

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

WRIT PETITION (CRIMINAL) NO 260 OF 2018 (D NO 32319)

ROMILA THAPAR AND ORS

..PETITIONERS

VERSUS

UNION OF INDIA AND ORS

..RESPONDENTS

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The intersection between criminal law and constitutional rights has led to the evolution of judicial precedent which originates in this Court. Our recent decisions reiterate the value of individual dignity as essential to a democratic way of life. But lofty edicts in judicial pronouncements can have no meaning to a citizen unless the constitutional quest for human liberty translates into securing justice for individuals whose freedom is under threat in specific cases. The role of the Court involves particularly sensitive balances when the state seeks to curb freedom to investigate perceived breaches involving offences against the state. Custodial interrogation involves the balancing of diverse and

often conflicting values: the effective administration of criminal justice, an impartial process of investigation and the liberty and reputation of the individual. The invocation of our jurisdiction under Article 32 in this case is founded on the grievance that a group of five human rights activists is sought to be persecuted for espousing the cause of the marginalised which is considered to be 'unpopular'. Conscious as the Court is of the public interest in the effective administration of criminal justice, it cannot be oblivious to the overriding constitutional concern to secure the dignity of the individual. The key to the balance between the two lies in a fair, independent and impartial investigation of crime. As a matter of principle, I am unable to agree with the views expressed by the learned Chief Justice and my learned brother Justice AM Khanwilkar.

2 On 29 August 2018, the jurisdiction of this Court under Article 32 was invoked by five distinguished academics to seek an "independent and comprehensive inquiry" in the circumstances relating to the arrest of five human rights activists on 28 August 2018. The arrests by the Pune police took place following the raids which were conducted at their homes and offices. The arrests took place simultaneously in Delhi, Faridabad, Mumbai, Thane and Hyderabad. The petitioners assert that our jurisdiction has been invoked not to impede the investigation but to ensure that an independent and credible investigation is made by persons nominated by and subject to the supervision of this Court. The petitioners urge that the invocation of the draconian provisions of the Unlawful Activities (Prevention) Act, 1967 (UAPA) in the present case is an attempt to

silence dissent by targeting human rights activists who have been working to protect the rights of the poor and the marginalised, particularly Dalits. This is set forth in the prefatory averments of the writ petition, extracted here:

“The charges against them on the face of it appear indiscriminate, unwarranted, part of a malicious campaign to threaten human rights defenders, independent journalists, writers and thinkers in this country, from critiquing the government and its policies and an attempt to muzzle dissent. The activists who have been arrested are pro democracy workers who have been leading peaceful peoples rights based movements especially among the poor and marginalised communities, Dalits and adivasis, for several years, in different parts of the country. The use of the UAPA meant for exceptional and violent activity, against such persons, when there has been absolutely no evidence of any acts of violence by these activists is deeply disconcerting and calls for an urgent intervention by this Hon’ble Court.”

The grievance is that those five persons are being persecuted for their views and their voices are sought to be chilled into silence by a criminal prosecution.

3 First, as to the locus of the petitioners:

(i) The first petitioner – Romila Thapar is an eminent historian and Professor Emeritus at Jawaharlal Nehru University. She was selected on two occasions for the conferment of the Padma Bhushan award by the Union Government, which she declined. Romila Thapar has been elected to the British Academy and the American Academy of Arts and Sciences and has been conferred with honorary doctoral degrees by the Universities of Oxford and Chicago, among others. Her writings include a book titled, ‘A History of India’;

(ii) The second petitioner, Devaki Jain is a pioneer feminist economist and has been associated with national bodies, including the Planning Commission and the National Commission for Women and, international organisations, including UNDP and the South Commission. She is the founding member of two organisations engaged in women's studies. She is a recipient of the Padma Bhushan in 2006, the third highest civilian award from the Government of India, for her contribution to social justice and the empowerment of women;

(iii) The third petitioner, Prabhat Pattnaik, was a Rhodes Scholar and is an eminent economist who taught at JNU for over three decades. He was vice-chairperson of the Kerala Planning Board and a member of a high-powered UN Task Force on the global financial system;

(iv) The fourth petitioner Satish Deshpande, is a sociologist at the University of Delhi. He is a recipient of the Malcolm Adiseshiah award for distinguished contributions to development studies. He was a member of the Union government's expert committee on the proposed Equal Opportunity Commission. He has held visiting appointments at the University of Chicago and in Paris; and

(v) The fifth petitioner, Maja Daruwala, is a member of the Board and a senior advisor to the Commonwealth Human Rights Initiative. In that capacity she has been associated with significant research on the implementation of

human rights norms in the country. She has been working in the field of advocacy for rights and social justice for over forty years.

4 The persons who were arrested on 28 August 2018 and on whose behalf these proceedings were initiated have been described thus in the petition:

- i. Gautam Navalakha (Human Rights activist and journalist New Delhi). He was the President of the People's Union for Democratic Rights and has been associated with the Economic and Political Weekly. He is a known commentator on current affairs. The state relied upon him to negotiate the safe return of persons abducted by left wing extremists in Chhattisgarh.
- ii. Sudha Bharadwaj (Advocate, Chhattisgarh High Court, currently residing in Faridabad) Prominent cause lawyer of Bilaspur High Court who has represented workers, poor and marginal farmers and others in Chhattisgarh. She is the national green secretary of PUCL and since 2017 been teaching at the National Law University, Delhi. As a member of the Indian Association of People's lawyers, advocated Sudha Bharadwaj was vocal against the arrest of lawyers like Surendra Gadling in recent times. Sudha Bharadwaj has been a member of committees and provided legal aid and is a recognised human rights defender.
- iii. Varavara Rao (Age 79, based in Hyderabad, political worker, commentator and renowned poet). He was a professor of English and Telegu literature.
- iv. Arun Ferreira, (Mumbai) Practising as a lawyer since 2015 and a Human Rights activist.
- v. Vernon Gonsalves (Mumbai), Gold medallist from Bombay University in Commerce, accounts officer at Siemens, then lecturer of accounts in Maharashtra College, writer and columnist. His translation of Annabhau Sathe's "Gold from the Grave" from Marathi to English published in David Davidar's "A Clutch of Indian masterpieces".

