

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2018

DIST.: Pune

A Petition under Article 226 of the Constitution of India and Section 482 of CrPC 1973 seeking quashing of proceedings qua Petitioner pursuant to FIR No. 4/2018 (Vishrambagh P.S. Pune) as amended on 17.5.2018 adding Sections 13, 16, 17, 18, 18B, 20, 38 and 40 of the Unlawful Activities (Prevention) Amendment Act, 2012.

GAUTAM P. NAVLAKHA
Aged about 65 years,
Flat No.2 , R-3 Nehru Enclave
New Delhi 110019

...Petitioner

V/S

STATE OF MAHARASHTRA
Through Vishrambaug P.S.
(FIR No. 4 of 2018)

...Respondent

TO,

THE HON'BLE CHIEF JUSTICE AND OTHER
PUISNE JUDGES OF THIS HON'BLE COURT
THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.-

MOST RESEPECTFULLY SHEWETH:

1. The present Writ Petition has been filed under Article 226 of the Constitution of India and Section 482 CrPC 1973, seeking quashing of the FIR no. 4 of 2018 Vishrambagh P.S., Pune) in so far as the same, and the investigation thereunder, has sought to implicate the Petitioner after adding provisions of the Unlawful Activities (Prevention) Amendment Act, 2012.
2. By the Supreme Court's judgment and order dated 28/9/2018, in *Romila Thapar and Ors v Union of India*, the Petitioner has been enabled, inter alia to "*opt for remedy of discharge at the appropriate stage or quashing of criminal*

case.” The Supreme Court extended an order passed on August 29, 2018 to keep the accused under house arrest, for a further 4 weeks to enable them to seek the various remedies available to them in law. One such remedy was the petition for habeas corpus which was already pending in the Delhi High Court by way of WP (CrI) 2559/2018, and in which, the High Court has directed the Petitioner’s complete release on October 01, 2018. The Petitioner is, within those 4 weeks, invoking another remedy open to him in law, namely quashing of the case against him. Though, the said order of house arrest will again come into operation if another arrest is attempted within the said 4 week period, in the facts and circumstances of this case, it is open to this court and in interest of justice to direct that there shall be no arrest pending hearing of the present Writ Petition.

3. The FIR, which does not name the Petitioner, was originally registered on 8.1.2018 u/s 153-A, 505(1) (b), 117 and 34 of the Indian Penal Code ‘IPC’. Subsequently, on 6.3.2018, Section 120B IPC and on 17.5.2018 Section 13, 16, 17, 18, 18B, 20, 38 and 40 of the Unlawful Activities (Prevention) Amendment Act, 2012 ‘UAPA’ were added to the FIR. A true copy of the FIR and the addition of Sections is annexed hereto collectively as **Annexure-P1**.
4. The Petitioner is a journalist of long standing, associated with the Economic and Political Weekly and other well regarded publications. He has been a human rights activist for decades, whose outspoken views on political issues are well within the constitutional guarantees of free speech. Indeed, he was called upon by the State to assist in securing the release of officials abducted by Left wing extremists in 2011. He has also been an open critic of left wing extremist violence, as would be evident from **Annexure-P2**, which is a true copy of the Petitioner’s writing.

5. A brief chronology of events leading to the Petitioner's arrest is as follows:

S.No	Date	Event
1.	31.12.2017	A group of eminent persons including retired Judges P.B. Sawant and Kolse Patil hosted the Elgaar Parishad cultural program in Pune to commemorate the Bhima Koregaon anniversary.
2.	1.1.2018	An armed unlawful assembly led by one Milind Ekbote and Sambhaji Bhide attacked a Dalit procession that was proceeding to Bhima Koregaon to pay their respects.
3.	2.1.2018	One Anita Savle who was an eyewitness to the above violence registered FIR 02/2018 against Milind Ekbote and Sambhaji Bhide u/s 307, 143, 147, 148, 149, 295(A) Indian Penal Code 1860, 435 & 436 Arms Act 1959, 4(25) Maharashtra Police Act and 3(2) (V), 3(1), (10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 at Pimpri P.S. Pune. Pursuant to this C.R. No. 9/2018 was registered against Milind Ekbote and others at Shikarpur P.S. Pune. A true copy of FIR dated 2.1.2018 is annexed herewith as Annexure – P3 .
4.	8.1.2018	One Tushar Damgude who is a follower of Sambhaji Bhide registered FIR 4/2018 against 6 persons at Vishrambagh P.S. Pune u/s 153-A, 505(1)(b), 117 and 34 IPC alleging that inflammatory speeches were made and pamphlets distributed to incite hatred leading to Bhima Koregaon violence the next day. The Petitioner has been arrested under this FIR even though he has not been named in the FIR and was not present at the program. And admittedly that he was not present at the meeting either.

