

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 21/10/2025

Romila Thapar And Ors Vs Union Of India And Ors

Writ Petition (Criminal) No. 260 Of 2018

Court: Supreme Court Of India

Date of Decision: Sept. 28, 2018

Acts Referred:

Constitution Of India, 1950 â€" Article 14, 21, 22(1), 32, 142, 226#Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 â€" Section 3(1)(10), 3(2)(v)#Arms Act, 1959 â€" Section 4(25)#Indian Penal Code, 1860 â€" Section 17, 34, 120B, 143, 147, 148, 149, 153A, 295(A), 307, 435, 436, 505(1B)#Unlawful Activities (Prevention) Act, 1967 â€" Section 13, 16, 17, 18, 18B, 20, 38, 39, 40#Code Of Criminal Procedure 1973 â€" Section 41, 41B, 438, 439, 482

Citation: AIR 2018 SC 4683 : (2018) 10 JT 442 : (2018) 13 Scale 278 : (2018) 11 SCR 951 :

(2018) 10 SCC 753

Hon'ble Judges: Dipak Misra, CJ; A.M. Khanwilkar, J; D Y Chandrachud, J

Bench: Full Bench

Advocate: Prashant Bhushan

Judgement

A.M. Khanwilkar. J

1. Five illustrious persons in their own field have filed this petition on 29thAugust, 2018 complaining about the highhanded action of the Maharashtra

Police inraiding the homes and arresting five well known human rights activists, journalists, advocates and political worker, with a view to kill

independentvoices differing in ideology from the party in power and to stifle the honestvoice of dissent. They complain that the five activists, namely,

GautamNavalakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalveswere arrested on 28th August, 2018 from their homes at

New Delhi, Faridabad, Mumbai, Thane and Hyderabad, respectively, without any credible material andevidence against them justifying their arrest,

purportedly in connection withFIR No.0004/2018 dated 8th January, 2018 registered with Police Station VishramBagh, Pune City. This action was to

silence the dissent, stop people from helpingthe poor and downtrodden and to instill fear in the minds of people and was amotivated action to deflect

people \tilde{A} ¢ \hat{a} ,¬s attention from real issues. The petitioners have made it clear in their petition that they were seriously concerned about the erosion of

democratic values and were approaching this Court $\tilde{A}\phi\hat{a}$, $-\hat{A}$ "not to stop investigation into allegations $\tilde{A}\phi\hat{a}$, $-\tilde{A}\phi\hat{a}$, $-\hat{A}\phi\hat{a}$,

 \tilde{A} ¢â,¬Å"investigation into the arrest of stated five human rightsactivists. \tilde{A} ¢â,¬ They claim that anything short of that relief will damage thefabric of the nation

irreparably.

2. The FIR in connection with which the said five persons came to be arrested hasbeen appended and marked as Annexure P-2. It was registered on

the basis of the statement given by one Tushar Ramesh Damgule, which reads thus:

ââ,¬Å"Translation:FIR COPY

I,Tushar Ramesh Damgule [Age 37] Occupation ââ,¬" Reconstruction, Residing at surveyno.70, Santosh Nagar, Kafraj Pune, 411016, Mobile Number

 \tilde{A} ¢â,¬" 9850065423)personally states that, I am residing at the above mentioned address from last20 years. I am completed Masters in Arts (History). I

am running construction business by the name of Rao enterprises, from last 4 years. Somewhere in lastweek of December, I read one post of

Facebook, that Elgar Parishad organized31/12/2017 at Shaniwar Wada. Therefore on 31stDecember 2017, I personally wentto Shaniwar Wada.

opposite Ground, Pune, on around 2ââ,¬o clock in this concernprogramme conduct by Sagar Gokhale, role describer Sudhir Dhavale, singer andartist

Jyoti Jagtap, Ramesh Gaychor and other speakers like Jignesh Mewani, Umar Kahlid, Vinay Ratansingh, Prasanth Dontha etc. orators were seated on

thestage. The said ground was crowded fully. I had read information and newsrelated Kabir Kala Manch and their representatives by social media

andnewspapers. So, known them. On the programme of following other subjects, hadexpress statement again and again malice statement such as

