

**IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. \_\_\_\_\_ OF  
2017**

DISTRICT: MUMBAI

In the matter of Article 226 and  
227 of Constitution Of India,

And

In the matter under Section 482  
of Code of Criminal Procedure,  
1973

And

In the matter of Article 19 and  
21 of Constitution of India,

And

In the matter of impugned  
order dated 29<sup>th</sup> November  
2017 in Exhibit no. 1502 in  
Sessions Case nos. 177 of  
2013, 178 of 2013, 577 of  
2013 and 312 of 2014 passed  
by Additional Sessions Judge,  
Sessions Court, Mumbai, at  
Mumbai.

Brihanmumbai Union of journalists )  
Through its Executive Committee Member )  
23-25, Prospect Chambers Annexe, )  
2<sup>nd</sup> Floor, Dr. D. N. Rd, Mumbai – 01 )...

Petitioner **Versus**

1. Central Bureau Of Investigation, )  
Through Joint Director, Zone-I, CBI, )  
13<sup>th</sup> Floor, Plot No. C-35A, 'G' Block, )  
Bandra Kurla Complex (BKC), )  
Near MTNL Exchange, Bandra (East), )  
Mumbai 400098. )
2. Rehman Abdul )  
(Original accused no. 7) )  
Government quarters, )  
Pratap Nagar, Udaipur )  
345, Jalpura, Jaipur Rajasthan )
3. Home Department, State Of Maharashtra)  
Through its Principal Secretary )  
Mantralaya Annex, )  
Mumbai )....Respondents

**TO,**  
**THE HON'BLE CHIEF**  
**JUSTICE OF THE**  
**HON'BLE HIGH COURT**  
**OF BOMBAY AND OTHER**  
**HON'BLE PUISNE JUDGES**

**HUMBLE PETITION OF**  
**THE PETITIONERS**  
**ABOVE NAMED.**

**MOST RESPECTFULLY SHEWETH:**

**PARTIES:**

1. Petitioner is a registered society registered under Maharashtra Societies Registration Act, 1860. Petitioner society was formed on April 16, 1947 by members of Journalists with various objects and aims including one amongst them to strive to secure the right to information as a fundamental right and to ensure freedom of expression and safeguarding it against encroachments from any quarters. Respondent no. 1 is Central Bureau Of Investigation which has investigated infamous Shohrabuddin Fake Encounter Case and filed charged sheet which is now being tried at Sessions Court at Mumbai in Sessions Case nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014. Respondent no. 2 is original accused no. 7 in Sessions Case nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014 (hereinafter referred to as “the sessions case”) who had preferred the application being Exhibit no. 1502 in the sessions case seeking order of ban on media from reporting any proceedings in print, social or electronic media of ongoing trial of the sessions case. Respondent no. 3 is State Of Maharashtra, through its Home Department.

**ISSUE:**

2. Petitioner herein has challenged order dated 29<sup>th</sup> November 2017 in Exhibit no. 1502 in Sessions Case nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of

2014 passed by Additional Sessions Judge, Sessions Court, Mumbai, at Mumbai under section 237 of Code Of Criminal Procedure, whereby the Learned Additional Sessions Judge has restrained media personnel from reporting any proceedings of ongoing trial in the sessions case in print media, social media and electronic media.

**FACTS:**

3. Petitioner submits that petitioner represents its members who are all reporters in social, print and electronic media with national and international news agencies. Majority of members of Petitioner regularly report important events and orders passed in the ongoing trial of the sessions case.

4. Petitioner submits that trial of infamous case of alleged fake encounter of one Sohrabuddin Sheikh, his wife Kausar Bi and associate Tulsiram Prajapati of Sohrabuddin Sheikh is being conducted in Court of Sessions For Greater Bombay.

5. Petitioner submits that the trial is concerning alleged fake encounter in November 2005 of one Sohrabuddin Sheikh who was allegedly travelling on a public bus with his wife, Kausar Bi, from Hyderabad to Sangli, Maharashtra. It is alleged that at midnight, accused herein (Members of Gujarat Police Force) stopped the bus and took them away. Three days later Sheikh was allegedly killed in staged encounter on a highway at Vishala Circle near Ahmedabad. Two days

after Sheikh was killed, Kauser Bi was allegedly raped, strangulated and cremated. On 28<sup>th</sup> December 2006, Tulsiram Prajapati was allegedly killed in fake Encounter by Accused in the sessions case.