5.	20.1.2018	A 10-member committee led by the Dy. Mayor of Pune submitted its report on the Bhima Koregoan violence. This report names Milind Ekbote and Sambhaji Bhide as amongst the 4 main conspirators including for the Bhima Koregaon violence which according to the report was pre planned by them from mid December 2017. This completely falsifies the allegations mentioned in the present FIR, which has been filed as an afterthought by a supporter of Sambhaji Bhide. A true copy of report dated 20.1.2018 is annexed herewith as Annexure-P4 .
6.	5.2.2018	Milind Ekbote filed SLP (Crl.) 1187 of 2018 against denial of anticipatory bail by the Sessions Court, Pune and Hon'ble High Court of Bombay.
7.	13.2.2018	The Maharashtra Police filed a counter affidavit in SLP (Crl.) 1187 of 2018 in the Hon'ble Supreme Court of India opposing Milind Ekbote's anticipatory bail application on the following grounds: <ul style="list-style-type: none"> i. that Milind Ekbote played a pivotal role in the conspiracy and commission of the violence, ii. that he distributed pamphlets to local reporters right before the violence which contained recitals that triggered the violence, iii. that Milind Ekbote was not cooperating with the present investigation and, iv. that there were 23 other cases pending against Milind Ekbote in some of which he had violated bail conditions. A true copy of Maharashtra government's counter affidavit dated 13.2.2018 is annexed herewith as Annexure –P5 .
8.	6.3.2018	Pune police added Section 120B IPC in FIR no. 4/2018.
9.	14.3.2018	The Hon'ble Supreme Court of India dismissed SLP (Crl.) 1187 of 2018 filed by Milind Ekbote.

10.	14.3.2018	Pune police arrested Milind Ekbote.
11.	17.4.2018	Pune police raided the premises of the following persons in connection with FIR no. 4/2018: <ul style="list-style-type: none"> i. Rona Wilson ii. Surendra Gadling iii. Sudhir Dhawale and Harshali Potdar iv. Sagar Gorakhe v. Dipak Dhengale vi. Ramesh Gyachore and Jyoti Jagtap.
12.	19.4.2018	Sessions Court Pune granted bail to Milind Ekbote.
13.	17.5.2018	Section 13, 16, 17, 18, 18B, 20, 38 and 40 of Unlawful Activities (Prevention) Amendment Act, 2012 'UAPA' added in FIR No. 4/2018. It is pertinent to note that no UAPA provisions have been added to the FIR against Milind Ekbote even though it pertains to the same incident.
14.	6.6.2018	Pune police arrested the following 5 individuals under FIR no. 4/2018: <ul style="list-style-type: none"> i. Rona Wilson ii. Surendra Gadling iii. Sudhir Dhawale iv. Shoma Sen v. Mahesh Raut
15.	28.8.2018	Multi city raids and arrests of five well known human rights activists including lawyers citinf FIR 4/18 PS Vishram Bagh. The Petitioner's house is raided. The search and seizure did not yield anything incriminating. At 2.15 he wasarrested from his house in Delhi in violation of Chapter IV Cr.PC. The Petitioner is shown documents in Marathi, which is not his native language and is not informed the grounds of his arrest.
16.	28.8.2018	A Habeas Corpus Petition Crl. W.P. No. 2559 of 2018 is filed on behalf of the Petitioner in the Hon'ble High Court of Delhi. Upon urgent

		mentioning at around 2:15 p.m., it is assigned to the roster bench
17.	28.8.2018	At 2.45 pm, the Hon'ble High Court of Delhi directs that the Petitioner will not be moved from Delhi till further orders.
18.	28.8.2018	At about 2.15 p.m. the petitioner is arrested at his house and taken to the CJM Saket, Delhi who grants 2-day transit remand to Pune police. A true copy of order-dated 28.8.2018 passed by the CJM Saket is annexed herewith as Annexure-P6 . It is highly unlikely that his production and the order of transit remand could have been passed before 2.45 p.m., by which time the High court's injunction against removal from Delhi had been passed. Furthermore, aside from a handwritten application, no case diary was shown to the magistrate and the Magistrate did not even ask for the case diary, as it turned out.
19.	28.8.2018	At 4:00 p.m., the Hon'ble High Court of Delhi stays the abovementioned transit-remand order and directs house arrest of the Petitioner until next morning when the matter is fixed. Pune Police is asked to file the documents produced before the CJM as well as English translation of all documents in Marathi by that time i.e. 29.08.2018.
20.	29.8.2018	At 10:30 a.m., Pune Police seeks more time to produce translations before the Court. Matter is fixed for 2 pm on the same day and hearing begins around 3.15 pm.
21.	29.8.2018	Five eminent academics filed a PIL bearing Crl. W.P. D. No. 32319 of 2018 in the Hon'ble Supreme Court of India terming the country wide arrests as a move to scuttle dissent and prayed for a Court monitored SIT. The matter came to be heard. This matter was fixed for hearing the same afternoon and in the event it was heard around the same time as the