ââ,¬Å"Bima Koregaon neDiladhada, Navi Peshawar Mainatgada, Udavathikrya Rai Rai re, Gadun TakaPeshwai Re Garjana Sidnakache, Aalee Nvyane

Peshwai re Garaj Tila Thokyachee,Re Saimka Garaj Tila Thokyacheeââ,¬. After this, some other orators had theirspeeches, as well as in that, Kabir

Kala Manchââ,¬s artist such as Jyoti Jagtap,Ramesh Gaichor and other six seven person sing the song again ââ,¬Å"Bhima Koregaonne diladhada, Navi

Peshwa Navi Peshawar Mainat Gada, Udavathikrya Rai Rai re,Gadum Taka Peshwai Re Garjana Sidnakache, Aalee Nvyane Peshwai re Garaj

TilaThokyachee, Re Saimka Garaj Tila Thokyachee \tilde{A} ¢ \hat{a} ,¬ \hat{A} ¦ \tilde{A} ¢ \hat{a} ,¬ as well as, the same hadpresented in the form of Pathnatya (Raadaramai) and Dance Event

with malice andenmity intentions. After in Second session, said Sudhir Dhawade whileexpressing role, he made the malice and disputable statement

that \tilde{A} ¢â,¬Å"Jab Julm Hoto, Bagawat Honi Chahiye shahar mein, Jab Julm Ho to bagawat honi chahiyeshahar mein aur agar bagawat na ho to, behatar

hai kee, rat dhalane se phle yeshahar jalke rakh ho jaye, ye shahar jalke rakh ho jaye \tilde{A} ¢ \hat{a} , $\neg \hat{A}$!. \tilde{A} ¢ \hat{a} , $\neg \hat{A}$ ". Then he said someother malice statement that \tilde{A} ¢ \hat{a} , $\neg \hat{A}$ "ye jo

satrahai, ye satra hia, tayat hi apane aapmein ladai ka ellanhai, ye nave peswai ko haemin Samshan Ghat mein, kabrastanmeindajana

hai.. \tilde{A} ¢ \hat{a} , \neg Afterwards, other speakers also expressed themselves in grudgewords in the same Programme, some objectionable and provocable books kept

forselling. After ending the program, I left from the there. On the date of 1stJanuary, 2018 as usual year, huge crowd gathered to salute and honour

thevictory stambh/monument at Bheema Koregaon. But because of the Elgar Parishadwhich was held at Shaniwar Wada on 31st December, 2017,

Kabir Kala Manchââ,¬sSudhir Dhawale, Sagar Gorakhe, Harshali Potdar, Jyoti Jagtap, Ramesh Gaichorand other six seven persons tried to express

malice statement and tried toincite disputable words, sentences between two society groups, raise someprovocable slogans, songs and road drama

imposed wrong and false History abovementioned Sudhir Dhawale, Harshali Potdar and other Kabir Kala Manchââ,¬sActivists been interrogated by

legal inspection and sources. Therefore, I statethat, banned Maoist Organisation (CPI) have organized role is to boast and implicate the strong Maoist

thoughts in depressed class and misdirect ormisguide them and turn them towards unconstitutional violence activities, carrying the same thoughts, Kabir

Kala Manch \tilde{A} ¢ \hat{a} , $\neg \hat{a}$,¢s Sudhir Dhawale and his otheractivist had presented different areas in Maharashtra, malice speeches, hadspread false History,

disputable statements and incite objectionable slogans, sung songs and road-dramas. They distributed some objectionable and provocablepamphlets,

books too. So remarkably it reflected at Bheema Koregaon and nearerplaces by stone throwing, castes clashes and arson incidents. Therefore,

anorganization ââ,¬"Elgar Parishad, on the day of 31st December, 2017 at 2.00 p.m. to10.00 p.m. at Shaniwar Wada, Pule, role defines Kabir Kala

