IN THE HIGH COURT OF JUDICATURE AT MUMBAI

IN ITS CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO. /2021

DISTRICT : MUMBAI

IN THE MATTER OF

ARTICLE 226, 227

CONSTITUTION OF INDIA

AND

IN THE MATTER UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE, 1973

AND

IN THE MATTER OF ARTICLE 14, 21 AND 22 OF CONSTITUTION OF INDIA

AND

IN THE MATTER OF CASES REGISTERED INVOKING UNLAWFUL ACTIVITIES PREVENTION ACT, 1967

AND

IN THE MATTER OF INCARCERATION BY CREATING FAKE, FABRICATED DOCUMENTS IN ORDER TO FALSELY IMPLICATE PUBLIC INTELLECTUALS

AND

IN THE MATTER OF POLICY OF THE RESPONDENTS IN TARGETTING INTELLECTUALS BY SLAPPING CASES UNDER STRINGENT LAWS AGAINST PUBLIC JUSTICE

RONA S/O JACOB WILSON)
AGED 42 YEARS, CURRENTLY)
JAILED IN CENTRAL PRISON TALOJA)
ORDINARY RESIDENT OF DELHI)... PETITIONER

VERSUS

1. STATE OF MAHARASHTRA,)
THROUGH ITS ADDL. CHIEF SECRETARY,)
DEPARTMENT OF HOME AFFAIRS)
HAVING HIS OFFICE AT)
MANTRALAYA MUMBAI)
2. SHIVAJI PAWAR , AT THE MATERIAL TIME)
THE INVESTIGATING OFFICER, NOW)
HAVING HIS OFFICE AT THE OFFICE OF)
THE COMMISSIONER OF POLICE , SADHU)
VASVWANI CHOWK, CHURCH PATH,)
AGARKAR NAGAR, PUNE 411001)
3. UNION OF INDIA, THROUGH THE)
SECRETARY, MINISTRY OF)
HOME AFFAIRS, HAVING HIS OFFICE)
AT NORTH BLOCK NEW DELHI)
4. NATIONAL INVESTIGATION)
AGENCY, THROUGH ITS)
SUPERINTENDENT VIKRAM)
KHALATE, HAVING HIS OFFICE AT)

CUMBALLA HILLS, PEDDAR ROAD,)

RESPONDENTS

TO

THE HON'BLE THE CHIEF JUSTICE AND OTHER HON'BLE PUISNE JUDGES OF HIGH COURT OF JUDICATURE OF BOMBAY

THE HUMBLE PETITION OF

THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. By way of this petition, Petitioner prays for quashing of prosecution, challenges his framing and incarceration based on planted forged and false documents, which are the basis of the prosecution case against him in the case/s, popularly known as the Bhima Koregaon case/s, and seeks investigation through a special investigation team to ascertain the person/s behind such planting of fabricated documents in his electronic devices, so as to implicate him in sensational case, and prays for the prosecution of those responsible in accordance with law.
2. The Petitioner is an independent researcher, mainly concerned with research for documentaries on themes pertaining to political economy and ethnography of small communities and social formations. He is a native of Kerala and has been a resident in Delhi since the past 22 years. He completed his M. Phil from JNU, Delhi and was

in the process of pursuing a Ph.D. at the University of Surrey or the University of Leicester, England. Both universities had accepted his Ph.D. proposal and he was in the process of applying for a scholarship in 2018. The Petitioner is also a human rights campaigner and was involved in various campaigns for the release of persons falsely arrested for their political beliefs or for belonging to ethnic / religious minorities. The Petitioner was also a part of a legal campaign to save the life of Delhi University's Prof. G. N. Saibaba who despite being 90% disabled remains incarcerated. The Petitioner was thus actively involved in the field of civil and human rights and he was the media secretary for the Committee for the Release of Political Prisoners (CRPP). Prior to the present case, the Petitioner has not been booked in any criminal case till date and he has no criminal antecedents.

3. Since June 6, 2018, he has been languishing behind bars as an under-trial in Special ATS Case No. 1 of 2018 before Sessions Judge, Pune and since transfer to NIA on 24.01.2020, in NIA Special Case No. 414 of 2020 and is awaiting trial in case under Unlawful Activities Prevention Act, 1967 arising out of Crime No.4/2018 registered with Vishram Baug Police Station Pune, 153A, 505 (1) B, 117, 120B, 34 IPC and Section 13, 16, 17, 18, 18(B), 20, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967, and has

been charge sheeted by ACP, Swargate, Pune. On 06.06.2018, the Petitioner along with 4 other intellectuals were arrested by Respondent No. 2. On 28.08.2018, five more intellectuals from different parts of the country came to be arrested by Respondent No. 2. On 24.01.2020, investigation was taken over by Respondent No. 4, National Investigation Agency, and transferred to NIA Court Mumbai and renumbered as NIA/414/2020. Seven more intellectuals came to be arrested this time by Respondent No. 4, NIA, and a second supplementary chargesheet came to be filed after their arrests. Presently 16 persons have been arrested in this case and the investigation is still continuing. Charges are yet to be framed, which itself will take a long tie and the trial is further likely to take a long time. There is no possibility of the trial being concluded in the forseeable future given the fact that there are more than 200 witnesses in supplementary charge sheet alone and considering further the pendency of cases before the Special Courts.

4. Respondent No.1 is the State of Maharashtra, through Additional Chief Secretary, Department of Home, which initiated criminal action against Petitioner and his co-accused and the authority which allowed their prosecution under stringent laws, by according sanction by two orders dated 14.11.2018 and 20.02.2019 to prosecute as required

under Section 45 of the UAPA 1967. The Petitioner craves leave to refer to and rely upon the said applications and orders of sanction as and when produced. The Respondent No. 2 is the Investigating Officer who carried out the raids, searches and seizures in an unlawful manner concerning the Petitioner and his earlier 9 co-accused, their arrests and the filing of the charge sheet against them. The Respondent No. 2 claimed to have obtained "secret information" on which basis raids were carried at the house of the Petitioner in Delhi, even after search warrant was repeatedly rejected by JMFC Court, Pune. The secret information related to the documents which were allegedly found in the computer of the Petitioner and co-accused, which are now found to be planted. The Respondent No.3 is the Union of India, through the Ministry of Home Affairs. Under Section 4 of the National Investigation Agency (NIA) Act, superintendence of the Respondent No. 3 is vested with the Respondent No.4. The Respondent No. 3 is also granted the third order of sanction to prosecute the Petitioner as detailed in later part of this petition without assigning any reasons. It is this authority which has, in total disregard to the provisions of law, suddenly and much belatedly transferred investigation of the matter to the National Investigation Agency. Respondent No.4 is a statutory body, a central investigation agency which has

mandate to investigate cases, assigned to it by Respondent No.3. The Respondents through various arms of the state have been in a co-ordinated manner *mala fide* prosecuting the Petitioner and co-accused.

5. The entire edifice of the Prosecution's case against the Petitioner and the co-accused is based entirely on electronic evidence supposedly recovered *inter alia* from the Petitioner's computer/electronic devices. As subsequently detailed in the Petition, it has now come to light through independent and unimpeachable expert analysis that the incriminating documents relied upon by the Prosecution have been planted in the Petitioner's electronic devices to incriminate him and the co-accused. In view of this, any further prolonging of the case against the Petitioner and the co-accused will be an absolute and continued travesty of justice, apart from sanctifying the abuse of process of law and will lead to further violation of the Petitioners and co-accused fundamental rights. It is in this context that the present Petition is filed.

5. The Petitioner at this stage feels it necessary to enumerate facts in brief leading to the filing of the present petition:

Brief Facts of the case

a. On 1st January 1818, the Peshwa army led by Peshwa Bajirao II was defeated by the British

Army consisting mainly of Mahars, Marathas, Hindu Rajputs and other Backward castes at Koregaon. Over the years, and especially after a call given by Dr. Babasaheb Ambedkar, the "Vijay Stambh" (Victory Pillar) at Koregaon Bhima has become a symbol to commemorate the victory of the oppressed Castes against injustices perpetuated by the Peshwas.

b. 1st January is observed every year by large number of Dalits for the victory of the oppressed castes in defeating Peshwai rule in the historic battle of Bhima Koregaon. It was to be observed on an even larger scale in 2018 to observe its 200th anniversary.

c. On 31.12.2017, to commemorate the 200th anniversary of this historic battle of Bhima-Koregaon, more than 250 social organizations representing Dalits, other Backward castes (OBCs), Adivasis, Women's Organizations, Marathas and Muslims organized themselves as the "*Bhima Koregaon Shaurya Din Prerna Abhiyan*" (Campaign in Inspiration of the Valour Day of Bhima Koregaon) so as to appropriately commemorate the anniversary held the Elgaar Parishad.

d. The Parishad was convened by Retired Supreme Court Hon'ble Justice P B Sawant and Retired Bombay High Court Hon'ble Justice Kolse-Patil and was held at Shaniwar Wada in Pune city, which is around 30 kms from Bhima Koregaon and it was conducted peacefully without a single incidence of violence or disruption of law and order. The Petitioner was not present and had no role to play in the said Parishad.

e. The members of the public mainly of Dalits and other oppressed sections of society proceeding to the memorial site were attacked by mobs of 1100-1200 young people, who were on bikes holding saffron flags and shouting slogans. The dalit processionists were injured in the large scale violence and arson that saw burning of vehicles, stone pelting and attacks by lathi wielding mobs. The Petitioner was not present in or around the site on the concerned date.

f. Eight days after the violence, i.e. on 08.01.2018 a Complaint by one Tushar Damgurde was registered as C.R. No. 4/2018 of Vishrambaug PS under Sections 153-A, 505 (1) (b), 11, 34 of IPC against Sudhir Pralhad Dhawle & five others. The Petitioner is not named in this FIR. However, it is

in this FIR that the Petitioner came to be arraigned as an accused four months later and arrested six months later. A copy of the said FIR dated 08.01.2018 is annexed herewith and marked as **EXHIBIT –A.**

g. However, six days prior to the said FIR at Exhibit-A, on 02.01.2018, FIR "0" of 2018 was lodged by one of the victims, Anita Sawle, at Pimpri PS, Pune City under I.P.C. Sections 307, 143, 147, 148, 149, 295(a), 435, 436, Arm Act 4(25) Maharashtra Police Act, Section 3(2)(v), 3(1) (10) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989, with regard to the violence at Bhima-Koregaon on 1/1/2018 naming Sambhaji Bhide, the head of Shiv Prathistan Hindusthan; Milind Ekbote, the head of Samastha Hindu Aaghadi and their followers as accused being the perpetrators of the crime. The FIR was subsequently transferred as C.R. No. 09 of 2018 of Shikrapur PS, Pune Rural.

h. That the FIR 4/2018 which was registered mainly under section 153A of IPC, with Vishram Bag police station, came to be assigned to ACP of Swargate Division on 22.01.2018. thereafter on 6th of March 2018, the Respondent No. 2, the then

Investigating Officer, informed the learned Magistrate that section 120B had been invoked on the basis of "secret information "received from "secret sources", and also added the name of the Petitioner and Surendra Gadling, Advocate, as a suspected accused.

