

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT : AHMEDABAD

MISC. CRIMINAL APPLICATION NO . 10200 OF 2018

Javed Anand & Anr....

Applicants

v/s

State of Gujarat....

Respondent

AFFIDAVIT ON BEHALF OF THE APPLICANTS

I, Javed s/o Iftexhar Ahmed, aged 68 years, the applicant no. 1 herein solemnly affirm and state on oath and file this affidavit on behalf of both applicants as under:-

1. At the outset the applicants would like to deny the allegations leveled against the applicants. I respectfully state that since certain allegations against the applicants were argued by the Ld. Public Prosecutor before the Hon'ble Sessions Court at the time of hearing of the anticipatory bail application the applicants are required to clarify the same in this affidavit as the same arguments are likely to be advanced against the applicants. I respectfully say and submit that this case is part of a long line of cases in which sections of the Gujarat police, who have animosity against us because of our perusal of justice for the survivors of 2002, are misusing their power to simply harass and intimidate us. Powerful perpetrators and sections of the police too are behind this animus being spearheaded by Rais Khan Pathan. That one Rais Khan Pathan a former employee of a sister organization, CJP, discontinued from service in January

2008 has been used as a pawn by the powerful in the state to launch a series of witch hunts against applicant No 2 and now also applicant No 1. (Annexure QQ lists the cases spearheaded by CJP). Rais Khan Pathan has been appointed by the present central government to the Central Wakf Board.

2. Moreover at the outset the applicants would like to state that the entire matter is out of the jurisdiction of the Crime Branch, Ahmedabad. The matter relates to a project of the central government which at no time was operational in the state of Gujarat. Moreover, the educational project under the Ministry for Human Resources Development (MHRD) was for the period of 2010-2011 to 2013-14, in the state of Maharashtra alone and though predictable, the zeal with which the Crime Branch Ahmedabad is pursuing the matter is a matter of shock and surprise to us. I wish to draw attention to two letters by applicant No 2 to Hon. Minister for MHRD, Shri Prakash Javdekar related to rumours and newspaper reports about the said criminal complaint (The copy of the latest letter is already annexed alongwith the application as Annexure – II at page no. 219).
3. At the outset the applicants would like to state that the Hon'ble Bombay High Court first (April 5, 2018) and the Hon'ble Supreme Court thereafter (April 9, 2018) granted and extended the Transit Bail to both applicants (Annexure KK and Annexure PP) clearly on the grounds that the matter in any case related to documentary evidence of accounts and therefore the pressing for custodial interrogation was not just unnecessary but against the established principles of law and jurisprudence. In any case, in the case of the applicants it is an invitation to custodial torture, given the animus against them. I say and submit that the motive of the Crime Branch is clear when matters of such clear political motivation are being used to demand, and demand repeatedly, custodial interrogation and incarceration.

4. Under directions of the Hon'ble Bombay High Court both applicants appeared before the Crime Branch (April 6, 2018) and extended full cooperation without prejudice to their stand that the FIR and investigation is malafide and malicious. Thereafter applicant one again appeared before the investigating agency on May 11, 2018 and answered all the questions put to him. Whatever else was required to be sent was also dispatched and sent. A copy of the documents submitted to the Investigation Team on April 6, 2018 is already annexed to the ABA. (Annexure 'LL' at page no. 239). Annexed herewith is a copy of the covering letter dated April 17, 2018 listing the documents (165 pages) hand-delivered to the Crime Branch, Ahmedabad on April 18, 2018. As also a copy of the covering letter dated May 12, 2018 listing the documents (104 pages) hand-delivered to the Crime Branch, Ahmedabad on May 14, 2018. It is clear therefore that no argument of non-cooperation with the investigation can be made out Annexure **ANNEXURE - I** is the copy of the letter dtd 17.4.2018 and **ANNEXURE - II** to this affidavit is the copy of letter dtd. 12.5.2018.
5. Furthermore, the Crime Branch of the Ahmedabad police, in numerous cases, wherein the same person, Rais Khan Pathan, aided and abetted by powerful persons in the state of Gujarat has been at the helm of harassment and intimidation of Teesta Setalvad (initially) and thereafter Setalvad and Javed Anand. (Annexures AA - Annexure CC, pages 151-202). This has been tantamount to a litany of false cases, appearances and defences in the court, all in a bid to stymie the work of the applicant no. 2 as a journalist and human rights defender.
6. Before 2010, since 2004, sections of the vested interests in the state of Gujarat have leveled baseless allegations against Teesta Setalvad including that of 'kidnapping witnesses' charges that were investigated by a Supreme Court appointed Registrar level Committee (Annexure 'DD') at the behest of the applicant no. 2 herein and were found to be baseless.