Three of the above individuals were prosecuted in the past for offences primarily under the Indian Penal Code, 1860, the Arms Act, 1959 and the UAPA. Arun Ferreria is stated to have been acquitted in all eleven cases instituted against him. Vernon Gonsalves was acquitted in seventeen out of the nineteen cases instituted against him (an appeal is pending in one case where he stands convicted while an application for discharge is pending before the Gujarat High Court in one case). Vara Vara Rao was acquitted in all twenty cases where he was prosecuted¹.

5 During the course of the hearing, a preliminary objection was raised by Mr Tushar Mehta, the learned ASG to the maintainability of these proceedings. He urged that the petitioners have no *locus* to question the circumstances relating to the arrest of the five individuals named above. I would not have been inclined to accept a technical argument of this nature in view of the constitutional imperatives for this Court to intervene when human freedoms and liberties are alleged to be imperilled. The jurisdiction under Article 32 is wide enough to reach out to injustice in any form and originating in any source. Securing human liberty and dignity must occupy an important space in the judicial docket. Liberty and freedom are defining values of our Constitution. The institutional role of this Court as a constitutional adjudicator should brook no technicalities which obstruct the cause of justice. When a group of citizens has moved this Court with an impassioned plea about the violation of human rights

¹ Details of these cases have been submitted in charts A, B and C annexed to the written submissions filed by Dr AM Singhvi, learned senior counsel.

— in the present case no less than five distinguished citizens with a track record of service to the nation have done so — the Court must look beyond *locus* into the heart of the matter. Whether the grievance has any substance is indeed a distinct matter which must be determined objectively. The Court will not interfere in every case merely because it has the jurisdiction. But its duty to scrutinise, perceive and remedy violations of human rights is non-negotiable. However, the issue of *locus*, even in a technical sense, has receded into the background. During the course of the hearing, the Court has been apprised that each of the five individuals who were arrested has subscribed to the averments in the petition and would stand by what is urged before this Court in protection of their rights. The objection to maintainability lacks substance, in either view of the matter.

6 A brief historical background is necessary. On 1 January 1818, a few hundred soldiers of the East India Company comprising of Dalits, tribals, Muslims, Christians and backward communities defeated the Peshwa army led by Bajirao II at Koregaon, on the banks of the Bhima river near Pune. Like many of its genre, the battle has assumed a legendary status primarily because of the victory of the Dalits. Honouring the then martyrs, the colonial government raised a victory pillar, the ‘Vijay Stambh’. The pillar is a symbolic rallying ground for an annual event to mark the victory. The event represents the aspirations of those who have been subject to discrimination and prejudice in the caste-ridden structure of our society.

7 In keeping with tradition, a public meeting was scheduled to commemorate the 200th anniversary of the Bhima-Koregaon victory on 31 December 2017. Among those who were associated with the event were two judges: one of them, Justice PB Sawant is a former judge of this Court. Justice BG Kolse Patil is a former judge of the Bombay High Court. The event was planned at Shaniwar wada in Pune. An organisation known as the Kabir Kala Manch was to supervise a cultural programme. Besides the two judges who addressed the Elgar Parishad, the speakers included Shri Prakash Ambedkar, President of the Bharatiya Republican Party. The event was titled: “Bhima-Koregaon Shourya Din – Elgar Parishad”. The petitioners claim that ‘Elgar’ is a clarion call. The state reads into it a sinister symbolism of an attack. On 1 January 2018, a communal disturbance took place at Bhima-Koregaon when, as the allegation goes, a group of Dalits was attacked in the process of offering a salutation to the victory pillar. News of the incident spread across the state of Maharashtra, resulting in a violent agitation in the state.

8 Following these incidents, a First Information Report in regard to the incident was lodged on 8 January 2018 by one Tushar Damgude. The FIR specifically names the following individuals:

- i Sudhir Dhawale;
- ii Sagar Gorakhe;
- iii Harshali Potdar;
- iv Dipak Dhengale;
- v Jyoti Jagtap; and

vi Ramesh Gaychore.

Sudhir Dhawale was arrested on 6 June 2018. As the investigation progressed, Section 120B of the Penal Code was added on 6 March 2018 and two more persons – Surendra Gadling and Rona Wilson - were suspected to be involved. On 17 April 2018, the Pune police conducted searches at the residences and offices of the following persons:

- 1 Rona Wilson, a resident of Delhi;
- 2 Surendra Gadling, a resident of Nagpur;
- 3 Sudhir Dhawale and Harshali Potdar, residents of Mumbai;
- 4 Sagar Gorakhe, a resident of Pune;
- 5 Dipak Dhengale, a resident of Pune; and
- 6 Ramesh Gaychore and Jyoti Jagtap, residents of Pune

In the counter affidavit which has been filed by the Assistant Commissioner of Police, Pune city, it has been stated that the material retrieved from the computers, laptops, pen drives and memory cards of the above accused persons implicated them as active members of the Communist Party of India (Maoist), a banned organisation, and reflected a design of being involved in the commission of offences having the potential to destabilise the country. Based on the investigation, the provisions of Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAPA were invoked on 17 May 2018 against the following individuals:

- (i) Surendra Gadling;

- (ii) Rona Wilson;
- (iii) Shoma Sen;
- (iv) Mahesh Raut;
- (v) Comrade M. alias Milind Teltumbade (underground);
- (vi) Comrade Prakash alias Navin alias Rituparn Goswami (underground);
- (vii) Comrade Manglu (underground); and
- (viii) Comrade Dipu and other underground members.

On 6 June 2018 five persons were arrested namely:

- (i) Surendra Gadling;
- (ii) Rona Wilson;
- (iii) Sudhir Dhawale;
- (iv) Shoma Sen; and
- (v) Mahesh Raut.

The counter affidavit filed by the Assistant Commissioner of Police states that it is on the basis of the material recovered during the course of the search of the above persons that the five individuals on whose behalf the present proceedings have been instituted were found to be a part of the criminal conspiracy. The averment in the counter reads as follows:

"I state and submit that based upon the aforesaid material recovered from the searches of the aforesaid persons [which is a part of the case diary and which would be placed for consideration and perusal of this Hon'ble Court in a sealed cover], the following persons were also clearly found to be a part of the criminal conspiracy and their role was not merely peripheral role but they were found to be playing a very vital role in the criminal offences committed and/or planned by

others. Based upon the said incriminating material, the following persons came to be arrested on 28.8.2018 and searches were conducted at their residential/work places in a similar fashion, under videography in presence of individual Punchas who were Government officers.