6. Petitioner submits that originally law enforcement agencies of State Of Gujrat was investigating the complaints of fake encounter of Sohrabuddin Sheikh, Kausar Bi and Tulsiram Prajapati. On a petition filed by the deceased's brother Rubabuddin Sheikh, Hon'ble Supreme Court, by an order dated 12<sup>th</sup> January, 2010, transferred the investigation of the said case to the Central Bureau of Investigation. Pursuant to this, CBI filed the first charge sheet on 23<sup>rd</sup> July, 2010. Copy of the judgment dated 12<sup>th</sup> January 2010 of Hon'ble Supreme Court is marked and annexed hereto as Exhibit \_\_\_\_\_.

7. It is the case of Respondent no. 1 that between 2004 to 2006 accused in the sessions case entered into a criminal conspiracy to nab and kill one Sohrabuddin Sheikh, who was an accused in several cases of murder, abductions, extortion, carrying firearms, etc. pending in various courts of State of Gujarat and State of Rajasthan. Sohrabuddin Sheikh was killed, allegedly in a fake encounter in the morning of 26<sup>th</sup> November 2005. It is further alleged that after about 3 days of killing Sohrabuddin Sheikh, his wife Kausar Bi was also killed by police and her dead body was burnt and disposed of.

After about one year there from, on 27<sup>th</sup> December 2006, Tulsiram Prajapati was also allegedly shot dead by Gujarat and Rajasthan police in a fake encounter. Trial in respect of these offences have been transferred by the Hon'ble Supreme Court by orders dated 27<sup>th</sup> September, 2012 and 8<sup>th</sup> April 2013 to Learned Additional Sessions Judge, Mumbai i.e. Special Central Bureau of Investigation Judge. Copy of orders dated 27<sup>th</sup> September 2012 and 8<sup>th</sup> April 2013 passed by the Hon'ble Supreme Court are marked and annexed hereto as Exhibit \_\_\_\_\_.

8. Petitioner submits that as of today out of the original 38 accused in the cases, 15 accused have been discharged and the trial is being conducted against 23 accused.

9. Petitioner submits that on 29<sup>th</sup> November, 2017, Respondent No. 2 (Original Accused No. 7) filed an application (marked as Exhibit 1502 by the Learned Additional Sessions Judge) before the Learned Trial Court seeking an order barring any media (Print, Electronic or Social) from reporting any proceedings of the Sessions Case before the Trial Court till its judgment.

The Application reads as under:

“This Hon'ble Court may graciously be pleased to ban the print, electronic and social media from publishing, posting, and/or reporting the proceeding of the present trial till its judgment, as such act

will prejudice the case of prosecution, defense. The same may create security problem for accused facing trial, prosecution witness, Ld. Prosecutor as well as Defense Team. The case is having checkered history and mis-reporting has already caused prejudice to both side.”

A true typed copy of the said application dated 29<sup>th</sup> November, 2017 is marked and annexed hereto as **Exhibit \_\_\_\_..**

10. Petitioner submits that the Learned Additional Sessions Judge heard the application and was pleased to pass the impugned order on 29<sup>th</sup> November, 2017. The Learned Additional Session Judge passed the following order :

“..... Considering the sensitivity in the matter, likelihood of happening of any untoward incident and likelihood of effect on the trial of this matter, in case of day to day publication of evidence that may be brought on record, I am of the view not to allow media to may publication of any of the proceedings during the trial in the matter until further order. It may happen that the publication may create security problem for the accused persons, prosecution witnesses, the defense team and the prosecutor as well. I therefore

find justification in the request of the defense team of lawyers. The Application is allowed.”

A copy of impugned order dated 29<sup>th</sup> November 2017 is marked and annexed hereto as **Exhibit \_\_\_\_\_**.

11. Petitioner submits that by impugned Order, the Petitioner and its members and all other press/media throughout, are restrained from reporting “**any**” proceedings of the sessions case in media.