7. That Rais Khan Pathan has been sued for defamation and an order to that effect passed by the Hon'ble Bombay High Court has been annexed as annexure EE of the present application.
8. During the proceedings before the Hon'ble Sessions Court in an affidavit filed the same day that the application by present applicants for anticipatory bail was finally heard and was kept for orders and ultimately rejected, the investigating officer (IO) has mischievously put Ahmedabad as 'the scene of offence.' Under the column of the 'scene of the offence', the IO has deliberately given the address of the Field Office of Citizens for Justice and Peace (CJP) in a labored attempt to somehow connect the alleged offences with the state of Gujarat. The applicants vehemently deny this and express their shock at this deliberate obfuscation by the Crime Branch on affidavit before the Hon'ble Sessions Court of Ahmedabad. The Crime Branch is fully aware of the following facts:
 - (i) Citizens for Justice and Peace and Sabrang Trust are two entirely different trusts with their separate Memorandum of Understanding and Indenture of Trust respectively, separate board of trustees, separate bank accounts, separate books of accounts. Copy of the Trust deed of Sabrang trust is attached to ABA in Hon'ble Gujarat High Court (Annexure RR at page no. 261 - 270). Copy of memorandum of Association of Citizens for Justice and Peace is hereby annexed as **ANNEXURE - III** to this affidavit. All this information is already available with the Crime Branch of the Ahmedabad police in the investigations related to FIR CR NO I - 4/2014 during which over 20,000 pages of accounts and vouchers have been submitted to the investigating agency.
 - (ii) The HRD Ministry funded KHOJ Project of Sabrang Trust was a programme for schools in Maharashtra only during the period February 2011 and March 2014 and which had nothing whatsoever to do with any school programme or any other project or activity in Gujarat.

- (iii) A photocopy of the KHOJ project proposed to the HRD Ministry in the prescribed format, along with a covering letter dated 9.3.2010, was hand delivered to the IO at the Ahmedabad office of the Crime branch on 6.4.2018 by Teesta Setalvad and Javed Anand. (Annexure 'C', page 44). In response to question 8, it was clearly stated: "At the moment, KHOJ is operating in four districts (Mumbai, Mumbai suburban, Thane and Kalyan). KHOJ classes are being conducted in 33 schools, engaging 2,000 students in its innovative teaching programme annually. With the project being proposed (to the Ministry), I propose to cover 6,000 students in 75 schools including the existing 33 schools with its 2,000 students, in Mumbai, Mumbai suburban, Thane, Thane rural, Kalyan. Buldana, Aurangabad, Bhiwandi and Nanded districts". From this it is absolutely clear that the HRD Ministry funded KHOJ project was intended for schools in the state of Maharashtra alone.
- (iv) A photocopy of the same project along with Sabrang Trust's covering letter dated 9.3.2010 was also annexed to the ABA filed in the Sessions Court, Ahmedabad. (Annexure 'C' of present application).
- (v) In their oral statements while appearing before the investigation team of the Crime branch on 6.4.2018 (Teesta Setalvad and Javed Anand) and again on 11.5.2018 (Javed Anand) it was submitted that the HRD Ministry supported KHOJ project had nothing to do with schools or any other activity in Gujarat, that the field office of Citizens for Justice and Peace (CJP) in Ahmedabad (32, Opposite Vishvabharti school Shahpur Mill compound Shahpur Ahmedabad city) had nothing whatsoever to do with the project and not a rupee of the grant received from HRD Ministry was spent on the field office or the staff there.
- (vi) The applicants reiterate that the only possible purpose behind the IO's falsely naming of CJP's Ahmedabad office as the scene of offence is to claim it had jurisdiction in not

only filing the FIR but also proceeding with its politically motivated investigation.