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

The counter alleges that each of the five individuals is found to be working for and to be an active member of a “banned terrorist organisation” – the Communist Party of India (Maoist). Paragraph 26 of the counter affidavit states that each of them has been found, from the material gathered from others during investigation, to be involved in unlawful activities which are described thus:

“The material gathered from others based upon which the five accused persons named hereinabove are arrested, clearly show that they were involved in selecting and encouraging cadres to go underground in ‘struggle area’, mobilizing and distributing money, facilitating selection and purchase of arms, deciding the rates of such arms into India for its onward distribution amongst the cadres. Some of them have suggested training and laying of booby traps and directional mines. They are also found to be providing strategic inputs in furtherance of the objective of armed rebellion as per the strategic document of the banned terrorist organisation namely Communist Party of India (Maoist).”

The petition was initially taken up for hearing on 29 August 2018. Interim directions to place the five individuals under house arrest were issued, in terms of the request made by their counsel:

“We have considered the prayer for interim relief. It is submitted by Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the petitioners that in pursuance of the order of the High Court, Mr. Gautam Navalakha and Ms. Sudha Bharadwaj have been kept under house arrest. It is suggested by him that as an interim measure, he has no objection if this Court orders that Mr. Varavara Rao, Mr. Arun Ferreira and Mr. Vernon Gonsalves, if arrested, they are kept under house arrest at their own homes. We order accordingly. The house arrest of Mr. Gautam Navalakha and Ms. Sudha Bharadwaj may be extended in terms of our orders.”

Since the case was being heard, the house arrest has since been extended by the interim directions of this Court of 6 September 2018 and 17 September 2018. During the course of the hearing, permission has been sought to formally amend the writ petition to seek the constitution of a Special Investigating Team under the directions of this Court, so as to ensure an independent investigation.

9 Unfolding his submissions, Dr Abhishek Manu Singhvi, learned senior counsel stated that a First Information Report in respect of the violence which took place on 1 January 2018 (FIR 2/2018) was lodged by Anita R Sawale at PS Pimpri on 2 January 2018. The FIR alleges that violence was unleashed against Dalits by a mob armed with swords, rods and other weapons. The FIR specifically names Sambhaji Bhide, head of an organisation known as Shivajinagar Pratishthan and Milind Ekbote, Chief of Hindu Janjagaran Samiti as perpetrators and conspirators. Sambhaji Bhide has not been arrested while Milind Ekbote is stated to have secured bail within a month of his arrest. The FIR relates to offences under the Penal Code, Arms Act and the SC/ST Act².

² The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989

No provision of the UAPA has been invoked. Since the police were allegedly not investigating the FIR, a writ petition has been filed before the Bombay High Court³. FIR 4/2018 was lodged on 8 January 2018 at PS Vishrambagh by Tushar Damgude who is alleged to be a self-professed follower of Sambhaji Bhide. The FIR adverts to a speech delivered by Sudhir Dhawale at the Elgar Parishad on 31 December 2017 in which allegedly an incendiary speech was made, with the following lines:

“Jab Julm ho to Bagawat Honi Chahiye shahar mein, Jab Julm Ho to bagawat honi chahiye shahar mein, aur agar bagawat na ho to behatar he ke, ye raat dhalane se pehle ye shahar jalkar rakh ho jaye, yesatra hein, ye satra ki tittle hi, apne aap mein, ladhai k ailaan hein, ye nayi peshwai ko hamko shamshan ghat mein, Kabrastaan mein dafnana hein.””

Dr Singhvi submits that these lines are but a translation of Bertolt Brecht’s play, “The Good Person of Szechwan”, (1942). Notably, according to the submission, FIR 4/2018 does not allude to any conspiracy to attack the Prime Minister. It has been submitted that it is undisputed that none of the activists under house arrest were named in the FIR. They are not alleged to be present at the Elgar Parishad on 31 December 2017 or at Bhima-Koregaon on 1 January 2018. Moreover, according to the submission, the State of Maharashtra opposed the anticipatory bail of Milind Ekbote on the ground that the violence was committed as a part of a pre-planned conspiracy by him and by others. The arrests of the five persons were affected nearly nine months thereafter.

³ Criminal Writ Petition 1875/2018

10 The next limb of the submission of Dr Singhvi is that certain letters which are alleged to have been authored by the arrested activists are *ex-facie* fabricated. These letters are alleged to have been recovered by the police from the electronic devices of one of the accused who was raided in the month of April 2018 and was arrested in June 2018. Shri Parambir Singh, Additional Director General of Police (Law and Order), State of Maharashtra appeared in a television programme called “Truth v Hype” on NDTV on 1 September 2018 and stated that the letters which were placed before the media by senior police functionaries were yet to be verified. According to the petitioners, thirteen such alleged letters were leaked to the media by the police during the course of press briefings. They are now available in the public domain. These letters, it has been submitted, do not find mention even in the transit applications filed by the Pune police before the concerned court. The letters are unsigned and do not bear any identifiable particulars including e-mail addresses or headers. Curiously, the recovery is stated to have been made from the electronic devices of a third person who is neither the author nor the addressee of the letters. Hence, it has been urged that:

(i) While it was alleged that a plot against the Prime Minister has been uncovered in an alleged letter, it is noteworthy that no new FIR has been registered by the police and investigation continues by the Pune police under FIR 4/2018, pertaining to the Bhima-Koregaon violence;

(ii) The state is not taking the conspiracy theory seriously as is evident from the fact that no fresh FIR has been registered and the investigation continues to remain with the Pune police; and

(iii) Seven out of the thirteen alleged letters which were leaked to the media by the police have been authored by or addressed to one “Comrade Prakash”. The Sessions Court at Gadchiroli in its judgment dated 7 March 2017 convicting GN Saibaba in Sessions Case 13/2014 held that he had used the pseudonym ‘Prakash’ in letters scribed by him. It is a matter of record that Saibaba has been lodged in Nagpur Central Jail since 7 March 2017 and hence the alleged letters attributed to him after that date are *ex-facie* fabricated.

Dr Singhvi has drawn the attention of the court to the consistent pattern and history of the police targeting human rights activists and incarcerating them by foisting false criminal cases. This is buttressed by adverting to the prosecutions launched against three of the August 2018 detainees. Vara Vara Rao was implicated in 25 cases out of which 13 ended in acquittal, 3 in discharge and 9 in the withdrawal of the prosecution. He has not been convicted in any case and is 79 years of age. Arun Ferreira has been acquitted in all the 11 cases in which he was implicated. Vernon Gonsalves has been acquitted in 17 out of the 19 cases in which he was accused; a discharge application is pending in one case while an appeal against conviction in another case is pending before the Nagpur bench of the High Court, where he has already served his sentence.