Manchââ,¬s SudhirDhawale, programme conductor Sagar Gorakhe, and other artists HarshaliPotdar,Jyoti Jagtap, Ramesh Gaichor and others had

presented objectionable songs aswell as $\tilde{A}\phi\hat{a}, \neg \mathring{A}$ "Jab Julm ho to, Bagawat Honi Chahiye shahar mein, Jab Julm Ho tobagawat honi chahiye shahar mein

aur agar bagawat na ho to, behatar hai kee,rat dhalane se phle ye shahar jalke rakh ho jaye, ye shahar jalke rakh hojaye \tilde{A} ¢ \hat{a} , $\neg \hat{A}$ l \tilde{A} ¢ \hat{a} , $\neg such type of disputable,$

objectionable passing statements, tried toincite disputable words, sentences between two society groups, raised someprovocable slogans, songs and

road drama, imposed wrong and false Historymisguided the society. The same had been disputable and stone-throwing andarson incidents converted

into disputable and cast clashes in society¢â,¬â€‹sspecific groups, with human injuries, violence, severe damages etc.

Therefore,I lodged the complaint against (1) the role definer Kabir Kala Manchââ,¬s SudhirDhawale, (2) Pragramme conductor Sagar Gokhale (3)

Harshali Potdar (4) RameshGaichor (5) Deepak Denglr (6) Jyoti Jagtap. I read this typed statement andwhatever I stated is same true and correct.

Thisstatement given, Date: 08/01/2018

Infront of:

(M.B.Talware)

Police- Sub-Inspector Vishram Baug, Police Station, Pune.ââ,¬â€€

(emphasissupplied)

3.According to the petitioners, none of the five persons arrested in connection with the stated FIR was present during the event organized on 31st

December,2017 at Pune by $\tilde{A}\phi\hat{a}, \neg \hat{A}$ "Elgar Parishad $\tilde{A}\phi\hat{a}, \neg$ (with which they have no concern) nor anyallegation is found against them in the FIR. Nevertheless,

the Pune Policeswiftly moved against them, for reasons best known on fabricated charges undervarious provisions of the Unlawful Activities

(Prevention) Act, 1967 (ââ,¬Å"UAPAââ,¬â€()and under the Indian Penal Code.

4.According to the petitioners, since the FIR dated 2nd January, 2018, at PimpriPolice Station (Rural) for offences punishable under Sections 307, 143,

147,148, 149, 295(A), 435, 436 of IPC, Sections 3(2)(v) & 3(1)(10) of the Scheduled Castes Scheduled Tribes Act and Section 4(25) of the Arms Act

of the Maharashtra Police Act, 1989, was registered against the Hindutva right wingleaders Milind Ekbote and Sambhaji Rao Bhide, based on an eye-

witness accountthat they along with fringe groups had incited the violence against the Dalitcongregation, instead of taking action against those who

were behind the BhimaKoregaon violence, a false and fabricated complaint was engineered in the formof FIR No.0004/2018 and came to be

registered on 8th January, 2018 at VishramBagh Police Station (Pune City), in respect of which the five named activistsand others have been

arrested. This fabricated FIR against the activists cameto be registered in the name of the complainant who happens to have close linkswith the

named accused in FIR No.2 dated 2nd January, 2018 registered at PimpriPolice Station (Rural). The Pune Police thus embarked upon a motivated

processand arrested five human rights activists who had no concern with the incidentreferred to in the FIR No.4/2018.