i. On 9.03.2018 the Respondent No. 2 sought a search warrant to conduct raids at the houses of Petitioner and other co-accused, stating that he had got "secret information" about correspondence which would unravel a conspiracy, and according to the information, the same was stored in the electronic devices of the accused, which they may destroy if they are served notice of the same. The Learned JMFC rejected the application.

j. On 13.03.2018, the Respondent No. 2 again approached the same court with a fresh application, with a request for *in camera* hearing. He gave a detailed application narrating as to what was expected to be found in the electronic devices of the accused persons. This time also the application for the search warrant was rejected.

k. Thereafter, on 17.04.2018, the Respondent No, 2 conducted raids, searches and seizures of electronic devices at the houses of the six persons

named in C.R.No. 4/2018 at Exhibit-A hereto, as well as of the Petitioner in Delhi and Surendra Gadling in Nagpur who were named as "suspected accused".

l. On 19.05.2018 the provisions of Unlawful Activities Prevention Act, 1967 were invoked against Petitioner and other co accused.

m. On 06.06.2018, the Respondent No.2 in the said C.R. No. 4 of 2018 arrested the Petitioner along with four others - Sudhir Dhawale, Surendra Gadling, Shoma Sen and Mahesh Raut. However, only Sudhir Dhawale was named as accused in the FIR at Exhibit-A hereto. These were the first arrests under the said FIR.

n. Thereafter on 28.08.2018, five more persons came to be arrested by the Respondent No. 2 in the said C.R. No. 4 of 2018, namely V.V Rao, Vernon Gonsalves, Arun Ferreira, Sudha Bhardwaj and Gautam Navlakha and their homes raided and electronic devices seized.

o. On 14.11.2018, Respondent No.1 granted sanction to prosecute Petitioner and 4 others. A copy of the said sanction u/s 45 UAPA is annexed hereto and marked as **Exhibit-B**. Thereafter, on 15.11.2018 first charge sheet came to be filed against

Petitioner under UAPA, 1967. Are we not filing the summary report of the charge sheet dated 15/11/2018 here? A supplementary charge sheet against the added accused came to be filed on 21.02.2019, after obtaining sanction dated 20.02.2019. A copy of the same is annexed hereto marked as **Exhibit-C**.

p. By an order dated 24.01.2020 issued by the Ministry of Home Affairs of the Respondent No 1, bearing No. 11011/17/2020/NIA, the Respondent No.2, NIA, took over the investigation in FIR No. 04/2018 dated 08.01.2018 registered by Vishrambaugh Police station, i.e. after a period of two years. Attached hereto and marked as **Exhibit-D** is copy of the order dated 24.01.2020.

q. After the Investigation, the Respondent No. 4 NIA, obtained sanction dated 8.10.2020 from Respondent no.3 and filed another charge sheet against 7 more Accused on 09.10.2020, who were alleged to have committed offences under section 120B, 115, 121, 121A, 124A, 153A, 201, 505(1)(b) and 34 of the IPC and sections 13, 16, 17, 18, 18A, 18B, 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967. Annexed hereto and marked as **Exhibit-E** is the copy of the said

sanction order dated 08.10.2020. the said sanction order contains no reason whatsoever for according the said sanction.

The case against the Petitioner

6. The case, according to Prosecution, against the Petitioner and the co-accused has varied from charge sheet to supplementary charge sheet. However, it can be briefly summed up as follows:-

   a. The Petitioner, in connivance with other accused, all belonging to a proscribed organisation, CPI (Maoist), conspired to organise a programme in Pune i.e. Elgar Parishad on 31.12.2017. The intention of the said banned organisation, CPI (Maoist), was to propagate its ideology, through the said programme. Executing the same, a programme was organised and from the said stage, inflammatory speeches were given, which fanned communal sentiments and thereafter large-scale violence broke out in Maharashtra on 01.01.2018, leading to the death of one person. The programme was funded by the proscribed organisation.

   b. During the investigation, it was revealed that Petitioner and other co-accused, were hatching

conspiracy to eliminate Prime Minister Modi, "*in another Rajiv Gandhi type incident*." They were coordinating acquisition of sophisticated weapons from Nepal. They were recruiting people to join CPI Maoist in the forest area. They were sharing details of police posts in conflict area, and aiding in procurement of material for attacking. They were guiding the attacks to be carried out on armed forces. They were in touch with underground Maoists. The Petitioner and his co-accused are thus guilty of the said offences.

7. All these allegations, and other allegations in the charge sheets, are based entirely on the electronic evidence allegedly found in the devices of the Petitioner, Surendra Gadling and a few of the other co-accused. The electronic storage devices seized on 17.04.2018 from the houses of Petitioner, Surendra Gadling, Sudhir Dhawale, Sagar Gorkhe, Ramesh Gaichor, and Deepak Dhengle were sent to the Forensic Science Laboratory (FSL) for analysis and; after receiving clone copies of the same, the Investigating Agency claimed that "incriminating" electronic records in the form of electronic documents were found on the said devices. Accordingly the Investigating Agency added Sections 13,

16, 17, 18, 18 (B), 20, 38, 39, &40 UA(P)A on 17.05.2018.

8. It is also necessary to note that the laptop of Petitioner, which allegedly had most of the incriminating documents, was in "*shut down*" position when police landed at his house to conduct the raid and thus it could have been seized, without any hurdle. However the laptop in question was turned on and operated for period of approximately ten minutes by the person claiming to be cyber forensic expert and who was part of the police raiding team. The fact that his laptop was started and operated for over ten minutes is evident from the regional forensic lab report submitted before the lower court. At the same time it is also very much visible in the footage pertaining to the raid. A copy of the FSL Report dated 5.11.2018 pertaining to the device of the Petitioner is attached hereto and marked as **Exhibit-F**.

9. The order of sanction to prosecute the Petitioner and his co-accused was issued by Respondent No. 1 on 14.11.2018. It was stated that the said sanction has been granted by the Additional Chief Secretary to Department of Home of the Respondent No. 1 State of Maharashtra Government. That the Director of Prosecution, an independent review body appointed by

the State Government, had recommended to the State Government that there was sufficient evidence against the Petitioner herein and four other accused persons to prosecute them under the sections mentioned therein. It was further stated that relevant papers were produced before the Competent authority, Mr. Sunil Porwal, the then Additional Chief Secretary Home Government of Maharashtra, who was satisfied that a *prima facie* case was made out on the said offences and that accordingly he gave sanction as required by law to prosecute the Petitioner and other accused mentioned therein. It is submitted that the said sanction was based on non-application of mind..

10. It is submitted that it has come to the knowledge of the Petitioner that the incriminating documents found on his computer and referred to in the charge sheet have been planted for over a period of 22 months preceding the seizure without his knowledge and said sanction is based on false and fabricated evidence and is liable to be quashed and set side.

11. A day later, i.e. on 15.11.2018, the Respondent No. 2 filed charge sheet against the Petitioner and the 4 co-accused in Sessions Court, Pune. A copy of the Final Report in the Charge sheet dated 15.11.2018 is annexed herewith and marked as **Exhibit- G.**

12. It is submitted that the sanction to prosecute is bad in law and is based on false and fabricated evidence. At the time of grant of sanction there was nothing to show that the electronic device was not tampered with. As mentioned below, the Petitioners have evidence that the said electronic evidence relied upon by the Prosecution has been planted on the device of the Petitioner herein, in an attempt to target them and frame him and others with false prosecution. There was intrinsic evidence to show that the search and seizure was not in accordance with the law as the *hash value* of the device of the Petitioner was neither taken nor provided to the Petitioner on the said date, leaving open the possibility of tampering and/or not ruling out tampering of the electronic devices. Moreover, the IO had a put a question in his questionnaire to the FSL whether there was any tampering of the hard disc of the Petitioner but surprisingly the FSL had not answered that question. Regardless of the motive or intention behind the planting, a prosecution based on fake evidence and/or no evidence is is bad in law and is required to be quashed .

13. It is important and pertinent to note that although all the eight search and seizures conducted on 17.04.2018 resulted in the seizure and acquisition of

numerous alleged electronics records in the form of Hard discs, Pen drives, Memory cards, etc, yet no security procedures as mandated by law were adopted by the police to secure the electronic records at the specific point of time of the seizure in accordance with the rules framed to that effect.

14. The failure of the Investigation Agency to adopt proper procedures to secure the electronic records at the specific point of time of their seizure from the residence of the accused is inconsistent with the normal practice and process mandated for the Investigation Agency in order it to be fair, just and reasonable procedure under law in compliance with Article 21 of the Constitution. Except in the case of the searches carried out in seizing electronic material from the house of the petitioner and co accused, in all other seizures of the electronic records the same Investigation Officer has ensured that hash values of the seized electronic records were created and recorded at the spot itself. But this was not done in the case of the Petitioner's device. This is reflected is in the charge sheet, leaving the device open for tampering.

15. The Petitioner along with the first 4 co-accused were charge sheeted under 153A, 505 (1) B, 117, 120B, 121, 121A, 124A, 34 Indian Penal Code 1860 and

Section 13, 16, 17, 18, 18(B), 20, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967, vide chargesheet dated 15.11.2018 filed before Sessions Court Pune. Later on, 4 more persons were charge sheeted by Respondent No. 2 vide charge sheet dated 21.02.2019 based mainly on the electronic evidence so recovered from the Petitioners devise.

EVIDENCE: Documents are planted

16. The Petitioner categorically states that he is neither the author nor the addressee of the said incriminatory documents purportedly retrieved from his electronic devices. Moreover, he was neither aware of the existence of the said documents nor of them being on his electronic device. It is his contention that the said documents purported to be retrieved from his device were planted on his devices by persons unknown to him at some point of time.

17. It is the further the case of the Petitioner that he and the co- accused have been purposefully and *mala fide* implicated in this case, on the strength of absolutely fabricated and planted documents. He and the co-accused are being prosecuted with *mala fide* intentions, institutional support, with politically motivated agenda, through which they have amplified the institutional bias against the Petitioner and other co

accused. He is being targeted for his political views through fabricated and false evidence. The said fabrication amounts to offences against public justice and requires to be investigated in the interest of public.

18. The Petitioner states that the FSL Report dated 5.11.2018 at Exhibit-F hereto pertaining to the device of the Petitioner was submitted by Respondent No. 2 in the Pune Sessions Court. The tabular column below shows the alleged incriminating documents found on the Hard Disks seized from the Petitioner and a co-accused Surendra Gadling. Thereafter on 13.10.2018 the Respondent No. 2 I.O. sent a letter to the FSL, Pune requesting for report after analysis of electronic storage devices allegedly seized from the Petitioner. The FSL renamed this hard Disk as Ex. 15 and 17/1 respectively.