11 During the course of his submissions, Dr Singhvi urged that there was a gross violation of law rendering the arrest, search and seizure unlawful. The panch witnesses were 'imported' from Pune and are employees of the Pune Municipal Corporation. The two panch witnesses travelled together with the Pune police and are stock witnesses. Hence it has been submitted that there has been a clear violation of the safeguards introduced in Section 41B of the Code of Criminal Procedure, 1973. In the transit remand application of Sudha Bhardwaj, the Pune police submitted before the Court of the CJM, Faridabad on 28 August 2018 that her remand was necessary since other individuals who were arrested in June 2018 had made disclosure statements in regard to incitement of the riots in Koregaon. Significantly, no such disclosure has been made by the arrested persons nor is there a mention of a Maoist conspiracy in the alleged letters or in the remand application.

12 In summation, Dr Singhvi urged that each of the persons who were arrested on 28 August 2018 is an active defender of human rights. They have taken a position on human rights violations. The submission is that this targeted persecution is meant to strike fear amongst human rights' lawyers, activists and writers to deter them from speaking against or critiquing governmental policies and police actions. Persecution of this nature would, it has been urged, shake the foundation of the rule of law and render the freedoms guaranteed by the Constitution illusory. Learned counsel submitted that the purpose of these proceedings is not to thwart an investigation but to ensure that the investigation

is fair and impartial. It was urged that in a long line of precedent, this Court has ordered the constitution of Special Investigation Teams (SIT) or a court monitored investigation under Article 32 of the Constitution. In the present case, it was urged, that the facts which have been adverted to before the Court indicate that the investigation has been anything but fair and impartial. The targeting of human rights activists for their opposition to the governing regime implicates a serious violation of democratic values and necessitates either the setting up of a SIT or the monitoring of the investigation by this Court.

13 On the other hand, Mr Tushar Mehta, learned ASG has urged the following submissions:

- (i) No interference by the Court is permissible in a criminal case in the garb of a public interest litigation. A PIL is not maintainable at the behest of a third person for seeking reliefs which can be granted only under Sections 438 or 439 and Section 482 of the Criminal Procedure Code (**Rajiv Ranjan Singh ‘Lalan’ (VIII) v Union of India**,⁴ **Gulzar Ahmed Azmi v Union of India**,⁵ **Simranjit Singh Mann v Union of India**⁶ and **Ashok Kumar Pandey v State of West Bengal**⁷;
- (ii) There is an abuse of process in the present case since three of the arrested persons – Vara Vara Rao, Sudha Bhardwaj and Gautam Navlakha have filed petitions before the jurisdictional High Courts which are pending adjudication.

⁴ (2006) 6 SCC 613

⁵ (2012) 10 SCC 731

⁶ (1992) 4 SCC 653

⁷ (2004) 3 SCC 349

Hence it would be impermissible to allow their prayer for transposing them or adopting the averments in the petition (**Pratibha Ramesh Patel v Union of India**⁸, **Udyami Evam Khadi Garmodyog Welfare Sanstha v State of UP**⁹);

(iii) A PIL under Article 32 would not be maintainable for the purpose of seeking relief under Sections 438 and 439 of the Criminal Procedure Code;

(iv) Reliefs in the nature of a writ of *Habeas Corpus*, which have been sought in the present proceedings under Article 32 are not maintainable (**State of Maharashtra v Tansen Rizwan Siddiquee**¹⁰);

(v) The accused does not have a vested right to seek an investigation monitored by the court or to have a particular agency as the investigator; and

(vi) The investigation in the present case is being conducted responsibly and impartially by an officer of the rank of an Assistant Commissioner of Police. The investigation is being carried out under the supervision of a Deputy Commissioner of Police and is being monitored by the Joint Commissioner of Police who is of the rank of an Additional Director General.

14 While entertaining these proceedings, this Court is conscious of the fact that ordinarily, when an investigation into a criminal offence is in progress, rights and remedies are provided by the Code of Criminal Procedure. Hence, it is but trite law that in matters pertaining to or arising during the course of investigation

⁸ (2016) 12 SCC 375

⁹ (2008) 1 SCC 560

¹⁰ (2018) 10 SCALE 711

such as remand, bail (including anticipatory bail) and quashing of proceedings, recourse must be taken to the provisions of the Code. These principles have been highlighted in the decisions to which a reference has been made by the ASG. In **Rajiv Ranjan Singh** (supra) the trial had commenced in a criminal case involving a charge of amassing wealth disproportionate to the known source of income of a public servant. This Court held that a PIL is not meant to advance a political agenda and would be alien to pending criminal proceedings. The petitioners were not *de facto* complainants and if at all they had a grievance regarding the removal of a public prosecutor, they should have moved the Special Judge or the High Court at the earliest point of time. The Court emphasised that any interference at the behest of a third party was liable to affect the course of justice and may even prejudice the accused by denying a fair trial. In **Gulzar Ahmed Azmi** (supra) a petition under Article 32 sought an investigation of all bomb blast cases since 2002 with a direction for the release of the detenues on bail. In that context, this Court held that sufficient safeguards were available under the criminal law and it was for the individual against whom a criminal proceeding is lodged to work out his or her remedy. In **Simranjit Singh Mann** (supra) the Court declined to exercise its jurisdiction under Article 32 where the petitioner did not seek to enforce his own fundamental rights but the fundamental rights of two “condemned convicts” who had not themselves complained of a violation. This Court noted that it was not open to “any and every person” to challenge a conviction and unless the aggrieved individual suffers from a disability recognised by law, it would be unsafe and hazardous to

allow a third party or stranger to question the correctness of a conviction and sentence imposed after trial. These principles were also adverted to in the earlier decision in **Ashok Kumar Pandey** (supra). They are well settled. As a court which is governed by precedent, we are bound by them and by a consistent line of authority which requires that during the course of investigation, it is to the competent court that an accused must ordinarily turn for the remedies that are available under substantive or procedural provisions of the criminal law.