5.It is further stated in the writ petition that the Pune Police investigatingthe Bhima Koregaon violence was systematically leaking documents to

selectivemedia with a view to spread false propaganda against the activists and toprejudice the public opinion against those arrested. The leaked

documentsallegedly found from the computer recovered during the search of the house ofRona Wilson, were addressed to Comrade Prakash and

signed by ¢â,¬Á"RĀ¢â,¬, whichapparently mentions about senior comrades proposing concrete steps to end theModi-era by planning a Rajiv Gandhi style

incident to assassinate the PrimeMinister. The police had deployed systematic strategy to put out highlyprovocative but completely unsubstantiated,

unverified and unproven allegationsthrough select media channels to prejudice the public opinion against thosealready arrested. Further, the organizers

of Elgar Parishad had immediatelyrefuted the tall claim of the Pune Police and went on record that the eventreferred to in the FIR under investigation

was organized by them (ElgarParishad) and no other organization was concerned therewith, much less anybanned organization had any role in that

regard. This statement was issued by aformer Judge of this Court and another former Judge of the Bombay High Courtwho are the organizers of

Elgar Parishad, emphatically condemning the lettersleaked to the media by the Police as the same were never produced in evidencebefore the Court

and that it was a ploy of the Government as it had feltthreatened because of the mobilization of people by Elgar Parishad to raisetheir voice against the

establishment and resist communal forces. Theorganization of Elgar Parishad had also denied of having received funds from anyof the accused

persons named in the FIR.

6.According to the petitioners, similar arbitrary arrests by the Pune City Policewere caused across the country, particularly of those who spoke for the

poorand marginalized and to malign human rights defenders, lawyers, activists and the progressive ideas and human rights ideology that they espouse,

so as tohave a chilling effect in the minds of the activists and dissuade them from riticizing the policies and programmes of the Government.

7. The petitioners then state that without providing any evidentiary link between the persons arrested and raided inter alia Gautam Navlakha and Sudha

Bhardwajwith FIR No.4 of 2018, they were served with the arrest memos signed by thepersons who were brought as part of the entourage of the

Pune Police asso-called $\tilde{A}\phi\hat{a}, \neg \mathring{A}$ independent and respectable persons $\tilde{A}\phi\hat{a}, \neg$ to authenticate the arrestmemos. The seizure memos were prepared in Marathi

and signed by the Panchas whowere brought by the Pune Police as part of the entourage. No translated copy of the FIR or the seizure memo was

made over to Gautam Navlakha or Sudha Bhardwajeven though they were not conversant with Marathi. In this backdrop, GautamNavlakha filed

habeas corpus petition before the Delhi High Court, being WritPetition No.2559 of 2018 challenging the transit remand order passed by theChief

Metropolitan Magistrate on 28th August, 2018. Similar petition was filedin the Punjab and Haryana High Court to direct the jurisdictional Court

whichhad allowed the prayer to grant transit remand, to keep Sudha Bhardwaj at herresidence under supervision of the local police. Even the petition

filed in the Punjab and Haryana High Court is still pending. Nevertheless, the petitioners rushed to this Court by way of the present writ petition filed as

a publicinterest litigation, to espouse the cause of the five persons arrested by thePune Police, praying for an independent and comprehensive enquiry

into the stated arrest as follows:

ââ,¬Å"PRAYERS

Itis therefore prayed that this Honââ,¬â€ ble Court be pleased to grant the followingprayers:

i)Issue an appropriate writ, order or direction, directing an independent and comprehensive enquiry into arrest of these human rights activists in June

andAugust 2018 in connection with the Bhima Koregaon violence.

ii)Issue an appropriate writ, order or direction, calling for an explanation from the State of Maharashtra for this sweeping round of arrests; iii) Issue

anappropriate writ, order or direction, directing the immediate release fromcustody of all activists arrested in connection with the Bhima

Koregaonviolence and staying any arrests until the matter fully investigated anddecided by this court.

iv)Pass any such other order as may be deemed appropriate.ââ,¬â€€

8. Asaforesaid, the petition was filed on 29th August, 2018 and mentioned for urgentdirections before the Chief Justice of India on the same day. This

Benchconsidered the urgent mentioning and passed the following order on the sameday:

ââ,¬Å"Takenon Board.

Issuenotice.

Mr. Tushar Mehta and Mr. Maninder Singh, learned Additional Solicitor Generalsbeing assisted by Mr. R. Balasubramanian, learned counsel shall file

thecounter affidavit by 5.9.2018. Rejoinder thereto, if any, be filed within threedays therefrom.