		Petitioner's habeas corpus petition was being heard in the Delhi High Court.
22.	29.8.2018	The Hon'ble Supreme Court of India extended the interim protection granted to the Petitioner by the Hon'ble High Court of Delhi to all 5 persons arrested (including the petitioner) on 28/8/2018 and directed the Respondent to file its reply.
	29.8.2018 5.03 p.m.	Delhi High Court, in the midst of passing the order on the habeas corpus petition halts the same upon being informed of the Supreme Court's intervention.
23.	30.8.2018	Delhi High Court adjourns the matter awaiting the Supreme Court's order.
24.	5.9.2018	The Maharashtra Police filed a counter affidavit in CrI. W.P. D. No. 32319 of 2018 in the Hon'ble Supreme Court of India taking a completely contradictory stand to its earlier affidavit dated 13.2.2018 filed in Milind Ekbote's case.
25.	28.9.2018	The Hon'ble Supreme Court of India, by a majority of 2:1, declined to order a Court monitored SIT but extended the house arrest (earlier ordered on 29/8/2018) for a further 4 weeks to enable the accused to pursue appropriate remedies by way of quashing petitions, discharge or bail and also pursue the pending proceedings of habeas corpus in the High Courts.
26.	1.10.2018	The Hon'ble High Court of Delhi quashed the Petitioner's arrest as it was in violation of Article 22 of the Constitution of India, Section 167 r/w 57 and 41(1)(ba) of CrPC and ordered the Petitioner's release from house arrest. A true copy of judgment dated 1.10.2018 passed by Hon'ble High Court of Delhi is annexed herewith as Annexure-P7

6. On 28.8.2018, raids and arrests across the country were carried out by the Pune Police, in relation to 5 well-known activists, lawyers and writers. The Petitioner was one of them. The Search Memo of the raid at New Delhi revealed nothing incriminating. A true copy of the Seizure Memo dated 28/8/2018 is annexed hereto as **Annexure P8**. Later at 2.15 p.m. the Petitioner was arrested from his house. A true copy of the Arrest Memo is annexed hereto as **Annexure P9**. 9 months after the FIR No.4/2018 PS Vishram Bagh, without one shred of material connecting him to anything related to either the FIR or even investigations following the same, the Petitioner was arrested in complete violation of his constitutional and statutory rights. He was not shown any material except papers in Marathi, a language he does not know. Meanwhile, since he was not allowed to move out of the house a habeas corpus petition was moved and mentioned between 2.15 and 2.30 p.m., and heard first at 2.45 p.m and then at 4.00 p.m. by the Delhi High Court.
7. Even as the habeas corpus Petition was being moved and heard, the Petitioner was arrested at 2.15 pm. Later he was taken to the CJM Saket for a transit remand. It is significant that the only basis given in the remand application is “Gautam Navlakha’s name has come up during investigation”. This is after setting forth details of the Elgar Parishad event of 31/12/2018. A copy of the application for transit remand is annexed hereto as **Annexure P10**. The order on transit remand is hereto annexed at **Annexure-P6**. The Delhi High Court, looking at the transit remand order at around 4 p.m. could not make out the basis of house arrest as none of the documents shown indicated the same besides the majority of them being in Marathi. The court kept the matter as the first item the next morning and meanwhile directed the Petitioner to be kept under House arrest and directed the Pune police to produce the translated copies of the documents relied upon by them for the arrest.