15 But in the present case, it is necessary for the Court to bear in mind that recourse to its constitutional jurisdiction under Article 32 has been invoked not only by the petitioners but by the five individuals who were arrested on 28 August 2018. The petition was moved before this Court on 29 August 2018 when, as already noted, an interim order was passed directing that the five arrested persons be placed under house arrest. At the earliest possible point in time, these five individuals have moved this Court indicating that they abide by the averments and reliefs sought in the petition and seek that they should be transposed as petitioners under Article 32. The petitioners have not in their submissions sought recourse to the jurisdiction of this Court for espousing a remedy which is available before the competent court under the Code of Criminal Procedure. These proceedings have been moved with a specific grievance that the arrest of the five individuals is an attempt by the state to muzzle dissent and that each of them is being persecuted for being a defender of persons subjected to human rights' violations. When the petition was initially

filed, the relief which was sought was in regard to the circumstances relating to the arrest of the human rights activists. By an application for amendment, the reliefs have been sought to be amended to *inter alia* seek the constitution of a Special Investigating Team (to be monitored by this Court). For clarity, the above reliefs are extracted below:

“i) Issue an appropriate writ, order or direction for setting up of a Special Investigating Team (SIT) comprising of senior police officers with impeccable career records of professionalism, integrity and independence, reporting directly to this Hon'ble Court, for conducting a fair and independent investigation and inquiry into the offences stated in the zero FIR lodged at Pimpri police station on 02.01.2018 (now Cr.Case No 2/2018), and the FIR 4/2018 lodged at Vishrambagh police station on 08.01.2018 by Tushar Damgude, and all other related matters and allegations; or

ii) Issue an appropriate writ, order or direction for the investigation into the offences alleged in the zero FIR lodged at Pimpri police station on 02.01.2018 (now Cr.Case No 2/2018), and the FIR 4/2018 lodged at Vishrambagh police station on 08.01.2018, and all other related matters and allegations, to be carried out by an independent agency which shall be monitored directly by this Hon'ble Court through regular filing of status reports of the investigation by the investigating agency;”

16 Though the prayer seeking the appointment of a Special Investigating Team is sought to be introduced by way of an application for amendment, it is necessary to note that in the petition as it was originally filed, it has been stated that the object of the petition is not to stop an investigation but to ensure an independent and credible investigation. The relevant averment in that regard reads as follows:

“Petitioners are seriously concerned about the erosion of democratic values and are moving this Hon'ble Court not to stop investigation into allegations but to ensure independent

and credible investigation by such persons as may be deemed fit under supervision of this Hon'ble Court. Anything short of this will damage the fabric of nation irreparably.”
(emphasis supplied)

The application for amendment, does not, in other words, set up a new case but is intended to introduce a formal prayer on the basis of averments which have already been made in the petition as it was originally filed.

17 This Court, as a constitutional adjudicator, has been entrusted with the jurisdiction under Article 32 to secure the fundamental freedoms guaranteed by Part III of the Constitution. While the discipline of the law of criminal procedure must at all times be kept in view, it cannot be gainsaid that the protection of fundamental liberties is a subject so integral to democratic constitutional values that technicalities should not be allowed to override the cause of substantive justice. The court must undoubtedly tread with circumspection for in the guise of seeking access to its wide jurisdiction under Article 32, the normal remedies under the criminal law should not be displaced. Again, as the court has repeatedly emphasised, public interest litigation should not become a weapon for settling political scores or of pursuing extraneous ends. In the present case, we have no manner of doubt that the initiation of the proceedings under Article 32 is not motivated by extraneous reasons. The law is not a respecter of social, economic or political status and every litigant who seeks access to justice has to be treated evenly. Here we have five citizens who have invoked the jurisdiction of this Court in extraordinary circumstances where they claim that a

group of human rights activists has been targeted by the state police. Each of those five individuals has joined in these proceedings.

18 Over the course of the last decade, the jurisdiction of this Court has evolved under Article 32 to order the constitution of a SIT. In **National Human Rights Commission v State of Gujarat**,¹¹ a SIT was constituted in a matter involving a serious element of communal disharmony. Further directions were issued by this Court for regular status reports to be filed by the SIT (**NHRC v State of Gujarat**¹²). In **Ram Jethmalani v Union of India**,¹³ this Court observed that in several instances in the past, when the issues were of a complex nature, yet requiring the intervention of the Court, SITs were ordered to be constituted to enable the Court, the Union government and other organs of the state to fulfil their constitutional obligations. In **Common Cause v Union of India**,¹⁴ the test for the constitution of a SIT was a *prima facie* abuse of power and authority by the Director of the Central Bureau of Investigation to scuttle an investigation and enquiries into coal block allocations. In **Sunita Devi v Union of India**,¹⁵ an independent and impartial SIT was constituted where it was found that the investigation into the murder of a family was lackadaisical and the real culprits had not been put to trial. These instances indicate the diversity of settings in which this Court has ordered the constitution of SITs. Decisional flexibility in the

¹¹ (2009) 6 SCC 342

¹² (2009) 6 SCC 767

¹³ (2011) 8 SCC 1

¹⁴ (2017) 3 SCC 501

¹⁵ (2018) 3 SCC 664

exercise of this jurisdiction meets exigencies which arise in unforeseen situations, warranting the intervention of this Court under Article 142. While the Court does not determine the course of the investigation, it acts as a watchdog to ensure that a fair and impartial investigation takes place. A fair and independent investigation is crucial to the preservation of the rule of law and, in the ultimate analysis to liberty itself.

19 Mr Harish Salve, learned senior counsel appearing on behalf of the complainant, has sought to urge that a SIT has been constituted in cases where there is an allegation against the political class in power, so that the investigation is not derailed by those who are capable of intercepting it. Such a construction, in my view, would restrict the width and ambit of the jurisdiction which has advisedly been entrusted to this Court by the framers of the Constitution. The fact that in a particular case, a SIT was ordered to be constituted in a situation where there was an allegation of interference with the investigation by the political establishment is not a reason to confine the exercise of the jurisdiction only to such cases. In the rights discourse, violations of law and transgressions of human rights arise in myriad situations which it may be difficult to anticipate exhaustively. Prudently therefore, the jurisdiction under Article 32 is not hedged in by technicalities nor would it be wise to confine it to stated categories. The ultimate touchstone for the exercise of the jurisdiction is that a violation of the fundamental human freedoms relatable to the cardinal values of liberty, dignity and equality under Part III of the Constitution is in issue.

