhir Dhawale, Sagar Gorake, Jyoti Jagtap, Harshali Potdar, Ramesh Gayichor and 06 to 07 other persons deliver the provocative speeches, misleading history, inflammatory songs and street plays were performed by the above Sudhir Dhawale, Harshali Potdar and others activists of Kabir Kala Manch have faced the enquiry and action for their Naxal links.

Further I state that, the policy of the banned organisation CPI (Maoist) is that by misleading dalit community and attract them towards the maoism which is not constitutional way but the way of violence. As a part such policy Sudhir Dhawale and his other members of Kabir Kala Manch since last few months in various places of Maharashtra delivered the inflammatory speeches which abated the hatred based on casteism, misleading history, inciting songs and street plays. Similarly through

provocative pamphlets, books and speeches which lead to enmity and hatred in the society. Which resulted in picketing, violence and arsoning at Koregaon Bhima and nearby places. After that it lead to damage to property and also loss of life in Maharashtra.

Still On 31/12/2017 Elgar Parishad was organised at Shaniwarwada, Pune from 1400 to 2200 hrs in it 1.Sudhir Dhawale of Kabir Kala Manch, 2.Anchor Sagar Gorkhe and other artists, 3.Harshali Potdar, 4.Ramesh Gaychor, 5.Deepak Dhengale 6.Jyoti Jagtap and other persons presented the objectionable song as above" Jab julma ho to bagwat honi chahiye shahar me, Jab julma ho to bagwat honi chahiye shahar me aur agar bagawat na ho to behetar ho ke, ye raat dhalne ke pehele ye shahar jalkar rakh ho jaye, he shahar jalkar rakh ho jaye, ye jo satra hai, ye satra ki title hi apne aap me, ladhai ka elan hai, ye nai peshwai ko humko smashan ghat me, kabrastan me dafnana hai" by delivering such inflammatory and enmity promoting speeches also through pamphlets and books were distributed which abeted hatred in the society. This resulted in picketing, violence and arsoning at Koregaon Bhima and nearby places. After that it lead to damage to property and life in entire Maharashtra and also hatred in the society on the basis of casteism. Thus, I have complaint against the

Members of Kabir Kala Manch 1.Sudhir Dhawale 2.Anchor Sagar Gorkhe and his other members, 3.Harshali Potdar 4.Ramesh Gaychor, 5.Deepak Dhengale 6.Jyoti Jagtap and other persons.

I have read this above mentioned typed complaint and it is correct and true as per my version.

This statement on 08/01/2018.

Sd/-

M.B. Taware

Police Sub Inspector

Vishrambaug Police Station

Sd/-

Complainant

Tushar Ramesh Damgude

//True translated copy//