8. The next morning of 29/8/2018 Pune Police sought more time to produce translations before the High Court. Matter was fixed for 2 pm on the same day and hearing began around 3.15 pm.
9. Meanwhile five eminent academics filed a PIL bearing CrI. W.P. D. No. 32319 of 2018 in the Hon'ble Supreme Court of India terming the country wide arrests as a move to scuttle dissent and praying for a Court monitored SIT. The matter came to be fixed for the afternoon and was heard around the same time as the Petitioner's habeas corpus petition was being heard in the Delhi High Court.
10. The Hon'ble Supreme Court extended the interim protection granted to the Petitioner by the High Court of Delhi and to all those arrested (including the petitioner) on 28/8/2018 until September 06, 2018 and directed the Respondent to file its reply.
11. The Delhi High Court, informed of the aforesaid development in the Supreme Court, at 5.03 pm while it was dictating the order disposing of the habeas corpus petition, stayed its hand, and adjourned the matter from time to time awaiting Supreme Court's direction/decision. The Supreme Court (by its order dated 28/9/2018 in Romila Thapar v UOI Writ Petition Criminal 260/18) by a majority of 2:1 declined the prayer for an SIT but left it open to the concerned accused to pursue various remedies including quashing, and enabled the recourse to these remedies by extending the interim order passed on August 28, 2018 (and continued from time to time) for a further period of 4 weeks.
12. Subsequently, the Petitioner's arrest and transit remand came to be quashed by the Hon'ble High Court of Delhi on

1.10.2018. The Petitioner, having availed of the remedy against transit remand, is now approaching this Hon'ble Court for quashing the case arising from FIR 4/2018 qua himself.

13. The case of the prosecution in the FIR 04/2018, PS Vishrambagh (hereinafter called the "FIR") is that on 31.12.2017, in furtherance of the CPI (Maoist) policy to misguide dalits, members of Kabir Kala Manch made provocative speeches and distributed inflammatory pamphlets at the Elgaar Parishad cultural program in Pune to incite caste based violence. The case of the prosecution is that as a result of these inflammatory speeches there was picketing, violence and arsoning in Bhima Koregaon on 1.1.2018. The Petitioner was not named in the FIR and it is undisputed that the Petitioner did not attend this program nor was he present at the violence on the next day.

14. Furthermore, the Elgaar Parishad cultural program was in fact organized by many eminent persons including former Supreme Court Justice Mr. P.B. Sawant and former High Court Justice Mr. Kolse Patil. The Petitioner submits that both these retired judges have publicly spoken about the untenability of the arrests of 28/8/2018 in this regard. In an article published in Scroll.in on 1.9.2018, Justice Kolse Patil was quoted as saying "*Most of the activists arrested in the case had absolutely nothing to do with the Elgaar Parishad,*" *said Kolse-Patil, who claims he did not even know most of the accused in the Bhima Koregaon case before they were arrested. "But yes, we openly tell people we are leftist, and those who have been arrested more or less share our ideology. They are rational thinkers."* A copy of the article-dated 1.9.2018 published on Scroll.in is annexed herewith as **Annexure P-11**. Furthermore, Retd. Justice P.B. Sawant has authored an Op-Ed in the Indian Express stating "*In fact, except for Sudhir Dhawle and Shoma Sen, no one else was*

either associated with or attended the conference, nor do we know them. This shows that the arrests are clearly politically motivated. It appears that panicked by the present wave of discontent against it, the government is trying to divert the attention of the people.” A copy of Op-Ed dated 6.9.2018 authored by Retd. Justice P.B. Sawant is annexed herewith as **Annexure-P12**.

15. The Petitioner submits this Hon'ble Court must take judicial notice of all the news articles annexed herewith as they completely negate and falsify the claim of the police that the Petitioner was associated with the Elgaar Parishad cultural program, which was the substance of the said FIR.

16. Furthermore, there is good reason to infer the violence in Bhima Koregaon was caused by Milind Ekbote, Sambhaji Bhide and their followers. The earliest FIR in this regard is by Anita Sawale (FIR 02/2018 PS Pimpri). This High Court is seized of a Criminal Writ Petition No.1875/2018 seeking directions to investigate the matter further against Milind Ekbote and others. The Mayor's report also points to the complicity of Ekbote and Sambhaji Bhide.

17. In a sharp deviation from the ground reality and even from the original FIR, in which Petitioner is sought to be arrested, the Pune police has introduced an entirely new case against the Petitioner (and others) orally accusing him of being part of a Maoist conspiracy to destabilize the society and assassinate the Prime Minister. These allegations, which are entirely unconnected to the events mentioned in the FIR 04/2018 are not borne out either from the FIR or the remand application. It comes to light that the only basis for this are undated, unsigned and near anonymous letters that have been authored by or recovered from third parties .