20 Besides the jurisdiction to order the constitution of a SIT, the proceedings of this Court are replete with instances where an investigation has been monitored under the authority of this Court. In **Vineet Narain v Union of India**,¹⁶ this Court in the context of the widely publicised Jain Hawala transactions case ordered a court monitored investigation to ensure that government agencies discharged their duties and functions bearing in mind the tenets of equality and the rule of law. In doing so, this Court emphasised the need to retain public confidence in the process of investigation. In **Babubhai Jamnadas Patel v State of Gujarat**,¹⁷ a two judge Bench, while noting that investigation of offences is normally the function of the investigating agency emphasised that where extraordinary facts or situations are involved, it is the duty of the High Courts and of this Court to intervene to ensure that the rights of citizens are duly protected:

“The courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly protected.”

In **Centre for Public Interest Litigation v Union of India**,¹⁸ a court monitored investigation was ordered in a public interest litigation which focused on the need for a thorough and impartial investigation into the 2G Spectrum scam. In **Bharati Tamang v Union of India**,¹⁹ this Court held that in an appropriate case, or when exceptional circumstances have been made out, the jurisdiction under

¹⁶ (1996) 2 SCC 199

¹⁷ (2009) 9 SCC 610

¹⁸ (2011) 1 SCC 560

¹⁹ (2013) 15 SCC 578

Article 32 can be exercised to constitute a SIT or to transfer the investigation to a Central Agency and monitor it, or even to order a *de novo* investigation into criminal cases.

21 With this body of precedent on the subject, the maintainability of a prayer for relief, seeking that the investigation should be either monitored by this Court or should be entrusted to an independent SIT under the directions of this Court cannot be in doubt. Though wide-ranging submissions have been urged before this Court on merits, it is necessary that the court must eschew a detailed or meticulous examination of the material produced by the ASG together with the case diary, particularly when the investigation is in progress. The expression of a finding by this Court would affect the administration of criminal justice or perhaps in a given case, even the rights of the accused. The observations of this Court must, therefore, be confined to assessing whether a case has been made out for the constitution of a SIT and matters having a bearing on that decision.

22 I must, at the outset, dwell on the fairness of the manner in which the police have approached this investigation. On 29 August 2018, this Court issued notices to the State of Maharashtra and to the others impleaded as respondents to the proceedings. Within a few hours of the conclusion of the court hearing, a press conference was held in Pune by Shivarjirao Bodhke, the Joint Commissioner of Police proclaiming that the Pune police had more than

sufficient evidence against the five individuals whose transit remand was stayed by this Court while ordering them to be placed under house arrest. This is disconcerting behaviour – the Joint Commissioner sought in this oblique manner to respond to the interim order of this Court by recourse to the electronic media. On 31 August 2018, a press conference was addressed by a team of senior police officers headed by Shri Parambir Singh, ADG (Law and Order), Maharashtra. During the course of the press conference letters (many of which should form part of the case diary) were selectively flashed and read out. According to the petitioners they were also leaked to the media. A video of the press conference is annexed in the form of a CD at Annexure R-2 of the rejoinder and has been uploaded on <https://www.youtube.com/watch?v=PCVKfstx2Qc>. On 1 September 2018 the ADG (Law and Order) appeared on a television programme titled “Truth v Hype” on NDTV, during the course of which he is stated to have agreed that the letters which had been read out by him were still undergoing forensic analysis together with the electronic devices. The CD of the programme is annexed as Annexure R-3 to the rejoinder. Besides this, the attention of the Court has been drawn to the fact that the first round of arrests in the present case took place on 6 June 2018. On 8 June 2018 an alleged letter was released by the police to the media a little before the proceedings for remand before the competent court (in the June arrests), alleging that the arrested persons were plotting to attack the Prime Minister. On 4 July 2018 when the arrested persons were to be produced before the Court in Pune, a letter attributed to Sudha Bhardwaj was

sensationally telecast on a television channel linking her with the unlawful activities of certain groups. A serious grievance has been made about the fact that these letters have neither been placed before the Court of law nor did they find mention in the transit remand applications moved before the CJM, Faridabad by the Pune police.

23 In **Rajendran Chingaravelu v RK Mishra**,²⁰ this Court deprecated the tendency of the police to reveal details of an investigation to the media even before the completion of the investigation. This Court observed:

“21. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. **There is growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed.** Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the Investigation Officers to represent to the media that the person was arrested with much effort after considerable investigation or a case. Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or ‘leakage’ to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law...” (emphasis supplied)

24 This facet of the case of serious concern. The manner in which the Joint Commissioner of Police and the Additional Director General of Police (Law and

²⁰ (2010) 1 SCC 457

Order), Maharashtra have selectively disclosed purported details of the investigation to the media and on television channels casts a cloud on the impartiality of the investigative process. In its 2010 decision in **Rajendran** (supra) this Court was constrained to take note of this growing tendency on the part of investigating agencies. The use of the electronic media by the investigating arm of the State to influence public opinion during the pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt. In the present case, police briefings to the media have become a source of manipulating public opinion by besmirching the reputations of individuals involved in the process of investigation. What follows is unfortunately a trial by the media. That the police should lend themselves to this process is a matter of grave concern. The investigation commenced as an enquiry into the Bhima-Koregaon violence. The course of the investigation was sought to be deflected by alleging (in the course of the press briefings of the police) that there was a plot against the Prime Minister. Such an allegation is indeed of a serious order. Such allegations require responsible attention and cannot be bandied about by police officers in media briefings. But during the course of the present hearing, no effort has been made by the ASG to submit that any such investigation is being conducted in regard to the five individuals. On the contrary, he fairly stated that there was no basis to link the five arrested individuals to any such alleged plot against the Prime Minister. Nor does the counter affidavit makes any averment to that effect. All this has certainly a bearing on the basic question as to whether the

Maharashtra police can now be trusted to carry out an independent and impartial investigation.

25 During the course of the hearing, the learned ASG has assisted the Court by tendering the case diary and a compilation of documentary material. As a matter of prudence, the court must desist from adverting to the details contained in the compilation or in the case diary save and except for indicating broad reasons in the course of evaluating the reliefs which have been claimed. The counter affidavit, which has been filed by the State of Maharashtra makes it abundantly clear that the arrest of the five individuals (on 28 August 2018) was based on “material gathered from others”. This adverts to the material alleged to have been gathered in the course of the raids conducted against those individuals who were arrested in the months of June and July 2018. Paragraph 26 of the counter (which has been extracted earlier) states that this material “clearly shows that they were involved” in (i) selecting and incorporating cadres to go underground in the ‘struggle area; (ii) mobilising and distributing money; (iii) facilitating selection and purchase of arms; (iv) deciding the rates of such arms; and (v) suggesting the routes and ways of smuggling such arms into India for its onward distribution amongst the cadres.