19. On a perusal of the said FSL Report, the following observations are significant :-

SR. No.	Exhibit No.	Nature of device	Last date and time accessed
1.	17/1	Laptop HDD	Last logon was on 17/04/2018, 11:16:15 AM and last shut down

			is observed as Tuesday 17/04/2018 05:50:04 i.e. 11.20:00 IST (Paras 2 and 3 of Report)

20. It is thereafter that on 15.11.2018 that the charge sheet against the Petitioner and the four co-accused came to be filed as mentioned above. And also as stated above, five more public intellectuals and lawyers came to be arrested on 28.08, 2018 and the charge sheet against four of them was filed on 21.02.2019.

21. The case against the Petitioner and the eight co-accused and the naming of more intellectuals proposed to be arrested in the Bhima Koregaon Case gained national and international attention for the jailing of public intellectuals, activists, writers and lawyers and has come to be called *The Bhima Koregaon Case*. Numerous organisations published reports condemning the arrests and prolonged incarceration of the accused under anti-terror laws. One such very prominent organisation, the American Bar Association, hereinafter ABA, an independent lawyers organisation published a report dated October 2019 about the cases in which the Petitioner and co-accused were implicated in its

conclusion states that, "*there are serious grounds for concern that the government has not demonstrated sufficient evidence of a direct and immediate connection to justify charging of the defendants*". A copy of the ABA Report is annexed herewith and marked as **EXHIBIT – H.**

22. Various newsmagazines and news portals carried extensive research and exposure of the selective and targeted prosecution of intellectuals in the last two years. One such story was published on 12.03.2020 "*The Caravan*" titled "*Bhima Koregaon case: Prison-rights activist Rona Wilson's hard disk contained malware that allowed remote access*". The said Article proceeded to state that on 17.04.2018 the investigation authorities raided the Delhi house of this Petitioner and seized electronic devices from the house of this petitioner, which was later on produced before the court of Learned Session Judge-3, Pune. It appears that the publishers of *Caravan* in order to do their due diligence prior to publication conducted a cyber-forensic examination of the Petitioners disks and found that the disk contained malware that can be used to remotely access the computer and plant files. They also found several other discrepancies, pointing towards manipulation of evidence in the case. The report further stated that;

> "*While examining the contents of Wilson's disk, we found an executable file infected with Win32:Trojan-gen, malware that can allow stealing of information such as usernames and passwords and, more importantly, allow remote access to the computer, which can then be used to plant files on a system. The executable file, we found, launches itself as soon as the computer is switched on, leaving no room to doubt that the malware was functioning on Wilson's computer before the Pune Police seized it. There are several ways the malware can be planted, including if the recipient clicks on malicious links sent through emails or instant messages*"

A copy of the said *Caravan* article is annexed herewith and marked as **EXHIBIT-I.**

Forensic analysis report by Arsenal of Petitioner's cloned hard disc

23. That though it was necessary for the prosecution to provide a clone copy of the hard disc seized from the Petitioner and co-accused along with charge sheet itself, the same was purposefully avoided. Instead, the IO submitted one disc in which he had stored selected incriminating data and termed it as "Annexure Hard Disc". A clone copy of the seized electronic articles or its

original was neither submitted to the court nor given to any of accused, despite repeated assurances, thus forcing the defence to make an application u/s 207 CrPC for supply of the same. Surprisingly this was objected to by prosecution terming it as dilatory tactics on part of the defence. Strangely, though it is the right of the accused to have a copy of the clone disc to ensure a fair trial, the Prosecution alleged that if the clone copies are given there would be possibility of misuse of the same, which can endanger the security, integrity, unity and sovereignty of India. It was in such circumstances that the learned trial court vide order dated 4.06.2019 directed supply of the clone copies, on or before 27.06.2019.

24. Despite the said order of the court, citing one or other flippant reasons, the Prosecution avoided to supply the clone copies, compelling defence to file an application seeking order against the prosecution, to refrain from relying on the electronic material till the time the clone copies of the hard discs are provided. Based on such application, the learned trial court, to the prejudice of the accused persons, passed an order directing to place bail applications in abeyance till the time such clone copies are provided.

25. That the petitioner therefore had to approach this Hon'ble Court challenging the order by which bail applications were kept in abeyance. This Hon'ble Court, vide order dated 18.09.2019, was pleased to set aside the order of the trial court, and directed the hearing on the bail applications expeditiously. Attached hereto and marked as **Exhibit-J** is a copy of the said order of this court dated 18.09.2019.

26. It was only on 20.11.2019, i.e. one year after filing of the charge sheet that the clone copy in relation to the present Petitioner along with other clone copies of the same were supplied to the Petitioner and the co-accused in 8TB SATA Hard disc.

27. The Petitioner states that after seeing the FSL report dated 05.11.2018 and learning about the American Bar Association and reading the *Caravan* report, the Petitioner, through his counsel, approached the American Bar Association to help conduct an independent forensic analysis of the clone copy of electronic devises seized from the Petitioner..

28. The said ABA is an extremely well reputed organisation based in USA. It was founded in 1878 and has presently 4 lakh lawyers as members. The ABA contacted Mr. Mark Spencer, President of M/s Arsenal Consulting (hereinafter Arsenal) in Chelsea,

Massachusetts, USA, a highly reputed digital forensic analysts to conduct the said analysis with the intention of ascertaining the source of the said documents. After receiving the Petitioner's clone copy disk on July 30, 2020 from the Petitioner's lawyers, ABA provided the clone copy to Mr. Spencer on 31.07.2020.

29. Arsenal provides professional computer forensics and information security services to law firms, corporations and government agencies. Founded in 2009 Arsenal is a digital forensics consulting company. It's president, Mark Spencer, is a leader in guiding development of digital forensics tools used by law enforcement, military and private-sector customers across the globe. Arsenal has more than 20 years experience of working with law-enforcement and private-sector digital forensics. It includes employment at the Suffolk County DA Office in Boston, Massachusetts and the international company named First Advantage Litigation Consulting. Arsenal has led many high-profile and high stakes cases, wherein allegation of intellectual-property theft and evidence spoliation to support terrorist organisations and military coup plotting etc were involved.

30. M/s Arsenal was initially asked to perform forensic analysis in respect of the 10 identified

documents, which are alleged to have been found in the computer seized from Petitioner on 17.04.2018. These documents had been used by the Prosecution against the Petitioner and the co accused in the charge sheet. It is by citing these documents, that Prosecution has been able to ensure prolonged detention of the Petitioner and his co-accused. These documents were produced before the Courts and publicised in newspapers by the Prosecution to even claim a conspiracy to kill the Prime Minister. The documents were heavily relied used by the Prosecution during the bail proceedings of Petitioner and the other co-accused, Surendra Gadling, Mahesh Raut, Shoma Sen, Sudhir Dhawale, Arun Ferriera, Vernon Gonslaves, Sudha Bharadwaj, Vara Vara Rao, and also in quashing petition and anticipatory bail application of Anand Teltumbde. Copies of these 10 documents are annexed hereto and collectively marked **Exhibit-K** hereto**.**

31. These documents also formed part of those records which were examined by the Hon'ble Supreme Court in case of *Romila Thapar and ors vs Union of India*, citing which, prosecution successfully obtained dismissal of the petition which sought investigation by independent investigation team.

32. That though the report drawn by Arsenal aims at examining only ten specific documents, a perusal of their report will bear out that it has found out existence of malware which has made material changes in the content of the system without Petitioner even getting a hint of it. It is further stated that examination by Arsenal of a few other documents is still on ongoing and report with respect to the same is expected soon.

33. The report drawn by Arsenal, after examining the clone copy, as provided by the prosecution, dated 08.02.2021 shows with scientific details that an attacker, deployed a malware named NetWire, with which he initially subjected the Petitioner to surveillance, and later on, remotely through the malware, delivered various files, including the incriminating correspondence which, but not limited to, the aforesaid 10 documents. The same were stored in a folder which was set to hidden mode, and over period of 22 months, from time to time various such letters and material came to be planted on the system of the Petitioner without his knowledge.

34. The report further shows that the folders and the documents were never opened on the computer of Petitioner by Petitioner himself or anyone else and their existence would be unknown to the Petitioner. The

hacker also synchronised these documents in such a way that they would get planted in any external memory device connected to the laptop. Thus it has concluded that the said 10 documents along with various other documents were planted through malware on the device of the Petitioner by an unknown person, using private virtual servers. A copy the Arsenal Report dated 08.02.2021 is annexed herewith and marked as **Exhibit-L.**

35. It is therefore just and necessary, that this Hon'ble Court does enquire into the fraud committed on the Petitioner in order to frame him and his co-accused with the aim of keeping them behind bars for an indefinite period of time. The said planting and framing amounts to false prosecution with malice in fact and in law as is obvious for the selective prosecution of the accused while ignoring to prosecute the real culprits of the violence that took place on 1.1.2018 as mentioned herein below, with the intention of convicting innocent persons. This requires a thorough enquiry by this Hon'ble Court in order to ensure that the fair name of justice is not sullied.

36. It also amounts to targeted and selective prosecution of the Petitioner and the co-accused which is violative of the fundamental rights of the Petitioner under Article 14 and Article 21 of the Constitution of India. The impugned

sanction to prosecute is based on false and fabricated documents and is required to be quashed and set aside. No effort was made by the sanctioning authority to satisfy itself even *prima facie* that the device of the Petitioner had not been compromised prior to giving sanction as they were bound in law to do. This Hon'ble Court may be pleased to direct the Respondent No. 1 and Respondent No.3 to produce the materials on the basis of which said impugned sanctions dated 14th November 2018, 20th February 2019, was granted and after going through the legality thereof quash and set aside the same and all consequential actions based on the said sanction including the filing of the charge sheets on the ground that it is based on no *prima facie* evidence.

37. The Petitioner at the moment does not have any much efficacious and expeditious remedy available in law, and if he is to wait for such remedy which would be available during a trial, he will be losing his precious right to liberty resulting in the success of those who wanted to keep him and his co-accused behind the bars for an inordinate length of time. Therefore, the Petitioner has no alternative remedy than to invoke the inherent and extraordinary jurisdiction of this Hon'ble Court.

Compromising the system used by the Petitioner

38. The report provided by M/s Arsenal Consulting at Exhibit-L_ hereto has scientifically shown that the laptop seized from the petitioner was tactfully infected with a malware namely “NetWire RAT (Remote Access Trojan)”. The malware can be procured online and can be used to provide remote access to a computer. Hacking computers by knowledgeable persons is known to exist and it allows surreptitious remote access to the same and requires installation of malware like one used in the present case of the Petitioner.

39. It is stated by Arsenal that their report is prepared on the basis of deep analysis of clone copy of the seized hard disc provided by the prosecution itself being CYP 168/2018 EX 17_1 and CYP168/2018_26. Arsenal having the necessary infrastructure, resources and technology to conduct such an analysis has given a detailed report as to the manner in which such malware came to be planted, and how it was used for delivery of document and other such acts.

40. The Arsenal report demonstrates that Petitioner’s computer was compromised through a mail sent to his email account, which carried an attachment in the form of a document (another victory.rar). Since it appeared to be innocuous, the Petitioner tried opening it but did not succeed in opening it. However the fact that he clicked on

the attachment that helped the attacker install the malware in his laptop. It is stated in the report that the attachment enveloped in itself a decoy file namely "another victory.rar" and clicking the same resulted in a chain of events that led to the installation of the malware on his device.