18. It is pertinent to note that contrary to the Pune police's claims about a plot to assassinate the Prime Minister, the Additional Solicitor General of India conceded in the Hon'ble Supreme Court of India that there was absolutely no evidence of such a conspiracy. This concession has completely falsified the Pune police's claims who have constantly advanced unsubstantiated allegations against the Petitioner by leaking fabricated letters to the media.

19. The case of the State as noted by the Supreme Court is that *"the subject FIR in respect of which action is being taken against the accused was registered on 8th January, 2018 for offences punishable under Section 153-A, 505 (1B), 17, 34 IPC. After the investigation progressed, further offences were added including the offences under Sections 13,16,17,18, 18B, 20,38,39 40 of UAPA on 16th May, 2018, on the basis of the material collected during the on-going investigation. Initially, the offence was registered only against 6 accused and as the investigation progressed, as of now there are 22 accused named, including the 5 accused referred to in this petition who were added as accused on 22nd August, 2018 for the reasons stated in the Case Diary, and only thereafter the investigating team proceeded to arrest them on 28th August, 2018. He submits that the Investigating Agency had to proceed against the named accused after the revelation of their involvement with the banned organization, as was noticed from the documents and material recovered during the searches conducted in respect of the premises of co-accused."* Therefore, the sum of material against the five persons arrested on 28.08.2018, even as per the State's before the Supreme Court, was no more than a few letters and references in the computer of one Rona Wilson (or others) arrested in June 2018. Furthermore, the oral submissions describing the said references (although nothing in particular against the

Petitioner was pointed out) did not indicate any offence under the UAPA.

20. Had there been any truth to these letters, it cannot be fathomed why they do not form part of or find any mention in the remand applications. However, even as they stand, they do not suggest any activity on part of the petitioner which falls within the UAPA.

21. It is submitted that the police is unwilling to produce these letters in Court as they are evading judicial scrutiny. Yet, solely on the basis of these supposed letters allegedly recovered from the electronic devices of previously arrested persons, the Pune police has added the provisions of UAPA to the present FIR, and roped in the Petitioner without anything further. And simply on that basis they have sought to arrest him.

22. It is submitted that despite his innocence, the Petitioner has been arrested under a most draconian law i.e. UAPA. The Petitioner submits that the Respondent has added the provisions of UAPA to target the Petitioner and others so that they has no recourse to anticipatory bail and so that the Respondent can seek extended remand and time for investigation to introduce further unsubstantiated allegations. Had there been any truth to these allegations, it cannot be fathomed as to why no new FIR was registered against an alleged national level Maoist conspiracy.

23. The Petitioner submits that a bare reading of the FIR discloses no offence under UAPA and no other material has been placed on record to justify the same. Therefore there is no ground to add Section 13, 16, 17, 18, 18B, 20, 38 and 40 of the UAPA to the FIR No.4/2018 PS Vishrambagh. At any rate neither the said FIR nor any other material justifies the implication of the

Petitioner in this case. Hence, the Petitioner has filed the present Petition seeking quashing of proceedings against the Petitioner and in particular the case against him under Section 13, 16, 17, 18, 18B, 20, 38 and 40 of UAPA in FIR No. 4 of 2018 on the following among other grounds without prejudice to each other:

GROUND

- I. FIR does not disclose any offence under UAPA, much less any such involvement of the petitioner in any other offence either even from the material referred to in Press Conferences and enumerated during arguments in the Supreme Court it is evident that there is no justification for roping the petitioner into the case or levelling any UAPA charges against him
- II. It is admitted even by the State that the Petitioner had nothing to do with either the Elgar Parishad or the organization of the event on 31/12/2018, either as a member of the Parishad or as a participant in the event. It is also admitted that he was neither present nor involved in the violence that took place in Bhima Koregaon on 1/1/2018. Therefore, any criminal process against the Petitioner in terms of the said FIR is manifestly unjust and liable to be quashed.
- III. The UAPA does not include within its scope any activity which is not done with the aim of promoting terrorist activity as is defined in Section 15 of the Act. The Supreme Court notices the scope of the investigation these terms: *“As presently advised, we find force in the argument of the State that the crime under investigation in FIR No.4/2018, inter alia is to investigate the allegations that a banned organization, CPI(M), organises events such as referred to in FIR No.2/2018 to propagate ill-will in*

different classes and turn them into unconstitutional and violent activities. Further, such activities were purportedly carried out by Kabir Kala Manch, Sudhir Dhawale and other activists in different areas in the State of Maharashtra by delivering vituperative speeches and to spread false history, disputable statements and incite objectionable slogans, sing songs and road dramas and distribution of objectionable and provocative pamphlets and books also. And that the incidents such as at Bhima Koregaon and nearby places of stone throwing, castes clashes and arson incidents is the outcome of such conspiracy.....”.

“ Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities.”

- IV. Thus the ultimate scope of the investigation relates to organization of such meetings as may disrupt the constitutional fabric. It then becomes crucial to see exactly who organized the disruption, and the State of Maharashtra has on record attributed the same to Milind Ekbote and his ideological colleagues.
- V. It also follows from the above that until the allegations are substantiated, there is no basis even for suspecting a Maoist organization in the case particularly with material already existing against Milind Ekbote. In such circumstances, roping in the present petitioner despite not being part of either the meeting or any such organization is plainly unwarranted.

- VI. Thus, on the date of arrest on 28/8/2018, no material or context existed for suggesting that the Petitioner was involved in any criminal activity much less one under the UAPA. It transpires now that the references in the computer of a third party are being used against him. In what context these references have come up, if at all they have, is deliberately obfuscated. Whether the electronic record refers to him or is authentic or not is a further question.
- VII. It is submitted that mere reference by name, is insufficient for adding someone to the FIR. And, while authenticity of material is a matter for trial, if the only reference is in third party electronic records, then authentication ought to be a precondition for inclusion in the FIR.
- VIII. The UAPA is attracted only to activities towards actualizing “terrorist acts” as defined therein or such activity that supports the terrorist purposes of a banned organization. Engagement with human rights issues such as false encounters of alleged terrorists or extremists, speaking up for the legal defence or investigating the framing of persons under the draconian laws like UAPA is not the nature of engagement that is a crime under the UAPA.

Therefore, the Supreme Court, has enabled the Petitioner and other accused to inter alia move for quashing of the case, in these words:

“the named accused have already resorted to legal remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the

investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case.”

IX. USE OF CRIMINAL LAW TO TARGET LEGITIMATE POLITICAL ACTIVITY

- i. There must be accountability in the definition of “terror” and the attempt to bring anyone and everyone within its sweep must be firmly curtailed. This petition is not a mere interference in a criminal case but a challenge to the use of criminal law, as a policy, to target those who are critical of the state’s dealings with the marginalised or the manner in which social wealth is sought to be corporatized for private gain.
- ii. It is a matter of historical and social truth that extremism has grown in the context of state repression and social injustice. To recognize this is neither abetment of extremism nor its justification. To speak for the human rights of anyone, a murderer, a rapist, a terrorist is not to become a murderer or rapist or terrorist. Yet, if such voices are silenced by making the interlocutors one with the offender whose cause is espoused, it is not criminal justice that is saved, but the constitution that is lessened.
- iii. Political extremism has political and criminal facets. A political understanding of the same or a view that state policy is contributing to the same is not participation in extremism. Police action cannot be permitted to overwhelm political opinion merely by erasing this very important difference. At all times an alternate

understanding of causes of extremism and its open articulation is essential to democracy.

- iv. For decades, writers, historians and political activists have studied and attempted to comprehend political violence, social unrest, state repression and poverty driven social crimes. In the course of this, they do set up dialogues with those outside the established political order. In recent times Jayaprakash Narayan established a dialogue with dacoits of Chambal, the social worker/actor Sunil Dutt tried a dialogue with underground extremists of the Punjab, persons like late Kuldip Nayyar and the late Justice Rajinder Sachar spoke to the Kashmiri separatists and negotiated for the release of prisoners like Yasin Malik. These acts were not an interference with criminal process but attempts, in the interest of the polity, for restoration of peace. This is how they were viewed even by the State. They were viewed as well-meaning interlocutors. The Petitioner is one such public spirited interlocutor who has not minced his words in criticizing extremist violence. The nature of his engagement with legal and political issues including extremism is both intellectual and democratic. It is submitted that this is not a “link” to banned organisations that is criminal in nature. As has been stated earlier the State itself has called upon him to negotiate the release of persons abducted by left wing extremists which he did successfully.

X. EVEN THE FIR AND OTHER ALLEGATIONS TAKEN AT FACE VALUE DO NOT MAKE OUT A CASE AGAINST THE PETITIONER

- i. The FIR, which names 6 person, alleges that inflammatory and communal speeches were made at the Elgaar Parishad cultural program to incite enmity within society. According to the FIR, the inflammatory speech declared

“when there is injustice, there should be rebellion in the city, and if there is no rebellion, its better that this city gets reduced to ashes before night, city gets reduced to ashes, this session- the title itself is declaration of battle, we have to bury this neo peshwayi in cemetery, in burial ground...”