26 Next, it is alleged that “some of them” (i) “have suggested training and laying of booby traps and directional mines”; and (ii) “are found to be providing strategic inputs in furtherance of the objective of armed rebellion” in pursuance

of a strategic document of a banned terrorist organisation namely, the Communist Party of India (Maoist). With the assistance of the ASG I have carefully perused the compilation produced before the Court. Upon perusing the material, I find that the allegation that each of the five individuals arrested on 28 August 2018 is found to be engaged in activities of the nature set out in paragraph 26 of the counter affidavit (extracted above) is taking liberties with the truth. General allegations against the philosophy of a banned organisation, its policies and the modalities followed in the execution of its unlawful activities constitute one thing. Linking this to specific activities of named individuals is a distinct matter. At this stage, it is necessary to note the submission which has been urged in regard to an undated letter of Sudha Bhardwaj to Comrade Prakash which was also allegedly distributed to the media. There is a serious bone of contention in regard to the authenticity of the letter which, besides being undated, does not contain any details including the e-mail header. A statement has been handed over the court in support of the submission that the letter is an obvious fabrication made by a Marathi speaking person because in as many as 17 places, it contains references to words scribed in Devanagari, using forms peculiar to Marathi. It has been urged that Sudha Bhardwaj who does not belong to Maharashtra and is not Marathi speaking, could not possibly have written a letter in Devanagari utilising essentially Marathi forms of grammar or address. We need not delve into these aspects at this stage, since they are matters for a fair investigation.

27 One of the circumstances which must certainly bear upon the fairness and impartiality of the process which has been followed by the investigating agency is in regard to the importation of two panch witnesses from Pune, when the arrests were carried out. Section 41B of Code of Criminal Procedure emphasises the importance of an independent witness while making an arrest. Section 41B of the Code provides as follows:

“Every police officer while making an arrest shall-

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be-

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.”

(emphasis supplied)

The two panch witnesses in the present case are employees of the Pune Municipal Corporation. It is not disputed before this Court that they travelled as part of the police team which made the arrest.

28 It was in **DK Basu v State of West Bengal**,²¹ that this Court laid down requirements to be followed in all cases of arrest, which included the following:

“(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such

²¹ (1997) 1 SCC 416

memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.”

This Court observed that the requirements it had enunciated emanated from Articles 21 and 22(1) of the Constitution and “need to be strictly followed” failing which action for contempt of court would be initiated.

29 There is a serious allegation that the arrests have been motivated by an attempt to quell dissent and to persecute five individuals who have pursued the cause of persons who have suffered discrimination and human rights violations. In approaching the present case, the Court must be mindful of the need not to thwart a criminal investigation leading to the detection of unlawful acts. Equally, the Court has to be vigilant in the exercise of its jurisdiction under Article 32 to ensure that liberty is not sacrificed at the altar of conjectures. Individuals who assert causes which may be unpopular to the echelons of power are yet entitled to the freedoms which are guaranteed by the Constitution. Dissent is a symbol of a vibrant democracy. Voices in opposition cannot be muzzled by persecuting those who take up unpopular causes. Where, however, the expression of dissent enters upon the prohibited field of an incitement to violence or the subversion of a democratically elected government by recourse to unlawful means, the dissent ceases to be a mere expression of opinion. Unlawful activities which violate the law have to be dealt with in accordance with it. In the background which has been adverted to earlier, it would be blasé to accept the

submission that the investigation by the police should be allowed to proceed without a safeguard for ensuring the impartiality and independence of the investigative agency. The conduct of the Pune police in utilising the agency of the electronic media to cast aspersions on those under investigation fortifies the need for an investigation which is fair. When the Joint Commissioner of Police and the Additional Director General of Police cast aspersions in the public media against persons whose conduct is still under investigation, and in disregard of proceedings pending before a judicial forum, it is the duty and obligation of this Court to ensure that the administration of criminal justice is not derailed. I make it absolutely clear that nothing in this order shall be construed as any observation on the merits of the investigation which is to take place. The purpose of the direction which I propose to give is to ensure that the basic entitlement of every citizen who is faced with allegations of criminal wrongdoing, is that the investigative process should be fair. This is an integral component of the guarantee against arbitrariness under Article 14 and of the right to life and personal liberty under Article 21. If this Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty.

30 The judgment of the majority has relied on certain decisions to hold that such a petition as in the present case is not maintainable and the prayer for the constitution of SIT at the behest of the five individuals under investigation cannot be entertained. In **Narmada Bai v State of Gujarat**,²² the petitioner filed a writ

²² (2011) 5 SCC 79

petition under Article 32 for issuance of a writ directing the CBI to register a FIR in a case pertaining to an alleged fake encounter in which her son was killed. The key issue was whether after filing of the charge-sheet by the state investigative agency, this Court was precluded from appointing an independent specialised agency like the CBI to go into the same issues, if the earlier investigation was not done in accordance with the established procedure. The factual determination to be carried out was whether the petitioner had made out a case for entrusting the investigation to the CBI.

31 While this Court observed that “It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency” and that “the accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them”, the Court also observed that there were “large and various discrepancies” in the reports and the investigation conducted by the police authorities of the State of Gujarat and that the charge-sheet filed by the state investigating agency could not be “said to have run in a proper direction.” A two judge Bench of this Court concluded that even though the charge-sheet had been filed, in view of the circumstances brought to the notice of the Court, the involvement of the police officials of the State of Gujarat in the investigation was “undesirable”. Thus, “to meet the ends of justice and in the public interest”, the CBI was be directed to take charge of the investigation.

32 This case supports my view that in the interest of justice, and particularly when there are serious doubts regarding the investigation being carried out, it is not only permissible, but our constitutional duty to ensure that the investigation is carried out by a special investigation team or a special investigative agency so that justice is not compromised.

33 In **Sanjiv Rajendra Bhatt v Union of India**,²³ the petitioner, who was an IPS officer filed a plea before this Court seeking the appointment of a SIT, to probe into two FIRs filed against him by the Gujarat Police. On the facts of the case, it was held that the nature of the case relating to an allegedly false affidavit and the alleged hacking of an email account were not of such wide amplitude so as to warrant the constitution of a SIT. The Court also observed that the petitioner had not come to the Court with clean hands and that no relief could be granted to an individual who came to the Court with “unclean hands.” These facts were the distinguishing feature. I have previously discussed the established precedents of this Court which indicate the circumstances in which this Court can constitute a SIT.