41. The report of Arsenal further demonstrates that the attacker had retained the access of the Petitioner's computer for over 22 months, starting 13.06.2016 and it used this remote access facility for planting the incriminating letters while conducting the surveillance on the activities of the Petitioner without the Petitioner getting even a hint of it. It is therefore obvious that the entire operation was well planned long before the FIR was filed in January 2018 and continued after the filing of the FIR. It is also found in the analysis that the letters were placed in a hidden folder on the Petitioner's computer and also on the seized pendrive, and were mixed with certain other genuine documents from the computer itself.

42. The Arsenal report also demonstrates that the attacker created a folder namely "kbackup" on 3.11.2016 at 00:10:07, which then was renamed as "Rbackup" and was set to hidden mode. The folder was last modified on 16th April 2018 @16:50:41, i.e. a day prior to the raid, search and seizure at the Petitioner's residence on 17.04.2018. It

was in this way that incriminating documents were planted and certain genuine documents also copied in the folder. The Report scientifically demonstrates that the Attacker got access of Petitioner's laptop from 13th June 2016 and continued till 17th April 2018 i.e. day on which raid was conducted by Pune police based on "secret information" given by a "secret informant".

43. Importantly, the Report also shows that the hidden folder or the incriminating documents were not legitimately interacted (that is not opened/used/ created/ seen by the Petitioner) at any time on the laptop, meaning thereby that the folder or so called incriminating documents, were not accessed by the Petitioner himself ever. It also shows that the documents in the said folder and particularly incriminating documents were never opened on the computer by the Petitioner.

44. It is stated that as alleged by the Prosecution, the following documents with its name as provided by the prosecution, namely "Cyp 168/18 EX 17_1, /Rbackup" are the foundation of the case of prosecution. Copies of the same, alongwith their format is annexed herewith and collectively marked as **Exhibit-M** in the order as it appears in table below. They are part of the charge sheet dated 15.11.2018 in Vol No. 13.6 submitted by Respondent No. 2 in Pune Sessions Court. It is stated that some of the

documents are alleged to be in zip/compressed format indicated by .rar extension which are not part of the exhibits attached herein.

EXH NO.	DOCUMENT NUMBER	FORMAT
L.1.	April 2018 Convention pamphlet revised	.doc
L.2.	the colours of neo Peshvai	.docx
L.3.	Basanta	Pdf
L.4.	Bhima Koregaon _20 Jan 2018 by Sreenivas	Pdf
L.5.	CC_letter-08Jun	Pdf
L.6.	ERB-08 resolution on Life style for PM Final	Pdf
L.7.	Jail Comrade ke lia_sandesh_21 September,2014 _booklet	Pdf
L.8.	ET & OCT _ERB_June 2015 _Hindi	Pdf
L.9.	Letter	Pdf
L.10.	ltr_2_Anand_E	Pdf
L.11.	ltr_2_P-51117	Pdf
L.12.	Ltr_2_RW	Pdf
L.13.	Ltr_2_SG-27.1.2018	Pdf
L.14.	Ltr_1804_to_CC	Pdf
L.15.	Ltr_2312_to_CC	Pdf
L.16.	Ltr_2612_to_CC	Pdf

L.17.	Ltr_2704	Pdf
L.18.	Ltr_From_Com.M_022018	Pdf
L.19.	mohila meeting jan	Pdf
L.20.	Resolution on ERB Ex meet	Pdf
L.21.	Siraj017	Pdf
L.22.	UF-Book	Pdf
L.23.	Final_Dispatch	Pgp
L.24.	Accounts2k17	Txt
L.25.	for your drafts.txt	.txt
L.26.	Letter_to_GN_30July.pdf	Pdf
L.27.	Ltr_CC_2_P.pdf	Pdf
L.28.	IMPCorres\Received Naveen.doc	Doc
L.29.	IMPCorres\special.doc	Doc
L.30.	IMPCorres\one\1 Latest FC Meeting 3 July 2013.doc	Doc
L.31.	IMPCorres\ one\1 Main letter.doc	Doc
L.32.	IMPCorres\ one\20 March letter.doc	Doc
L.33.	IMPCorres\ one\budget.xls	Xls
L.34.	IMPCorres\ one\C Students.docx	Docx
L.35.	IMPCorres\ one\CF DEC 2012.doc	Doc
L.36.	IMPCorres\ one\Agenda1.doc	Doc
L.37.	IMPCorres\ one\FC Resolution on divisive Work in English.doc	Doc
L.38.	IMPCorres\ one\international report	Docx

	1.docx	
L.39.	IMPCorres\ one\international report 2.doc	Doc
L.40.	IMPCorres\ one\JP Resolution.doc	Doc
L.41.	IMPCorres\ one\Letter to G.doc	Doc
L.42.	IMPCorres\ one\loans to be cleared and future programmes.xls	Xls
L.43.	IMPCorres\ one\Meeting 1 2013 .doc	Doc
L.44.	IMPCorres\ one\Note on Naveen.docx	Docx
L.45.	IMPCorres\ one\Note.doc	Doc
L.46.	IMPCorres\ one\on the medical treatment of Sushil Roy.doc	Doc
L.47.	IMPCorres\ one\Proposal on IPT and other decisions.doc	Doc
L.48.	IMPCorres\ one\Report on Publications.doc	Doc
L.49.	IMPCorres\ one\Review of FC Functioning.doc	Doc
L.50.	IMPCorres\ one\Urgent Tasks.doc	Doc
L.51.	IMPCorres\ one\Urgent.doc	Doc
L.52.	IMPCorres\ one\Ltr_from_Prakash	Rar

44. As mentioned above, ten of the most incriminating documents, according to the Prosecution, have been analysed in the said report of Arsenal and some of the other documents are being examined and a report to that effect will available soon. That apart, RCM & ACM Book , CC Circular -1-3-2017_Eng, ERB Report & Review Final _ 2015, ERB Reso.PM, ERB-7 Resolution Janu 2014 to BJ SAC or PM, final_Hindi_23-2-2017_For SC-SAC-SZCs, Inaugural Speech_ERB Extended Meet _2015_Hindi-A4, Panda letter to GS.docx, Meeting.docx, Pol Pris Status report.doc, Report on Gautam Navlakha.doc, ERB 8 meet.final book, are also traceable in the same folder. However the same are not attached with the petition for sake of convenience, since the documents are voluminous, and therefore Petitioner craves leave of this Hon'ble Court to cite the same as and when called by this Hon'ble Court.

45. That the said Report also clarifies as to how some of the same documents were also found in the thumb drive/pen drive being CYP_168_18_26 allegedly seized from the Petitioner in the same raid dated 17.04.2018. The attacker, used tool like that of WinSCP to synchronize files between C2 (command and control) Server of the attacker and files from the devices he attached to it. It is clear that he used windows volume on Petitioner's computer as a staging area to synchronise data with Computer and the external

memory equipment/pen drives and stored the same in System Volume Information folder of such memory. That though the pen drive/thumb drive are not kept connected to the computer, however as and when they are so connected, material gets synchronised due to the malware. The Report shows that the said pen drive (i.e. EXH 26) was last connected to laptop before 23.03.2018, whereas the document named letter_to_Anand_E, was delivered subsequently, on the Computer (i.e. Exh-17_1) and therefore it did not get synchronised in the pen drive (i.e. EXH 26), which explains as to why it contains only 9 of the ten documents.

46. The Report further demonstrates with all technical details that as many as 52 diverse files shown at Exhibit C of the report were delivered to the laptop of the Petitioner in a hidden folder. Of these, 6 were delivered in PDF format, whereas 35 were delivered in .rar format, with 10.exe and 1.zip format. The format i.e. .rar and .zip is product of compression of various files in one folder. It can contain numerous files in one single file, with added benefit of reduction in the size of the folder. Once a file or folder is compressed/zipped, it converts to zip file, with extension as ".rar" or ".zip" based on the compressor used. Once the folder or file is unzipped, the contents of it can be

extracted in its original format, and saved at desired location.

47. That the report further states that computer of Petitioner had V3.70 version of WinRAR. However the unzipping on the computer of the petitioner came to be done with higher and later version which is V4.20 WinRAR. This has been confirmed by the expert by examining size and hash value of the versions provided by the official information or executables made available by the service provider itself.

48. A perusal of the Exhibit D of the Report will bear out that of most of the 52 files so delivered were in .rar format accompanied with unzip executable. Further the file names of zipped folders match with the name given to the incriminating documents, from which it was unzipped and all the files that were present in the folder came to be saved on the computer of the Petitioner. The report further gives details of files deleted and not deleted by the attacker, which additionally shows that all the files that are now being claimed to have been found on the computer of the Petitioner and therefore authored by him, were planted using the deceitful methodology without Petitioner's involvement whatsoever in the same.

49. The report further bears out that the attacker had control over C2 server (Control and Command Server) used

proxy server or which are called Virtual Private Server (VPS). This makes it difficult to identify the exact Internet Protocol address, enabling the attacker to hide. Arsenal experts have identified that the IP addresses exploited by the attacker, were provided by one "*HostSailor*". The said Arsenal report states that without the cooperation of such service providers and others it is difficult to zero down on any particular person who has planted the said documents. It is just and necessary that the said person or persons be identified and be brought to justice before this Hon'ble Court. It is therefore submitted that this Hon'ble Court be pleased to direct an enquiry or investigation into the said framing by planting documents on the Petitioner's devices with the intention of getting a false conviction of an innocent person.

50. While above summarises the manner in which planting has been done, the turn of events prior to the raid, will make it even clearer that Petitioner was targeted with an ulterior motive. The case of Petitioner is not just dependent on the forensic analysis report provided by M/s Arsenal Consulting, but also following facts and circumstances which demonstrate that the subject matter case is an absolute creation of fabrication, *mala fide*, biased, grossly disturbing and by exceptional misuse of power. The Respondents wish to make an example of the Petitioner

and the accused to prevent them from raising a voice of dissent against any ruling establishment. It may be mentioned that no arms or ammunition has been recovered from any of the accused, including the Petitioner herein. Nor is it alleged that any deaths have taken place on account of the acts of the accused in the said charge sheet. Save and except for "finding" of the planted electronic documents, no other overt act of violence has been attributed to the Petitioner or co-accused, so as to be able to show his involvement in the alleged crime or otherwise or justify invocation of the stringent provisions of Unlawful Activities Prevention Act.

Modus operandi adopted to frame the Petitioner

51. A perusal of the charge sheet in totality will bear out that the case against Petitioner as also the co-accused, now numbering 16 in total, is based entirely on electronic evidence. Although the charge sheets run into more than 22,000 pages, there are not more than 50 odd documents which the Prosecution bases its case upon. A sizeable chunk of the alleged incriminating evidence is seized from the laptop of Petitioner, and also from the desktop computer of his co-accused Surendra Gadling, Advocate.