9. False allegations of conflict of interest have been alleged. Teesta Setalvad was appointed to the Central Advisory Board of Education (CABE) in 2004 and served on this prestigious body due to her work in the field of curriculum building on social justice from 2004-2014. The MHRD grant was only made in 2011.
10. The applicants would like to categorically state that the malafide allegation that Teesta Setalvad and Javed Anand received grant illegally is mischievous and not based on facts on record. All procedures were followed. Sabrang Trust has been running an innovative and experimental educational programme in schools in Maharashtra since 1994. The trustees of Sabrang Trust therefore felt they were well qualified to apply for a grant under “The Scheme for Assistance for Experimental and Innovative Program for Education at the Elementary Stage, including Non-formal Education” of the Government of India. Accordingly, through a resolution of the Board of Trustees, in her capacity as Project Director of Khoj, Teesta Setalvad, the applicant no. 2 herein, was authorized to apply to the HRD Ministry in the prescribed format on March 9, 2010. The HRD ministry referred the proposal to NCERT for its scrutiny. Following scrutiny NCERT concluded: “Recommended with the following modification: The proposal may be resubmitted by incorporating the observation about the viability of the project”. (Annexure ‘D’ page 58). Following this, the ministry appointed a field investigation team (FIT) to visit Mumbai for an assessment of Sabrang Trust’s capacity to implement the proposal. Following the positive recommendation of the FIT, KHOJ project director was invited to present the proposal before the members of the Grants-in-Aid Committee (GIAC). (Annexure ‘F’, page 60). The GIAC approved the proposal (Annexure ‘G’, page 61) and Sabrang Trust was asked to submit a revised proposal which it did (Annexure ‘H’, pages 62-67). The applicant craves leave of

this Hon'ble Court to annex the copy of Sabrang Trust trustees' resolution dtd. 24.1.2010 as **ANNEXURE – IV** to this affidavit.

11. It is after this entire process, which stretched over nearly a year, was completed that, through its letters dated 13.1.2011, 3.2.2011, 24.2.2011 and 15.2.2011 the HRD ministry communicated to Sabrang Trust its decision for a grant to Sabrang Trust. (Annexures 'L', 'O', 'P' and 'Q' pages 81-92). In view of the above, it is not just untrue, but mischievous and malicious, to allege that "Teesta Setalvad and Javed Anand received the grant amounting to around Rs 1.4 crore (including bank interest earned on the grant amount) illegally".
12. Moreover, I would like to specifically deny the arguments of the Ld prosecutor in the Sessions Court that there was any *adverse finding* by this Committee: I state that the Sabrang Trust was never asked to appear before the said inquiry committee, nor has it received a copy of the said committee's findings.
13. Furthermore, I would also like to categorically deny the allegation which was evident during the course of arguments in the Hon'ble Sessions Court that *NCERT gave a negative opinion*: This is not true. I say and submit that the NCERT's report which was received from the HRD Ministry clearly states that the KHOJ Project proposal of Sabrang Trust is, "Recommended with the following modification: The proposal may be resubmitted by incorporating the observation about the viability of the project". (Annexure 'D' page 58). I respectfully state that since the above allegation and other allegations against the applicants were argued by the Ld. Public Prosecutor before the Hon'ble Sessions Court at the time of hearing of the anticipatory bail application the applicants have clarified the same in this affidavit as the same arguments are likely to be advanced against the applicants.
14. I respectfully say and submit that it was also argued before the trial court regarding the connection with the names of officers who formed part of the Field Investigation Team (FIT), I would

like to state that this was an internal matter of the ministry and that the HRD Ministry did not share the FIT report with Sabrang Trust. In view of the same, it is for the officials of the HRD Ministry to respond to this allegation.