34 In **E Sivakumar v Union of India**,²⁴ the petitioner was named in an FIR which was being investigated in regard to the illegal manufacture and sale of *pan masala* and *gutkha* containing tobacco and/or nicotine. The petitioner challenged the decision of the High Court to transfer the investigation of the

²³ (2016) 1 SCC 1

²⁴ (2018) 7 SCC 365

criminal case to the Central Bureau of Investigation. One of us (Khanwilkar J) who authored the judgment on behalf of this Bench held:

“The High Court has cogitated over all the issues exhaustively and being fully satisfied about the necessity to ensure fair investigation of the crime in question, justly issued a writ of mandamus to transfer the investigation to the CBI.”²⁵

The judgment of the High Court was upheld on the following ground:

“... the question regarding the necessity to ensure a fair and impartial investigation of the crime, whose tentacles were not limited to the State of Tamil Nadu but transcended beyond to other States and may be overseas besides involving high ranking officials of the State as well as the Central Government, has now been directly answered. For instilling confidence in the minds of the victims as well as the public at large, the High Court predicated that it was but necessary to entrust the investigation of such a crime to CBI. Viewed thus, there is no infirmity in the conclusion reached by the High Court in the impugned judgment, for having entrusted the investigation to CBI.”²⁶

Drawing attention to the duty of this Court as adjudicator, it was also observed:

“It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative...If a grave suspicion arises with regard to the investigation, should a constitutional

court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it?...”²⁷

(emphasis supplied).

²⁵ Ibid, at para 5

²⁶ Ibid, at para 9

²⁷ Ibid, at para 13

The above observations are a significant reminder of the function of this Court, as the protector of the fundamental rights of citizens. These rights must be safeguarded particularly when there is a possibility that failure to take a position may lead to a denial of justice.

35 The case of **Divine Retreat Centre v State of Kerala**²⁸ concerned with the maintainability of an anonymous petition to a judge of the High Court seeking a direction for an investigation. The anonymous petition was taken up *suo motu* by the High Court under Section 482 of the Code of Criminal Procedure and the investigation of the criminal case was directed to be taken away from the investigating officer and entrusted to a SIT. The central question in this case was the scope of the inherent power conferred on the High Court under Section 482 of the Code of Criminal Procedure. It was held that:

“The High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate a crime on whatsoever basis and more particularly on the basis of **anonymous petitions** addressed to a named Judge. Such communications cannot be converted into *suo motu* proceedings for setting the law in motion. Neither the accused nor the complainant or informant is entitled to choose its own investigating agency to investigate a crime in which it may be interested.” (emphasis supplied)

²⁸ (2008) 3 SCC 542

The Court in the context of Article 226 commented on the maintainability of public interest litigation as follows:

“It is well settled that a public interest litigation can be entertained by the constitutional courts only at the instance of a bona fide litigant. The Supreme Court has uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration...”²⁹

It was also observed that:

“the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions.”³⁰

36 These observations indicate that what found disfavour with this Court was the High Court having entertained an anonymous petition to constitute a SIT. The facts of the above case are distinct from the case at hand. The observations made on the maintainability of public interest litigation only lend support to the present case. The petitioners in the present case are not anonymous. There has been no argument that the petitioners have been motivated by personal gain or political considerations.

37 Recently on 14 September 2018, the learned Chief Justice, speaking for the present bench of three Judges handed down a verdict³¹ granting

²⁹ Ibid, at para 59

³⁰ Ibid, at para 50

³¹ S Nambi Narayanan v Siby Mathews, (2018) 11 SCALE 171

compensation of Rs 50 lakhs to a space scientist who was found upon further investigation by the CBI to have been wrongfully implicated and subjected to custodial interrogation. This was on an allegation that he had leaked out official secrets of the Indian Space Research Organisation. The learned Chief Justice held:

“...there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.”

The fact that the payment of compensation was ordered nearly 24 years after the wrongful arrest is a grim reminder about how tenuous liberty can be and of the difficulty in correcting wrongs occasioned by unlawful arrest.

38 There can be no manner of doubt that the deprivation of human rights seriously impinges upon the dignity of the individual for which even compensation may not constitute an adequate recompense. This theme echoes recurrently in the judgments of this Court in **Kiran Bedi v Committee of Inquiry**,³² **Delhi Judicial Service Association v State of Gujarat**,³³ **Joginder**

³² (1989) 1 SCC 494

³³ (1991) 4 SCC 406

Kumar v State of UP³⁴ and **DK Basu v State of West Bengal³⁵**. In **DK Basu**, this Court elucidated on the importance of personal liberty in the constitutional scheme:

“17. Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression “life or personal liberty” has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.”

The Court also emphasized that no arrest can be made without reasonable satisfaction after investigation about the genuineness and bona fides of a complaint:

“20. This Court in *Joginder Kumar v. State of U.P.* [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.””

³⁴ (1994) 4 SCC 260

³⁵ (1997) 1 SCC 416

39 This Court has a constitutional obligation, where its attention has been drawn, in a case such as the present, to a real likelihood of the derailment of a fair investigative process to issue appropriate directions under Article 142 of the Constitution.

40 Hence, I am of the view that while the investigation should not be thwarted, this is a proper case for the appointment of a Special Investigating Team. 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.

41 Hence, following the line of precedent of this Court which has been discussed earlier, I am firmly of the view that a Special Investigating Team must be appointed. The investigation shall be monitored by this Court. The Special Investigating Team shall submit periodical status reports to this Court, initially on a monthly basis.³⁶ The interim order passed by this Court on 29 August 2018 shall continue to hold the field for a further period of three weeks within which it would be open to the said five individuals or any one or more of them to apply for bail before the Court of competent jurisdiction. I would direct that the petition

³⁶ Speaking as I do for the minority, I have not indicated the names of the personnel who would constitute the SIT. Should that occasion arise, liberty is granted to seek an appropriate direction from this Court.

be listed after three days for orders on the constitution of the Special Investigating Team. There shall be an order in these terms.

.....J
[Dr Dhananjaya Y Chandrachud]

New Delhi;
September 28, 2018