52. It is important to note that all these allegations are based on correspondence alleged to be found on the

computers of some of the accused persons. The Petitioner, from the moment he learnt of such documents, has denied that he had anything to do with the documents or that he had knowledge about them in his computer or entered into any such correspondence or that he had conspired as alleged or at all. That apart, the very content of the letters suffers from inherent improbabilities, factual errors, and lack any proof of the fact in issue. The Prosecution has through leaks to the media labelled the Petitioner and the co-accused as "*urban naxals*," and based on these documents, impugned sanction to prosecute has been granted by Respondent Nos. 1 and 3, vide orders dated 14.11.2018, 20.02.2019 & 08.10.2020 which is at Exhibit-B, C & E respectively.

53. It has been the case of the Petitioner that he has been framed in the case, due to his active participation in the Committee for the release of Political Prisoners (CRPP) and his defence of political prisoners such as the late Prof SAR Gilani who was ultimately acquitted of charges of being involved with the Parliamentary Attack case and Prof G N Saibaba, presently a convict prisoner, whose conviction is pending in appeal. Forged and fabricated material is being used against the Petitioner to persecute him and keep him behind bars for a prolonged period. The Petitioner submits that he and the co-accused are being wrongfully and

unlawfully prosecuted in a manner unknown to law. It is submitted that the prosecution that is being carried out selectively is an abuse of the process of law and a denial of equality before law and equal protection of laws, thus violating Articles 14 and Article 21 of the Constitution of India. As will be demonstrated hereinbelow, the real culprits of the violence that took place on the 1.1.2018 are not the ones being prosecuted but others. Only a pretence of an investigation is being conducted. The Respondents are seeking to pin the violence of 1.1.2028 on the Petitioner and the co-accused as allegedly brought about by the speeches delivered by some of the accused (not the Petitioner himself who was not even present at the event on 31/12/2017) in a conspiracy to commit the offences mentioned in the charge sheet.

54. It is submitted that the discretion to prosecute or not to prosecute must be based arbitrary amounting to a violation of Articles 14 and 21 of the Constitution. It is submitted that the decision to prosecute is not based on *prima facie* evidence but is in disregard of prima facie evidence to indicate that there was nothing to show that the device of the Petitioner was not compromised. The decision to prosecute is based on no evidence, based on false and fabricated materials, which is liable to be set aside as bad in law and the consequential FIR and charge

sheets pending on the files of Special Court, Mumbai are also liable to be set aside. It is submitted that in the facts of this case, the said discretion has been exercised for extraneous purposes and must be quashed and set aside. It is submitted that having regard to the report of M/s Arsenal Consulting Ltd, at Exhibit H hereto, the Petitioner is being prosecuted on false and fabricated evidence amounting to false prosecution and is an abuse of process of law amounting to a denial of equal protection of laws.

55. The Petitioner has been a vocal critic of State repression of State regimes of whichever political hue, if their policies are against ordinary people and pro-corporate, usage of anti-terror laws to suppress dissent. Therefore, he has been framed in this case, that too by planting material on his computer, which becomes obvious given the following turn of events and the report of the forensic analysis.

A case of selective prosecution leading to the targeting of persons for political reasons

56. As stated above, the Petitioner and the co-accused are being prosecuted allegedly for being an instigator to the state-wide violence that took place on 01.01.2018. It is the case of Prosecution that Petitioner along with the other co-accused, hatched a conspiracy at the behest of proscribed Maoist organisation to organise the programme Elgar

Parishad on 31.12.2017 to propagate the ideology of the banned organisation. By organising the said programme, some of the accused persons delivered inflammatory speeches, which in turn instigated the violence of 01.01.2018 and resulted in loss of property and life.

57. It is a known fact that on 01.01.2018 a group of 1100-1200 people with saffron flags had gathered at Vadu Budruk at the Sambhaji Maharaj memorial in the morning. The said gathering was unprecedented as on a daily basis hardly 10-50 people used to visit the place. On that particular day, with full knowledge of the fact that it was the 200th Anniversary of the battle which the Dalits were celebrating at Bhima Koragao, the said gathering, after paying their homage at the memorial, of Shanbiji Maharaj, formed a procession and moved towards Koregaon Bhima, carrying saffron flags, and shouting slogans. Initially the police stopped them. However, suddenly the Police allowed them to go further. It is this crowd that attacked the dalit visitors on the way to Bhima Koragao with pelted stones, and started arson. In the ensuing riot, numbers of people were injured and one person lost his life.

58. One such victim, namely Anita Sawale, who lodged a report with Pimpri Chinchwad police station being zero FIR which was later transferred to Shikrapur police station, and registered as FIR 9/2018 on 02.01.2018. The FIR

particularly mentions the names of Sambhaji Bhide, and Milind Ekbote. On 03.01.2018, FIR No 2 of 2018, by one Akshay Bhikkad against Jignesh Mewani and Umar Khalid was registered at Vishrambgh police station, Pune who were the speakers at the Elgar Parishad which took place on 31st December 2017 at Shaniwar Wada. It was eight days after the Elgaar Parishad which took place on 31.12.2018, that on 08.01.2018 FIR No. 4/2018 came to be registered at Vishrambagh Police Station against the some of the co-accused in this case, which is at Exhibit A. The two earlier FIRs dated 02.01.2018 and 03.01.2018 are annexed herewith and marked as **Exhibit-N** and **Exhibit-O** respectively.

59. In pursuance of the FIR Nos. 9/2018 dated 2/1/2018, Milind Ekbote sought anticipatory bail from the sessions court, Pune, which was rejected. His appeal before this Hon'ble Court also met with the same fate. He challenged these orders and sought bail by filing SLP in the Apex Court. It is in this matter that the Assistant Commissioner of Police, Shikrapur Police Station filed affidavit an affidavit dated 13.02.2018 in the proceedings in the Supreme Court detailing his investigation in the case. A copy of the said affidavit is annexed hereto and marked as **Exhibit-P.**

60. It is stated in the said affidavit that Milind Ekbote had played a pivotal and active role in violence of 01.01.2018

which had a State-wide impact. It also stated, on the basis of evidence collected, that Milind Ekbote was present in the vicinity at the relevant time. The Police had recovered a pamphlet, which has objectionable contents, which triggered the said violence *inter se* between the two communities and its aftermath, which put the social fabric as well as law and order in peril. Importantly, the affidavit supports most of the findings given in reports of various fact finding committees that investigated the cause and effect of the violence. Vide this affidavit, Rural Police, Pune also expressed its apprehension of involvement of extremist Hindu organisations in carrying out the said attacks and therefore had stated that it needs to investigate from said point of view. The Supreme Court rejected the application for anticipatory bail.

61. That apart, the then Hon'ble Chief Minister, who was holding the portfolio of Home Minister as well, addressed the Maharashtra Legislative Assembly twice on the issue, firstly on 13.03.2018 and later on 27.03.2018 and gave a detailed sequence of events. In the said statements, the Hon'ble Chief Minister admitted that there was an unprecedented gathering at the memorial of Sambhaji Maharaj comprising of 1100-1200 young people, which took the form of processions and started to proceed towards Koregaon Bhima. He stated that since the people

claimed to be residents of the Koregaon they could not be stopped and had to be given passage. However, instead of proceeding to village Koregaon Bhima, they took a roundabout route, came on the road near the obelisk and started shouting slogans. In response, the dalit visitors, who had come to pay homage at the war memorial, also started sloganeering, which was followed by stone pelting. Thereafter, the police chased away the people. They went towards another village and *en route* vandalised vehicles parked in the temporary parking zones, wherein vehicles of the visitors were parked. They also set ablaze vehicles. Apart from that they also started to target passing vehicles. Attached hereto and marked is the unofficial English translation extract from the Assembly proceedings of the statement of the Chief Minister, dated 13.03.2018 as **Exhibit-Q**.

62. Again, when on 27.03.2018 the Hon'ble Chief Minister addressed the house on the issue of over-all law and order situation in state of Maharashtra, he reiterated the same official version of the incident on the 1.1.2018. He stated that the police had surrounded the mob of 1100-1200 people which had gathered in Vadu Budruk and they were not allowed to go initially, but after ascertaining that they were actual residents of village Koregaon Bhima, they were allowed to go towards Koregaon and police officers had

escorted them. He further stated that though there was a complaint registered against Sambhaji Bhide under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 for instigating the violence against Dalits by one Anita Sawle, the complainant lady herself did not see Sambhaji Bhide at the spot and therefore more evidence needed to be scrutinized to ascertain his role. Attached hereto and marked as **Exhibit-R** is a copy of the statement of the Hon'ble Chief Minister made in the Maharashtra Legislative Assembly on 27.03.2018.

63. It is reiterated that the FIR registered against Sambhaji Bhide and Milind Ekbote, is still pending investigation but till date no charge sheet has been filed. Despite a lapse of three years since incident and there being clear evidence disclosing the nature of the violence, no action whatsoever has been taken by Respondent No.1 against any of the perpetrators of the violence, in which one person has lost his life. No action has been taken against Sambhaji Bhide, despite his name having been mentioned in the FIR. Surprisingly, he has not even called for recording statement by the concerned police station. Even other FIRs that were registered by Shikrapur Police Station on the day of attacks on the processionists, on 01.01.2018 are still under investigation but no charge sheet has been filed and may have been dropped altogether.

64. The material above demonstrates that the perpetrators of the crime against whom clinching evidences was available have neither been investigated nor prosecuted. On the contrary to shield them and create a smoke screen, the Respondents allege that the said riot was instigated by the speeches delivered in Elgar Parishad on 31.12.2017, which was organised allegedly by Maoists. It is submitted that it is a publicly known and admitted fact that the said Elgar Parsihad was organised by Retired Supreme Court Judge, Justice Hon'ble P B Sawant and Retried High Court Judge, Justice Hon'ble Kolse-Patil who have taken responsibility for their leadership role along with more than 250 grass roots organizations. Yet, the Respondents have maintained on the basis of the alleged documents that it were Petitioner and his co-accused who organised the Elgar Parishad.

How the law treats electronic evidence

65. It is necessary to state herein that the Section 65B of Indian Evidence Act, 1872 deals with the manner in which an electronic record can be admitted as document in the trial. It has created various bars, the important of which is to show that the computer in question was in the lawful control of the person using it, and that it did not suffer from any defect so as to materially affect the contents of

the computer. At the same time Section 85B deals with the "secured electronic evidence" and the presumption arises that secured electronic record has not been altered since the specific point of time to which the secured status relates.

66. That the Information Technology (IT) Act, 2000 requires certain process to be followed to authenticate the electronic records to raise a presumption about their genuineness.

Section 3 provides as under

> *"3. Authentication of electronic records.–(1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.*
>
> *(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.*
>
> *Explanation.–For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it*

computationally infeasible– (a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm; (b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair"

This clearly has not been followed by the investigating agencies, despite being assisted by the cyber forensic experts from the time of preparation for raid itself.

67. Under Section-14 "*Secured Electronic Record*" is defined in the Information Technology Act 2000 to mean that any record shall be a deemed to be a secured electronic record, to which prescribed security procedure has been applied.