12. Petitioner submits that the offence being tried, investigation thereof and trial of the said sessions case in being reported in media (print, electronic and social) worldwide since year 2005 by members of Petitioner as well as other reporters.

13. Being aggrieved by the Order dated 29<sup>th</sup> November, 2017, passed by the Learned Additional Sessions Judge, Mumbai, in Sessions Case No. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014, Petitioner has approached this Hon’ble Court on the following among other grounds without prejudice to one another:

- a. That impugned order is illegal and bad in law;
- b. That Learned Additional Judge, Sessions Court failed to appreciate that the application was filed under section 327 of Code Of Criminal Procedure



Code which does not deal with restraining media personnel from reporting of day to day proceedings or orders in trial;

- c. That on the contrary the impugned order defeats the purpose of open court trial set out in section 327 of the Code of Criminal Procedure, 1973;
- d. That the Learned Trial Court failed to appreciate that Sessions Court has no powers u/s 327 of Criminal Code Of Procedure to restrain media/press from reporting proceedings of the trial unless it's a trial u/s 327 (2) of Criminal Procedure Code;
- e. That the Learned Trial Court failed to appreciate that no case was made out for an order in the Application filed by Respondent no. 2.
- f. That the Learned Trial Court failed to appreciate that the case is of utmost public importance which was also acknowledged by the Hon'ble Supreme Court on several occasions;
- g. That Learned Trial Court failed to appreciate that no case was made out on trial being affected by any media report whatsoever;
- h. That Learned Trial Court failed to appreciate that no case was made out

by Respondent no.2 of “real and substantial risk of prejudice to the proper administration of justice”;

- i. That Learned Trial Court failed to appreciate that no case was made out by Respondent no. 2 of clear and present danger in administration of justice;
- j. That Trial Court failed to appreciate that no case of exceptional circumstance was made out by Respondent no. 2 to protect interest of justice on the other hand Hon’ble Supreme Court has observed from time to time high handedness and biased investigation in the session case as the accused persons are none other than those who were meant to protect the citizen including the victims of offense being heard;
- k. That Learned Trial Court ought to have considered that the order of restraining media, in general, from reporting any proceeding until judgment in the sessions case violates fundamental rights of media protected under articles 14, 19 and 21 of the Constitution Of India. The impugned order fails at the test of reasonableness as it does not satisfy the

parameters of necessity and proportionality;

- l. That Learned Trial Court, in any case ought, to have relegated Respondent no. 2 to High Court for seeking order as no such order could be passed u/s 327 of Criminal Procedure Code;
- m. That in any event impugned order is bad in law, unreasonable, illegal and deserves to be quashed and set aside.

14. Petitioner has no other alternate and efficacious remedy other than to file the present Writ Petition.

15. There is no delay or laches in filing this Petition.

16. Petitioner craves leave to add, alter, amend, delete any of the foregoing paragraphs or grounds as and when found necessary with the permission of this Court.

17. Petitioner submits that she has not filed any other petition, application or case in this Court or in any other court or before the Hon'ble Supreme Court of India raising the issue raised in the present Writ Petition.

18. The Petitioners crave leave to refer to such other and further documents as this Hon'ble court may deem fit and appropriate.

**19. It is therefore prayed that:**

- (a) That this Hon'ble Court may be pleased to call for the records and proceedings of Sessions Case nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014 pending on the file of the Special Central Bureau of Investigation Judge, Mumbai, and after perusing the same, quash and set aside impugned order dated 29<sup>th</sup> November, 2017, passed by the Learned Additional Sessions Judge, Sessions Court, Mumbai in the application (marked as Exhibit 1502) in the aforesaid cases, entirely;
- (b) That pending hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the operation and effect of impugned order dated 29<sup>th</sup> November, 2017, passed by the Learned Additional Sessions Judge presiding over the Special Central Bureau of Investigation Court in in the application (marked as Exhibit 1502) in Sessions Case nos. 177 of 2013, 178 of 2013, 577 of 2013 and 312 of 2014;
- (c) Interim and ad-interim reliefs in terms of the above prayer clauses;
- (d) Costs of the present Petition.
- (e) Pass such other and further reliefs as the nature and circumstances of the case may require.