The FIR also alleges that objectionable and inflammatory books were kept for sale and that in pursuance of the policy of CPI (Maoist) to misguide dalits, the members of Kabir Kala Manch make inflammatory speeches and songs and perform street plays all over Maharashtra. According to the FIR, the violence in Bhima Koregaon was triggered by speeches made at the Elgaar Parishad cultural program.

It is submitted that on the face of it, none of the allegations mentioned in the FIR relate to offences under the UAPA. Section 13, 16, 17, 18, 18B, 20, 38 and 40 UAPA that have been added to the FIR relate to unlawful activity, terrorist acts and activities of a terrorist organization.

- ii. According to Section 15 of UAPA, a terrorist act is an act done with the intent to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror or likely to strike terror. According to the statement of objects and reasons of the UAPA *“the object of the bill is to make powers available for dealing with activities against the integrity and sovereignty of India.”*
- iii. It is submitted that assuming the allegations in the FIR to be true, neither does the alleged inflammatory speech qualify as an unlawful activity nor does it qualify as a terrorist act as nothing in the speech amounts to threatening the unity, integrity, security or sovereignty of India. It is merely a speech calling for dalit action against the *“neo peshawayi”*, which is a metaphor for new ruling class. It is pertinent to note that this speech was made in context of the Bhima Koregaon celebration to

commemorate the 200th anniversary of dalit victory over the oppressive Peshwa regime and is in celebration of dalit valor and resilience which is in no way connected to the security of the nation. It is submitted that a speech catered to a particular community about the decades of oppression suffered by it at the hands of a ruling class cannot be equated with threatening the stability of an entire country. It is submitted that even if the said speech resulted in public disorder or led to an unfavorable law and order situation as alleged, the provisions of IPC under which the FIR was initially registered wholly covers the allegations mentioned in the FIR. It is submitted that if the ordinary penal laws are sufficient to prosecute an offence, recourse should not be had to special laws only to brand an incident as a terror offence.

- iv. In any event, none of this implicates the Petitioners and therefore in terms of standards laid down in the Bhajan Lal case and others following that ratio, the case against the Petitioners should be quashed.

XI. NO BASIS FOR ADDITION OF UAPA

- i. In this regard, the observations of this Hon'ble Court in *Surendra Singh v. State of Maharashtra*, (1994) 1 Bom CR 470 with respect to allegations of terrorist activities under TADA are useful:

13. *The TADA Act is an extreme measure to be resorted to when the Investigating Agency cannot tackle the situation under the ordinary Penal law and the Act is intended to combat the growing menace of terrorism, as a drastic measure, not ordinarily to be resorted to unless failure of law machinery under the General law is experienced. (Usmanbhai v. State of Gujrat)¹, (1988) 2 SCC 271 : A.I.R. 1988 S.C. 922 : 1988 Cr. L.J. 938. This Court in exercise*

of inherent powers and writ jurisdiction has ample powers in the event of unjustifiable application by the Investigating Agency the provisions of TADA Act when the acts allegedly show that the offence is purely under the ordinary penal law, (Ayub Khan v. State of Gujrat)², 1991 Cr. L.J. 1085.

- ii. Similar observations were made by this Hon'ble Court in *Anil Vasant Chitnis v. Sr. Inspector of Police, Alibaug Police Station* 1994 CriLJ 3760 wherein this Hon'ble Court was examining whether proceedings under TADA should be quashed. The Hon'ble Court observed:

*8. Close analysis of the above provisions will indicate that many of the criminal activities punishable under the ordinary penal laws can also constitute terrorist acts. There is to an extent overlapping. But that does not mean that every criminal activity can fall under the net of section 3(1). There are various varieties of criminal activities. Some can disturb "law and order" and some can disturb "public order" — the distinction between the two being well-known. Ordinary penal laws and preventive detention laws are meant to tackle those situations. Merely because the crime belongs to later category, it does not become a terrorist act. The main distinguishing feature is in the fall out of intended activity. If it travels beyond the capacity of ordinary law enforcement agencies to tackle it, it may be covered by the TADA Act. But as observed by the Supreme Court in the case of *Kartar Singh v. State of Punjab*, JT 1994 (2) SC 423, a person is guilty of a terrorist activity only when (i) intention, (ii) action and (iii) consequences — the ingredients contemplated under section 3(1)— exist. Mere consequence of the criminal act is not decisive of the matter. Intention to achieve the result envisaged by section 3(1) is vital to attract the provisions. This view is consistently taken and is reiterated in the case of *Hitendra**

Vishnu Thakur v. State of Maharashtra decided on 12-7-1994 in Criminal Appeals Nos. 732-735 of 1993 along with connected matters. Law on the point is thus well crystallised and is not amorphous. Applying these tests to the incident, it is impossible to categorise the crime as a terrorist act.