68. The Central Government in exercise of its powers under section 16 of the Act, 2000, framed the rules, the Information Technology (Security Procedure) (IT) Rules, 2004, wherein it has laid down that the electronic record shall be deemed to be secured electronic records, if it has been authenticated by means of "*Secure Digital Signature*" as per rule 3 of the IT Rules, 2004.

69. That the IT Rules, 2004 further bear out as to what will constitute A secure digital signature. A perusal of Rule 4

will show that taking the "hash" of the content, through hardware or smart card having inbuilt private key for signing the hash which can be verified by the public key, and in events the electronic record if is altered the signature would be invalidated.

70. That therefore the requirement of obtaining hash result popularly known as hash value is fundamental and mandatory for securing the electronic records, and it is only after the process of applying such procedure that the record becomes" secure "within the meaning of the IT Act. However in the present case, none of the electronic record has been secured in the manner known to the law.

71. Since there was no "*hash result*" taken of the said device at the time of the seizure or given to the Petitioner at any point of time, the said record is neither an "*authenticated*" nor a "*secured electronic record*" and this is *ex facie* obvious from the FSL report. Therefore, they carry no authenticity of any nature and are not reliable in any manner.

72. In the case of Petitioner or any other co accused, no effort has been made to satisfy the requirements of the Section 65B, namely to show that there was no malware or unauthorised control over the system of the petitioner, moreover no *hash result* was taken to secure the electronic evidence as per the rules prescribed for the same. Importantly there is no 65B certificate or any

document indicating that the requirements mentioned in 65B (2) are taken satisfied, and it is, therefore, safe to rely on the contents of the electronic records.

73. It is evident from the records itself that no hash result of the seized electronic material was drawn at the time of raid, and provided to the petitioner. That the FSL report clearly bears out that the laptop of the petitioner was operated during the raid, and there is clear indication that material allegedly seized had been accessed much after its seizure. At the same time the records will bear out that the Investigating Officer had asked FSL in his questionnaire whether the hard disc is tampered with, to which FSL never replied. Hereto annexed and marked **Exhibit S** is a copy of the said letter/Questionnaire. Therefore the authority granting sanction ought to have been circumspect and given due consideration to these factors and refused to grant sanction.

74. It is submitted that sanction under Section 45 of the UAPA was granted on 14.11.2018 by one, Sunil Porwal and on 20.02.2019 by one Sanjay Kumar Additional Chief Secretary, no *prima facie* case for the grant of sanction could be made out. By that time the FSL report was ready and available to the sanctioning authority. A cursory look at the FSL Report coupled with the questionnaire of the IO asking whether the disc was tempered with was not replied

to would have led to the conclusion that minimum mandatory rules have not complied with. Therefore the electronic documents relied upon by the Prosecution are not authentic or nor reliable. Thus the said sanction has been granted on false and fabricated documents

75. The said sanction letter also notes "that the above unlawful activity led to aggravation for riots at Bhima Koragaon on 1st January 2018 between two groups namely schedules castes and non scheduled castes". It is submitted that on the said date, the said Additional Secretary was well aware that the then Chief Minister of the State had made a solemn statement on the floor of the Legislative Assembly on 13th march 2018 and 27th march 2018 to the effect that the 1100 to 1200 youngsters riding bikes and carrying saffron flags initiated the attack on the processionists in Bhima Koregaon near the obelisk. He had stated in his statement that it is this very mob, which had surprisingly gathered at memorial of Sambahji Maharaj at Vadhu Budruk and insisted upon going towards Bhima Koregaon and initiated the attack. Hence the attributing of the violence to the Petitioner herein and the co accused, was contrary to the case of the Respondent State at that time. He would have known or ought to have known this at the time of giving sanction .

76. That the sanctioning authority knew or ought to have known that on February 2018, the State of Maharashtra had filed an affidavit dated 13th February 2018 in the Supreme Court of India to the effect that Milind Ekbote was the main conspirator for the violence that occurred on 1st January 2018. Hence the reference to the violence of 1.1.2018 being attributed to the Petitioner herein and his co accused was *ex facie* false.

77. That the Sanctioning authority, also knew or ought to have known that in case of *Romila Thapar vs Union of India*, one of the judges of the Supreme Court had raised serious doubts over the authenticity of the documents. He also knew that in the same judgment, the hon'ble judge after appreciating the facts and evidences, the Learned Judge held, *"...Circumstances have been drawn to our notice to cast a cloud on whether the Maharashtra police has in the present case acted as fair and impartial investigating agency. Sufficient material has been placed before the Court bearing on the need to have an independent investigation..."*. Yet he has not taken any effort to rule out such apprehension, knowing that the allegations against the Petitioner and co-accused, could be false.

78. Moreover as later events show, there has been no serious attempt to investigate the role of Milind Ekbote or Shambaji Bhide. Hence the Prosecution against the

Petitioner and co accused based on the said sanction dated 14/11/2018, 20/02/2019 is selective, bad in law and violative of Article 14 of the Constitution of India.

79. The second supplementary charge sheet of the Respondent No. 4 NIA, came to be filed in the Sessions/NIA Court Bombay on 09.10.2020. In this case the sanction report is not even a reasoned order which would throw any light on the material or that was perused by the Respondent No.3 in passing the said order bearing such serious implications. Thus, for the reasons elicited above this sanction order also suffers from all the defects and the additional defect of lack of reasons.

80. That being aggrieved by the acts of omissions and commissions and further by the acts of vengeful prosecution, by acts of fabricating and planting evidences, and by act of abuse of process of court, in violation of the fundamental right guaranteed under Asrticle 14, 21 and 22 of the Constitution of India, the Petitioner approaches this Hon'ble Court for the reliefs prayed for herein on the following, amongst other grounds, which are without prejudice to each other.

GROUNDS

ARSENAL REPORT

i. For that the report submitted by the Arsenal scientifically demonstrates that the computer of the Petitioner, was infected with malware, namely NetWire, by planting the same through an email. It also shows that the attacker, initially carried out surveillance on the Petitioner and later on started delivering incriminating material and kept them in hidden folder namely Rbackup, which shows that the computer of Petitioner was not in his lawful control during the material time when this data came to be delivered and therefore it cannot be treated as evidence in any manner.

ii. For that the report of the Arsenal demonstrates that malware that was planted on Petitioner's computer, allowed its handler complete remote control through its C2 (control and command) server, which enabled the attacker to make any desired changes in the computer without any hurdle and through such access. The attacker planted the incriminating material without knowledge of the Petitioner.

iii. For that the report of Arsenal demonstrates that the attacker after having taken remote control of the computer of Petitioner has delivered 52 files in various formats over period of time. It has also shown that the folder in which most of the incriminating material has been allegedly found was neither opened by the Petitioner nor that it was ever opened on his computer legitimately.

iv. For that the Arsenal report demonstrates that the attacker retained the control over the computer of Petitioner for over 22 months starting 13.06.2016; thus such a period cannot be counted as period in which Petitioner had lawful control over the system and thus the material found on his computer cannot be attributed to him at all.

v. For, that the report submitted by the Arsenal demonstrates that the attackers used another technique to synchronise certain data in the computer of the Petitioner, with removable memory devices, with which he could hide the material in the system volume information of the pen drives, meaning thereby that any device like memory card, pen drive, hard drive etc that was connected to his computer would automatically sync the incriminating material in that device.

vi. For the Arsenal report demonstrates that the document namely *"letter_2__anand.pdf"* was delivered on the computer of Petitioner only in month of April 2018, whereas the Exhibit 26 pen drive was last connected prior to said delivery, and hence the document that was delivered subsequently did not synchronise and get planted in the seized pen drive.

vii. For the Arsenal report demonstrates that some of the files found in the computer were "saved" by Microsoft word 2010 or 2013 versions, whereas Petitioner's computer had

no other version than Microsoft Word 2007. It is important to state here that the functioning of saving a document directly to the pdf format became available only in later versions, and for creating a pdf file in the version that was found in the Petitioner' computer, additional software was necessary, which was not in the Petitioner's computer.

viii. For, that the report of Arsenal also demonstrates that, attacker used higher version of winrar i.e. v4.2 whereas Petitioner had winrar v3.0 in his computer to unzip the .rar files. For the said purpose attacker delivered executable files, used the same and deleted them subsequently. The Arsenal report gives particular details as to at what time which activity was performed, to demonstrate the above.

ix. For that the Arsenal report states that the attacker used virtual private Network Servers provided by "*HostSailor*", which enabled the attacker to disguise and make it difficult to trace him. That the Arsenal report also gives some of the internet protocol addresses which were procured from "*Hostsailor*" for carrying out the activity of planting the documents.

x. For that the report submitted by Arsenal positively shows that the operation of the computer in question was so affected that it caused changes in the contents, and

therefore also the electronic material sought to be relied upon by the prosecution has no value whatsoever.

xi. The Arsenal Report is clear evidence to establish that the device of the Petitioner has been compromised and incriminating documents have been planted on his device for 22 months through malware;

xii. The Petitioner submits that while he is filing the present Petition based on the report of Arsenal which shows that incriminatory documents were planted on the computer prior to the seizure, this by no means should amount to his giving up the grounds concerning illegal seizure and possibility of subsequent insertion of fabricated documents and this Petition is filed without prejudice to that contention.

Selective nature of the Prosecution: Framing the Petitioner

xiii. For that having regard to the "framing" of the Petitioner and the co accused, the Prosecution is an abuse of the process of law;

xiv. For that having regard to the "framing", the said prosecution is a wrongful and unconstitutional prosecution violating the fundamental rights of the Petitioner under Article 14 and Article 21 and the said prosecution is required to be quashed;

xv. For that the Petitioner and the co accused are entitled in law to be dealt with fairly and with non-discrimination before the law and the failure to do so is a violation of his fundamental rights;

xvi. For that the Petitioner has an independent and separate Constitutional cause of action on the issue of "framing" decided as a threshold issue so that the right to life and liberty of the Petitioner is protected rather than wait for a trial which has not even begun after more than three years after the FIR was lodged and is not likely to start in the foreseeable future;

xvii. For that it has been held in *Arnab Goswami* (2020 SCC Online SC 462) that this Hon'ble Court must come to the *prima facie* conclusion at the stage of admission whether the Petitioner has a case for quashing and if so, consider the grant of bail to the Petitioner;

xviii. For that the Petitioner has made out a *prima facie* case for quashing of the impugned sanctions and consequential charge sheets and the Petitioner is entitled to bail at this stage of the proceedings without waiting for the trial

xix. That the process is the punishment and hence the issue of "framing" and of "selective punishment" needs also to be decided as a threshold issue;

xx. That having regard to the said framing, the Petitioner and the co accused are being targeted for their actively raising

their voices against injustice and oppression, and the said prosecution is required to be quashed for violation for Article 14, 19 and 21 of the Constitution of India;

xxi. That the criminal proceedings launched against the Petitioner and the co-accused are manifestly attended with *mala fides* and are maliciously instituted with an ulterior motive for wreaking vengeance on the accused out of political vendetta (*State of Bihar and Anr. v. J.A.C. Saldanha and Ors.*, [1980] 1 SCC 554);

xxii. That the Respondents have transgressed the circumscribed limits and improperly and illegally exercised investigatory powers causing serious prejudice to the personal liberty and dignity of the Petitioner, values dear to our Constitution (*Bhajan Lal* AIR 1992 (SC) 604);

xxiii. For that the Supreme Court held in *Arnab Goswami* that the issues of targeting is a threshold issue and is required to be examined by the Court and bail was granted at the outset in the interest of liberty;

xxiv. That having regard to the fact that there has been no serious attempt to arrest or investigate the FIR against Ekbote and Bhide, and others involved in the riots of 01.01.2018, it is clear that the Petitioner and his co-accused are being selectively prosecuted, in an attempt to divert attention from the real culprits, which is unconstitutional and bad in law;

xxv. That the said planting of fake evidence is intended to frame the Petitioner and the co accused in a false prosecution and has resulted in the deprivation of his liberty without authority of law and hence violative of Articles 14 and 21 of the Constitution of India.