15. The appointment to the CAGE Committee as an advisory expert on education and the recipient of a grant from MHRD are two distinct and separate issues which are in no way in conflict.
16. I say and submit that the applicants have no knowledge of a dissident member, nor are they aware of the decision making process of the Grants In Aid Committee (GIAC).
17. I categorically and firmly deny that the grant amount was used individually and not for the purposes made in the grant. This allegation is mischievous and made with an intent to malign and frame the applicants. This is not the first time that the Crime Branch of the Gujarat police is conspiring to make such false allegations that are not borne out by facts or documents on record including bank statements etc. In fact, the three installments of the grant amounts viz, Rs.58,72,500, Rs. 26,66,570 and Rs. 54,20,848 were deposited in the existing savings account of Sabrang Trust, account number 369102010037953 with the Union Bank of India, Juhu Tara branch. Since the terms and conditions of the grant required the opening of a separate account for the HRD Ministry's grant, an account with the name Sabrang Trust – HRD was opened with the same bank branch and the entire grant amounts received in Sabrang Trust account were promptly transferred to Sabrang Trust - HRD account number 369102010806781. All payments related to the KHOJ project ONLY were made through the Sabrang Trust - HRD account. Annexed are monthly bank statements of Sabrang Trust (account no 369102010037953) for the months of February 2011, July 2012 and July 2013, when the grant installments were received. These clearly indicate that the same amounts were promptly transferred to Sabrang Trust-HRD account (no 369102010806781). Also annexed are monthly bank statements of Sabrang Trust – HRD account number

369102010806781 for the period February 2011 to January 2014. The payments to various parties shown in the bank statements belie the claim that “most of the grant amount used individually and for other purposes”. Annexed hereto and marked as **ANNEXURE – V** are copies of bank statements of Union Bank of India accounts of Sabrang Trust account no 369102010037953. The applicants crave leave to annex the copies of bank statements of Union Bank of India accounts of Sabrang Trust - HRD a/c no 369102010806781 as **ANNEXURE – VI** to this affidavit.

18. The allegation about the narrative report not being demanded by HRD Ministry is also not true and not borne out by documentary evidence. Sabrang Trust’s covering letter dated 21.04.2012 sent by Sabrang Trust to HRD Ministry clearly states that Utilisation Certificate for the period February 3, 2011 to February 3, 2012 and List of Schools where KHOJ programme is being implemented are attached. The Joint Evaluation Team (JET) had already visited Mumbai on 8.2.2012 and 9.2.201 and collected detailed information on the activities of KHOJ during 2011-2012. In view of the report of the Joint Evaluation Team, Sabrang Trust did not file a separate activities report for the period 2011-2012. Sabrang Trust’s covering letter dated 2.4.2014 clearly states that Utilisation Certificate for the period February 3, 2012 to February 3, 2013, report of KHOJ activities during 2012-2013 and list of schools are attached. Similarly, Sabrang Trust’s covering letter dated 15.5.2014 clearly states that Utilisation Certificate for the period February 3, 2013 to March 31, 2014, report of KHOJ activities during 2013-2014 and list of schools are attached. In view of the same, it is not true to allege that HRD ministry did not demand narrative report. (Annexes V-I to V-4, pages 109-127). As submitted in para 4, a copy of the report of activities of KHOJ for FY 2012-13 and 2013-14 have been submitted by Sabrang Trust to the HRD Ministry were hand-delivered to the Crime Branch, Ahmedabad on April 18, 2018. The applicants crave leave of this Hon'ble court to produce the list of documents tendered by the applicants to the IO as and when needed.

19. I say and submit that regarding the allegation about inquiry committee's report stating that grant was wrongly given to Sabrang Trust, Sabrang Trust was neither asked to appear before the inquiry committee nor was it given a copy of the report. It is for the HRD Ministry officials to respond to the allegation that the grant was wrongly given to Sabrang Trust.