- iii. It is submitted that the sole basis of addition of drastic penal statutes such as the UAPA cannot be on the basis of undated and unsigned letters that do not form part of the FIR and have not been produced in Court during remand. At any rate, these letters have been recovered from third part devices and could have been authored by anyone. If a person can be arrested on the sole basis of a fake or fabricated letter then there will be no bar for the police to arrest persons under such draconian laws providing custody of 180 days. Such restraint on a citizen's fundamental rights cannot take place without further investigation and corroboration. It is important to note that the level of due diligence required to arrest someone under UAPA is much higher than under IPC on account of enhanced custody. Therefore, in the absence of any other cogent evidence, the provisions of UAPA cannot be applied mechanically solely on the basis of some suspicion caused by a letter that could have been authored by anyone.
- iv. It is also pertinent to note that these letters does not form a part of the remand application and the police cannot be allowed to introduce such serious allegations outside of remand proceedings. This attitude of the police betrays their attempt to withhold judicial scrutiny of such fabricated letters.

XII. Malicious Use & Parity

- i. It is submitted that even before the present FIR was registered, FIR 0/2018 was registered on 2.1.2018 i.e. the very next day after the incident by one eyewitness Anita Savle accusing Milind Ekbote and Sambhaji Bhide of the same Bhima Koregaon violence that the Petitioner has been accused of. It is submitted that Sambhaji Bhide was never arrested and in fact a recent RTI has revealed that the State Government has withdrawn atleast 6 riot cases against him. It is submitted that Milind Ekbote and Sambhaji Bhide were also named as conspirators in the report released by the Deputy Mayor of Pune after a fact finding into the Bhima Koregaon violence. Moreover, the State of Maharashtra opposed Milind Ekbote's anticipatory bail in the Hon'ble Supreme Court of India on the grounds that he conspired to commit the violence in Bhima Koregaon and that he had prior criminal antecedents and was not cooperating with the investigation.
- ii. Despite the above and despite being an accused in over 20 other cases, Milind Ekbote was granted bail by the Sessions Court vide order-dated 4.4.2018.
- iii. It is also pertinent to note that no UAPA provisions were added to that FIR unlike the present case even though it pertained to the same incident.
- iv. It is submitted that the addition of UAPA to the present case has only been done to prejudice the Petitioner and prevent him from seeking recourse to statutory protections barred under the UAPA.

24. This Petition has been filed in the interest of justice.

25. The Petitioner submits that he has not filed any other Petition with the same reliefs in any other Court of Law.

26. The Petitioner craves leave to file translated copies if required and the Petitioner prays that the same be dispensed with for now.

27. The Petitioner craves to submit typed copies of relevant documents and prays that he may be dispensed with the same for now.

28. Accordingly, the Petitioner prays as follows:

PRAYER

That This Hon'ble Court be pleased to:

- i. Direct the Respondent to place on record the material upon which the Petitioner herein has been named as an accused in the present case and the basis on which he was arrested.
- ii. Quash the FIR and pursuant criminal investigation to the extent that the same includes the Petitioner
- iii. Pass such other orders as court deems fit in the interest of justice.

INTERIM PRAYER

- i. Pending disposal of the present writ petition direct that there shall be no arrest of the Petitioner

- ii. And pass such other orders as the court deems fit in the interests of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT
HEREIN AS IN DUTY BOUND SHALL EVER PRAY

Advocate for the Applicant

Petitioner

Place:

DATE:

VERIFICATION

I, Gautam Navlakha, the Petitioner above named, aged about 65 years, residing at Flat No.2 R-3 Nehru Enclave New Delhi, do hereby solemnly declare that what is stated in paragraphs _____ of this Petition are true to the best of my personal knowledge, and that what is stated in paragraph _____ are believed to be true based on my personal knowledge as well as knowledge based on records and legal opinion and that what is stated in the remaining paragraphs is stated on information and belief, and I believe the same to be true.

Solemnly affirmed at Delhi)

This _____ day of October, 2018)

Before me,

Advocate for the Petitioner

Petitioner