xxvi. That given the above, the Petitioner and the co accused are being targeted to divert attention from the role of the said real perpetrators of the violence that took place on 01.01.2018. Ekbote and Bhide who remain free, while the selective prosecution against the Petitioner and the co accused continues, and thus are denied equal protection of the laws and equality before law;

xxvii. The act of Respondents in not prosecuting or bringing Sambhaji Bhide and Milind Ekbote in accordance with law, despite there being overwhelming evidence and fabricating planting evidences to book persons like Petitioner is also violation of the principles enshrined in Article 14,and 21 for it is giving unequal protection of law and amounts to selective prosecution;

xxviii. That the said discretion to selectively prosecute the Petitioner and the co accused is an abuse of the process of law, unequal, denies equal protection of laws and renders the prosecution mala fide in law and in fact, manifestly arbitrary and unconstitutional;

xxix. In view of the fact that there were repeated statements of the Chief Minister cum Home Minister stating the roles of completely different persons, in the violence that occurred, prosecuting Petitioner is absolutely arbitrary, clearly aimed at protecting the perpetrators for political reasons.

xxx. The Respondents resorted to selective-prosecution in violation of ordinary equal protection standards and the prosecution of the Petitioner and his co-accused in the present case shows that this policy has "had a discriminatory effect and that it was motivated by a discriminatory purpose." [*United States v. Armstrong* -517 U.S. 456 (1996)];

xxxi. That it is apparent that the law is being implemented with “an evil eye, and unequal hand” (*Yick Wo Vs. Hopkins* 118 U.S. 356 (1886) 6 S. Ct.1064) which makes the entire prosecution against the Petitioner and co-accused, unconstitutional, illegal and unjust;

xxxii. For that Article 14 requires that all actions of the State be non-arbitrary and non-discriminatory to ensure equality before law and equal protection of laws;

xxxiii. For the discretion to prosecute the Petitioner and the co accused has been taken on discriminatory grounds and only for the reason that they have been taking up the cause of the rights of the marginalised have-nots against their oppression by the wealthy haves;

Offences against Public justice

xxxiv. The said act of planting amounts committing offences against public justice for which the persons responsible are required to be prosecuted;

xxxv. That that the issue of offences against Public Justice under Chapter XI established by *prima facie* evidence are required to be determined as a threshold issue at this stage calling for a quashing of the prosecution;

xxxvi. That the act of creating, planting or fabricating evidences is an act made punishable by law, being an offence against public justice under Chapter XI of the Indian Penal Code, has resulted in incalculable loss to life, liberty, reputation and many enumerable aspects of life which cannot be compensated in any manner, and therefore it is necessary that petitioner and his co-accused are set liberty forthwith;

xxxvii. The Respondents have shown scant regards to the procedure established by the law or constitutional provisions. Petitioner was being subject to surveillance with ulterior motives without bothering to adhere to procedure established by the law, and then over period plan was expanded to implicate him and other such dissenters by delivering documents in the computer of the Petitioner;

xxxviii. That the Prosecution has fabricated false evidence and done so with intent to procure conviction with a serious sentence of life imprisonment against the Petitioner and the co-accused as defined under Sections 192 and 195 of the IPC;

xxxix. The acts being a pre-planned conspiracy to implicate, persecute, defame and detain Petitioner by exploiting the process of law and process of court. The act being completely illegal, without any legal sanctity, by no stretch of imagination can fall within the ambit of "procedure established by the law" to curtail life, liberty or otherwise any harassment by exercising powers which are vested under anti-terror laws;

xl. That the Respondents time and again have misused the powers vested with them in order to achieve objectives which are not permissible in law. That the very act on part of the Respondents in snatching the investigation from State, after change in the government and on first hint of independent investigation to be likely, itself shows that there has been strong effort to ensure that the deed of the perpetrators in implicating petitioner and his co-accused is not exposed;

xli. For that once it is established that Article 14 and 21 are violated, the intention of the Respondents is irrelevant and the For that once it is established that Article 14 and

Article 21 are violated, the intention of the Respondents is not relevant and the said sanction ought to be quashed and set aside.

Need for an independent SIT

xlii. For that the offences against public justice need to be investigated by an independent Special Investigation Team (SIT) monitored by this Hon'ble court having regard to the nature of the allegations made herein namely targeting for political reason and unconstitutional and selective targeting by the State through its law enforcement agencies;

xliii. For that in public interest and in order to maintain the integrity of the criminal justice system and the integrity of the judicial process itself and to prevent an abuse of process of law, it is just and necessary that the said "framing" be forthwith enquired into and the persons responsible for the framing be brought to justice;

xliv. That the act of planting fabricated, false, imaginary yet incriminating documents in the computer of the petitioner, then admitting in the applications made for search warrant that the secrete correspondence is there in the electronic gadgets of the petitioner, followed by raid aimed at seizing electronic material even when search warrant is denied, and thereafter showing that the material about which

"secret confidential informer" has been found on the computer; this sequence of events in itself bears out that it was a well-planned targeted act, in which first material came to be planted and then created a farce of having seized it from the electronic devices of the petitioner.

xlv. For that the role of the investigating agencies has been questionable, and the conduct demonstrates that they have shown no inclination to ascertain the truth or authenticity of the records, and have shown extreme zest in arresting and prosecuting petitioner and co accused, and therefore it is necessary to ascertain whether the investigating agency was complicit in the act or negligent, and therefore also there is need to constitute a special investigation team to conduct probe in the issue of planting of the documents, and persons who are involved in such an act so as to bring them to books.

xlvi. That there is necessity to have independent cyber forensic experts to be involved in the investigation, who without fear or favour will be able to investigate the source or attacker who infected the computer of petitioner and also planted such documents.

Infirmities in the electronic evidence

xlvii. Apart from the report of Arsenal which clearly shows that the "incriminating documents" relied upon by the

Prosecution are planted and are fabricated documents, there are other gross infirmities in the electronic evidence relied upon by them.

xlviii. For that the Petitioner was not given the *hash value* of his device at the time of seizure and there is no knowing when the documents were planted on his device as there is no evidence of the contents of his devise at the time of seizure;

xlix. For that the failure to provide the *hash report* also leads to the conclusion that the decision to prosecute is not based on lawful considerations but is actuated with *mala fides* and bad in law;

l. That legally binding standard for the Authentication of Electronic records as laid down in Section 3(2) of the Information Technology Act 2000 is the recording *hash report* of the device. *Hash report* is an Unique Identifiable Sequence of alpha numeric characters which is generated by using an algorithm (hash function), when worked on a specific set of *bits* (electronic record) that would generate a different value. The generating and recording of *Hash Report* by a hash function (MD5, SHA-2, etc.) has become an important security procedure the world over to maintain integrity against contamination and unauthenticated duplication. Hash value helps identify if there has been any change in the contents of the system. As on date it is the only method with which gives sanctity

to the electronic material and on that basis, post seizure manipulation can ascertained, although manipulating the same (hash report) is also not impossible task. The process is neither time consuming nor expensive, and is routinely available and supplied by various agencies in India as well. Given that the police team that reached the Petitioner's house on 17.04.2018 had two cyber experts at the time of raid, there was no impediment in drawing the hash value of the gadgets and to supply the same to the Petitioner. However, it was intentionally not so supplied for the purpose that any manipulation is not detected;

li. For that the electronic evidences sought to be relied upon by the prosecution have to meet the requirement of Section 65B even to consider the whether the electronic documents are *prima facie* authentic and reliable, which is not met in this case.

lii. For that it was duty of the Prosecution to satisfy that the computer in question does not suffer from any incurable infirmity which will affect its operation or that it will affect the electronic records, or that that it will affect the authenticity of the documents or the accuracy of the contents. There not being any certificate dealing with this aspect or showing that any such issue was taken care of during the examination of the computer of the Petitioner,

makes the all of the electronic evidence unreliable, inadmissible and importantly of no *prima facie* value.

liii. That the Respondent No. 2Investigating Officer, while sending the electronic material to FSL, had specifically asked the FSL to see if any the hard disc had been tampered with. However, there was no response whatsoever to that question and in absence of that the Respondents could not have proceeded to prosecute Petitioner. This by itself is sufficient to cast doubts on the *bona fides* of the investigating agency and others.

liv. This assumes greater significance in view of the fact that its report indicates post and during seizure access to the laptop and other material, and despite that it has preferred not to answer the question in so many words, raising serious doubts over the reliability and authenticity of the material.

lv. That the electronic device of the Petitioner seized from his possession do not constitute " secured electronic records" within the meaning of Section 3 of the Information Technology (IT) Act and hence not entitled to the presumption mentioned in Section 85B of the Indian Evidence Act and therefore do not constitute *prima facie* evidence on which sanction could be given to prosecute the Petitioner as it sought to be done;

lvi. For that the Prosecution has not submitted any certificate or report showing that the electronic material seized from the computer of the petitioner was fed in the computer in the "ordinary course" of the activity, and therefore also the electronic material sought to be relied upon has no value, be it *prima facie or ex facie.*

lvii. That in the absence of any security procedures adopted by the investigation agency at the point of time of seizure as laid down in Section 16 of the Information Technology (Security Procedure) Rules, 2004; the electronic records seized therein and in particularly the electronic records seized from the Petitioner and his co-accused cannot be deemed to be secure electronic records as defined by the Indian Evidence Act r/w Section 14 of the IT Act. Hence the presumption of its authenticity and integrity under section 85 B (2)(b) of the IT Act is not available is questionable. Hence these electronic documents cannot even be treated as evidence in eyes of law and cannot be relied upon by the Prosecution to prosecute;

lviii. That with extreme advancement in the technology which can practically make any changes or take any actions without the knowledge, consent, informed choice of the owner, such type of evidence cannot be and must not be allowed to be considered as evidence at all, till its authenticity is proved beyond reasonable t doubt. The

extent to which electronic evidence is susceptible to be tampered with, is qualitatively different from the manner in which physical documents can be forged. Hence the Arsenal Report at Exhibit H hereto is to be given full at this stage requiring an investigation to avoid a failure of justice which is irreparabe;

lix. That the Respondents have knowingly and consciously avoided to comply with the mandate of the Section 65B with respect to the electronic evidence in question. Even though it is a mandate of the provision that it must be explicitly shown that the computer in question was not malfunctioning or was not so impaired that it will affect the functioning of the contents in it, the same was avoided. There is not a word used in the report that the computer of the Petitioner was functioning properly and it was not infected with any malware or not interfered with. The act on the part of the authorities is not just a lapse but is purposeful so as to make the Petitioner and the co-accused suffer long incarceration. The FSL report filed by the Respondents does not even qualify the test laid down under section 65B of the Evidence Act;

lx. That the use of the HP Laptop allegedly seized from the Petitioner after seizure by the Respondent No. 2 Investigation Officer himself was verified by a Police cyber expert and showed by the Last Logon – Shutdown

Date/time clearly indicating that the data integrity of the said Laptop had been compromised and also suggested contamination before, at or after the search and seizure and hence there exists no reason to believe that the files/documents allegedly found on the Hard Disk of the said HP Laptop including the files/documents containing the name of the Petitioner were planted;

The Respondents knew of the planting of the documents

lxi. That it is clear that the Respondent No. 2 knew about the documents having been planted. Twice he made applications for search warrants to the Ld. Magistrate which were rejected. He could not have done that without knowing about the same.

lxii. That justifying the searches on the basis of and terming it is as "secret information" is only to disguise his complicity.

lxiii. Once the Respondent No. 2 had knowledge of planting the documents, it is inconceivable that the other Respondents did not know of the same.