20. I say and submit that the baseless allegation about the KHOJ project spreading vengeance, discord and enmity between communities or castes is false and not based on fact. KHOJ's work has been recognised nationally and internationally by UNESCO and other well known bodies. It is preposterous that such allegations are being made concerning KHOJ activity being prejudicial to the Republic, Constitution, Judiciary and hence dangerous for national integrity. The applicants crave leave to annex hereto KHOJ's book, ME, MINE, YOU and OURS as produced during the duration of the KHOJ project. Each line, chapter reflects Indian Constitutional ideals and the Vision of our Freedom Fighters and Members of the Constituent Assembly like Dr Babasaheb Ambedkar and visionaries like Jyotiba Phule and Savitribal Phule. I crave leave to produce the set of DVDs also produced during the period of the project at the time of hearing of the matter or should the need arise. I would also like to place on record our shock and dismay that a police department is assigning itself the task of whetting school curriculum and syllabi a task for which it is neither qualified nor jurisdictionally supposed to police. Annexed as **ANNEXURE - VII** to this affidavit is the copy of the book ME, MINE, YOU and OURS.

20. I say and submit that, mid-course of the KHOJ project implementation, a 3-member Joint Evaluation Team was sent to Mumbai to evaluate the progress of the KHOJ Project funded by HRD Ministry. The JET concluded: "Overall, the objective and efforts of the Khoj project are undoubtedly laudable, since not only do these cater to the need to promote secularism and peace education, which should be a priority, but also since

there is hardly any effort otherwise in mainstream schools to address these aspects....The Khoj project may continue to be supported for at least another two year term so as to be able to assess any impact”. (Annexure ‘R’ of the present application, Page 102).

21. The allegation about grant amounts being transferred to personal accounts of Teesta Setalvad and Javed Anand are baseless and not supported by documentary evidence. This is clear from the payments detailed in the monthly bank statements of Sabrang Trust – HRD account. The applicants were paid a monthly honorarium as per the budgetary provision approved by the HRD Ministry and in accordance with the resolutions of the Trustees of Sabrang Trust. It is submitted that they received the honorarium amounts not by virtue of their being trustees but in lieu of the executive responsibilities entrusted to them by the Trustees to act as Project Director (Teesta Setalvad) and Project Administrator (Javed Anand) of the KHOJ project. Other than this, they were reimbursed for expenses incurred by them on the activities of KHOJ. Annexed hereto and marked as **ANNEXURE – VIII** is a true copy of the Trustees’ resolution regarding honorarium to the applicants.
22. The allegation regarding withdrawals of large amounts in cash is similarly baseless. It may be seen from the monthly bank statements annexed that cash was withdrawn from time to time only towards petty cash expenses. In fact, over 90% of the payments were through cheques.
23. The allegation that public money has been used individually and for political purposes in the state of Gujarat is also just not true. It is categorically submitted that no cash was withdrawn for individual purpose. It is further submitted that not a single rupee was spent for political purposes in the state of Gujarat as alleged. It is submitted that the investigating officer be asked to furnish proof of the baseless allegation.

24. Similarly the false allegation that cash amount withdrawn was used for giving false depositions of witnesses is also not just baseless but also not borne out by fact. It is reiterated that not a single rupee of the grant from HRD ministry was used for alleged false depositions by witnesses. The allegation regarding false depositions by witnesses is vehemently denied.
25. The allegation about conspiracy and collusion is vehemently denied. Moreover this allegation is baseless and politically motivated and surprising coming from the Crime Branch that is required, under law at least, to have a modicum of independence, and integrity from the political masters in the state or Centre.
26. Report of inquiry committee: As stated above, at no point did the said inquiry committee seek any explanation from the applicants. It is further submitted that the applicants never received a copy of the said inquiry committee report.
27. As stated above, the NCERT committee did not reject the KHOJ project. Instead the report concluded, "Recommended with the following modifications..." As far as the contention about the '*FIT report signed by only one member*' is concerned, the applicants are not familiar with the procedure followed by NCERT or HRD ministry in this regard. As far as the finding that there is a '*Negative noting by Shri SK Ray*', the applicants have no knowledge in this respect.
28. In written contentions before the Sessions Court in this matter, the IO has drawn in other malicious cases, in fact a string of them, to argue that anticipatory bail should be rejected in this matter. This argument goes against the grain of common law, natural justice and established principles. In fact as stated above, it becomes clear from the long list of cases that it has become the specific business of the Crime Branch to harass and intimidate the applicants, especially human rights defender, Teesta Setalvad. For each of these assaults, the applicants have not shied away but faced the onslaught bravely, believing in the rule of law, justice and the Indian Constitution. (Annexure 'CC',

pages 168-202 of the application.). Moreover, the applicants firmly state and contest this crude and malafide attempt by the Crime Branch of the Gujarat police to try and mislead the Courts to show us as habitual offenders when in fact the applicants have been at the forefront of ensuring justice for the weak and marginalised in the state. After 2014-15, while previously it was sections of the Gujarat police, similarly central agencies like the CBI were also deployed after the change of regime at the Centre and even this case is being faced with clarity and courage.