Sanction orders liable need to be set aside

lxiv. That, as pointed out above, the only evidence relied upon by the Prosecution against the Petitioner and that existed

at the time of sanction is the electronic evidence which is shown hereinabove to be planted and fake.

lxv. That the sanction orders impugned herein suffer from incurable defects and could not have been given for the very reason that it fails to appreciate that the hash value of the electronic evidence was not recorded, and therefore the electronic material placed before him had no authenticity and was not secured. However, this vital aspect has not been considered while granting the sanction orders.

lxvi. That the sanction orders granted by the Respondents have been granted without appreciating the FSL report submitted by the prosecution which clearly shows that the concerned laptop, was operated during the raid. Further the video recording of the same shows that it was operated by none other than the cyber expert who accompanied Pune Police from Pune itself. The sanctioning authority ought to have considered this factor, more so since the material placed before him was allegedly derived from the same laptop, and thus he ought to have given due consideration to rule out any tampering before according such sanction.

lxvii. That the sanctioning authority was well aware or ought to have been aware of the fact that Supreme Court of India, in case of *Romila Thapar vs Union of India* had considered prosecution case, on the basis of some of these very

documents, in the dissenting opinion delivered it, which on this issue is not contested by the majority, and therefore has weightage, found serious infirmities with respect to the authenticity of these documents.

lxviii. That said judgment also raised serious doubts over the impartial nature of the investigation based on the fact that the *panchas* for arrest were imported from Pune to arrest persons in Delhi.

lxix. It was very much aware or ought to have been aware of the affidavit filed by the State Government in case of *Milind Ekbote vs State of Maharashtra* in the Supreme Court of India wherein it had stated that the Milind Ekbote is the person responsible for the acts of riots, and disturbing the social fabric.

lxx. That the sanctioning authority ought to have given highest value to the fact that the electronic evidence being highly susceptible to tampering, must conform to the requirement of section 65B, which includes ruling out presence of malware, that not having done and having shown any satisfaction on the aspect the sanctioning authority has failed to perform its duty which the has vested in him.

lxxi. In such circumstances, *a fortiori*, it was necessary that the sanctioning authority act with higher degree of circumspection, consider and rule out all such possibilities of misuse of law. Having failed to do that the sanction

order is flawed, is without application of mind, is not in exercise of independent analysis.

lxxii. That the sanctioning authority has not given any consideration to the fact that there is a dearth of compliance with any of the requirements under section 65B of Indian Evidence Act, 1872. Though it appears to have had the opportunity to look into the forensic analysis report, it completely ignored the requisites of the law which are meant to ensure that the electronic evidence is reliable and not a fabrication.

lxxiii. That it has failed to appreciate that the Report submitted to it of the forensic analysis has not even made a whisper if it contained any malware or not, on the contrary it shows that the tools used are only for the purposes of drawing the clones, recovering the deleted files and none for the purposes of finding malware have been used.

lxxiv. That even otherwise, the reports submitted by the Prosecution of the forensic analysis, do not show even a semblance of compliance with the provisions of section 65B, without which the material in question, is *non est* as secondary evidence, and therefore cannot be considered as a document in law and has no evidentiary value whatsoever. That merely putting a cryptic footnote in the report does not suffice to cross the bar imposed under the

65B. That being so it is a case of no evidence in eyes of law, and therefore also the whole prosecution *non est* and.

lxxv. That the requirement of 65B in the criminal prosecution cannot be complied at with at a later stage and the conditions requisite ought to have been satisfied at the time of examination of the material itself.

lxxvi. That the law requires that in order to make any electronic material admissible as an evidence, it must be shown by the prosecution that accused was in lawful control of the system, and also that it did not suffer from any defect so as to cause ill-effect on the content of the computer, and further that the information so derived from the computer was fed into the computer in "ordinary course". Thus the onus having been placed on the shoulders of prosecution. It having chosen not to follow the procedure the electronic evidence in question does not have any sanctity, or existence in the eyes of law. It is neither admissible nor considerable, and therefore there is no evidence against the Petitioner or his co accused in the matter.

lxxvii. The sanctions have been granted without considering relevant material;

lxxviii. The sanctions have been granted on the basis of the record which indicates that tampering cannot be ruled out;

lxxix. The documents *ex facie* indicate, that they could be false and fabricated;

lxxx. The sanctioning authority failed to consider was bound to ascertain that the electronic evidence so presented was intact, not compromised with and does not suffer from inherent defects, more since same the Supreme Court of India in *Romila Thapar vs Union of India*, had cast a doubt on \the documents, demonstrating reasons for not considering them genuine.

lxxxi. That the authority granting sanction ought to have examined the material with utmost care and circumspection. It could not have acted in mechanical manner and ought to have conducted his own examination of the evidences to arrive at prima facie conclusion, that being lacking in all the impugned sanction orders deserves to be quashed and set aside.

lxxxii. That, in fact, as confirmed by the Arsenal Report, the sanction orders impugned herein have been granted based on false, fabricated and planted documents;

lxxxiii. That the authority granting sanction must note the reasons and grounds which satisfied him to arrive at such a conclusion.

lxxxiv. That the third sanctioning order granted by the Respondent No.3 dated 8th October 2020 Exhibit C hereto suffers from the lack of any reasons given to arrive at satisfaction or forming opinion. It has neither recorded nor demonstrated as to which material was relied upon by him

to give sanction, and therefore also the sanction order impugned herein deserves to quashed and set aside.

Delay in the trial

lxxxv. For that the prosecution has ensured that the trial delays on one or other reasons. It purposefully avoided to supply clones of the hard disc, and when the court ordered it to supply the same, they used all dilatory tactics, including using of slowest of the machines for preparing clone copies. Till date it has not supplied all the clone copies, and retains some of the crucial ones.

lxxxvi. For that the delay in the trial is itself a form of cruel and inhuman treatment while keeping the Petitioner in continued detention on fake and trumped up charges violating the Fundamental Right of the Petitioner to a fair trial

lxxxvii. Therefore the continuance of incarceration of the petitioner on the strength of such evidences, which are planted, are fabricated is illegal and therefore the whole process deserves to be quashed with consequential compensatory remedy

lxxxviii. That the Petitioner has not filed any such or similar petition earlier before this Hon'ble High Court or Hon'ble Supreme Court of India. The present Petition is filed under Article 226, 227 of the Constitution of India and Section 482 of the Criminal Procedure Code.

80. The Writ Petition is filed within time and there is no delay or laches in filing the petition.

81. That the petitioner has made out excellent case for grant of relief as prayed for including grant of ad interim relief.

82. The Petitioner states that the Respondent have their offices in Maharshtra, therefore, the cause of action has arisen within the Criminal Appellate Side jurisdiction of this Hon'ble Court; hence, it can admit the petition and hear it.

83. The Petitioner states that he has no other alternative efficacious remedy but to approach this Hon'ble Court and the reliefs prayed for herein, if granted, shall be complete.

84. The Petitioners will rely on documents a list whereof is annexed hereto. Petitioner also craves leave of this court to refer and rely on all such documents as would be helpful in successful adjudication of this petition.

85. That petitioner craves leave of this court to add, alter, amend or delete any portion of this petition if found necessary.

86. The Petitioner is in jail and hence is exempted from paying court fee and verification may also be dispensed with.

87. No caveat with regard to the subject matter of this petition has been received by the Petitioner from the Respondent till date.

PRAYERS

That in the circumstances above, Petitioner most humbly prays for directions, relief and orders as under that this Hon'ble Court may kindly be pleased:-

a) For an appropriate writ order or direction to appoint Special Investigation Team consisting of experts in Digital Forensic Analysis presided over by a retired judge of the High Court or Supreme Court, and other appropriate persons empowered independent investigators monitored by this Hon'ble Court to enquire into the planting of documents in the computer of the Petitioner, with direction to submit its report in time bound manner, and also to ascertain all the persons who perpetrated this crime, and thereafter direct appropriate actions including prosecution of the responsible.

b) For an appropriate writ order or direction calling for the records of the case relating to sanction for prosecution u/s 45 of Unlawful Activities (Prevention) Act, 1967, with regards to FIR 4/2018 and after going through the legality, validity and

constitutionality of the pr and the records relating to the sanction to prosecution, dated 14th November 2018, Exhibit-B hereto, 20th February 2019 Exhibit-C hereto and 08th October 2020, Exhibit-E and after going through the legality and validity thereof, quash and set aside the same and thereby also quash and set aside charge sheets dated 15.11.2018, 21.02.2019 & 09.10.2020 filed invoking Section 13, 16, 17, 18, 18A, 18B, 20, 38, 39, 40 UAPA, & IPC 117, 153A(1), 120B, 34, 121, 124, 124A, 505(1)(b) pending on the files of NIA Special Court, Mumbai;

c) For grant suitable monetary compensation to the Petitioner befitting to the agony, harassment, violation of fundamental rights, defamation, loss to reputation, incarceration, inhuman treatment, suffered during this period.

d) Pending the final hearing and disposal of this petition, for a stay effect and operation of all proceedings in the charge sheet dated 15.11.2018, 21.02.2019 & 09.10.2020 invoking section 13, 16, 17, 18, 18A, 18B, 20, 38, 39, 40 UAPA, & IPC 117, 153A(1), 120B, 34, 121, 124, 124A, 505(1)(b) pending before the NIA Special Court, Mumbai being Spl Case-414/2020;

e) Pending the final hearing and disposal of this petition for on order directing the immediate release of the Petitioner from jail on such terms and conditions as would be just and proper in interest of justice;

f) For costs of this petition;

g) For such further any other reliefs that this Hon'ble Court may deem fit in this case;

Dated this 10.02.2021

Mumbai

Advocate for Petitioner