29. The allegation about huge amount being transferred in personal account of applicants and huge amount of cash withdrawn from those accounts and the same being used for false deposition is just not true. This allegation has been refuted in detail under para 17 above.
30. Moreover, the applicants say and submit that the Crime Branch, Ahmedabad through an illegal order got the personal accounts of applicants frozen on January 20, 2014. Hence for the period under allegations and question, all details of the account are available with the investigating agency and there is nothing that the applicants can do until these are de-frozen. Why then is the investigating agency bent on further harassing and intimidating the applicants thus?
31. Further, as stated before the investigation team by applicant Javed Anand on May 11, 2018, the KHOJ Programme was implemented on an experimental basis in Himmatnagar, Gujarat for one year only and discontinued in March 2009. The HRD-funded KHOJ project during February 2011 and March 2014 was limited to schools in Maharashtra only as proposed to the ministry (Annexure 'C', page 44). Not a single school in Gujarat or any other activity was involved in the implementation of the HRD Ministry funded KHOJ project.
32. Transfer of Rs 24,50,000 from Sabrang Trust- HRD account in Union Bank of India account number 369102010806781 to

Sabrang Trust-HRD account with HDFC bank, Linking road branch: The amount was simply transferred from one Sabrang Trust – HRD account in Union Bank of India, Juhu Tara branch to another Sabrang Trust-HRD account with HDFC bank, Linking Road Branch, account number 50100035910270. The amount was transferred as per a resolution of the Board of Trustees of Sabrang Trust. Annexed hereto and marked as **ANNEXURE “IX Colly”** are copies of the HDFC bank statement of Sabrang Trust HRD Account No. 50100035910270 and the resolution of the trust regarding opening of Sabrang Trust HRD account.

33. Allegation regarding depositing grant money in their personal account: This allegation is unfounded, not proven and untrue. This allegation is vehemently denied and has been refuted in detail in para 17 above.

34. Finally, the applicants firmly state that there are and were no serious offences committed as wrongfully alleged by the IO and held by the Ld Sessions Judge and hence no prima facie case has been established. Moreover the applicants have fully cooperated with the investigation and the entire alleged crime concerns documentary evidence from seven years ago. That the maximum punishment prescribed is not more than 7 years in any of the offences alleged except sec. 409 IPC which is not attracted to the applicants. The applicants have never remotely attempted or have never directly or indirectly tampered with the evidence nor have they breached any condition of bail. Serious attempts have been made to procure custody of the applicants by implicating them in false complaints. The present FIR is concerned with the incident prior to 2013. Till now there is no allegation of the applicants attempting to tamper with the evidence or the case of the prosecution. The applicants herein rely upon the judgments in the case of Solanki Ravjibhai Dipubhai reported in 1992 (2) GLR 631, Arnesh Kumar reported in (2014) 8 SCC 469, Sidharam reported in AIR 2011 SC 312, Maulana Mohammed Amir Rashadi reported in (2012)2 SCC 382, Joginder Kumar reported in (1994) 4 SCC 260, Ram Karan

reported in (2014) 8 SCC 282 and Gurbaksingh Sibia reported in AIR 1980 SC 1632, N. Ratnakumari reported in 2014 Cri. L. J. 4433 (Ori).

35. The contents of the above affidavit have been read over to me and explained to me. The contents of its para 1 to 34 are true and correct to the best of my knowledge and belief. Its annexures are true copies of the originals and I certify them to be such true copies.

Solemnly affirmed on this 6th day of June, 2018 at Mumbai.

Explained by me,
Identified by me

Javed Iftekhar Anand
(Deponent)