Wehave considered the prayer for interim relief. It is submitted by Dr. AbhishekManu Singhvi, learned senior counsel appearing for the petitioners

that inpursuance of the order of the High Court, Mr. Gautam Navalakha and Ms. SudhaBharadwaj have been kept under house arrest. It is suggested

by him that as aninterim measure, he has no objection if this Court orders that Mr. VaravaraRao, Mr. Arun Ferreira and Mr. Vernon Gonsalves. if

arrested, they are keptunder house arrest at their own homes. We order accordingly. The house arrestof Mr. Gautam Navalakha and Ms. Sudha

Bharadwaj may be extended in terms of ourorders.

Needlessto say, an interim order is an interim order and all contentions are kept open.

Letthe matter be listed on 6.9.2018.ââ,¬â€€

Thisinterim arrangement has been continued from time to time and remains in forceuntil the disposal of this petition.

9. The State of Maharashtra has filed a counter affidavit of Dr. Shivaji PanditraoPawar, Assistant Commissioner of Police (Investigating Officer),

SwargateDivision, Pune City, Pune. Besides taking objection regarding themaintainability of the writ petition being filed by third parties who

arestrangers to the offence under investigation, he has highlighted that in lightof the material gathered during the investigation conducted so far, it

would be desirable to dismiss the writ petition. He has stated that the entire writpetition is based upon individual perception of the writ petitioners that

thearrested persons are \tilde{A} ¢â,¬Å"all outstanding, well-known and well respected humanrights activists \tilde{A} ¢â,¬ and therefore, their arrest requires to be enquired

into andthey should be released on bail. Having said that, he has asserted that in theinstant case, the five named persons have been arrested not

because theyexpressed dissenting views or difference in their political or other ideologies but the investigation done so far has unraveled their

involvement in a seriousoffence, including of being active members of Communist Party of India(Maoist), which has been banned as a terrorist

organization since 2009, and oftheir involvement in planning and preparation of large scale violence anddestruction of property, resulting into chaos in

the society. Each of them ispart of a well thought out criminal conspiracy and had supported the eventarranged at Pune by the Elgaar Parishad

through a frontal organization calledââ,¬Å"Kabir Kala Manchââ,¬â€.

10.It is then stated that one Tushar Ramesh Damgule had lodged an FIR on 8thJanuary, 2018, naming six persons as accused for the offence

registeredthereunder by the Vishram Bagh Police Station. Out of the six named accused, only one person came to be arrested on 6th June, 2018,

namely, Sudhir Dhawalein connection with the registered offence. As the investigation progressed and materialwas gathered during the ongoing

investigation, Section 120-B was added on 6thMarch, 2018 and two more persons were found to be suspected accused namely, Surendra Gadling, R/o

Nagpur and Rona Wilson, R/o Delhi. On 17th April, 2018the Investigating Agency conducted searches at the residence of eight persons, namely:

- 1)Rona Wilson, R/o Delhi
- 2) Surendra Gadling, R/o Nagpur
- 3)Sudhir Dhawala and Harshali Potdar, R/o Mumbai
- 4)Sagar Gorakhe, R/o Pune
- 5) Dipak Dhengale, R/o Pune
- 6)Ramesh Gyachore and Jyoti Jagtap, R/o Pune

Further, the entire search procedure was videographed right from the time the Investigating Agency knocked at the doors of the respective individuals

tillthe material recovered were seized, sealed, and punchnamas were drawn in the presenceof independent punchas. During the said search,

documents were recovered fromtheir respective computers/ laptops/pen drives/ memory cards. Differentdocuments were found to have been copied

on different dates. The seized itemswere immediately sent for investigation to Forensic Science Laboratory, whichin turn gave $\tilde{A}\phi\hat{a}, \neg \hat{A}$ "clone copies/mirror

images \tilde{A} ¢ \hat{a} , \neg to the investigating agency so as toensure that pendency of FSL Report does not hamper the investigation. It is then stated that documents

recovered from the seized items unraveled theinformation implicating the accused not only as active members of CPI (Maoist)but being involved in an

ongoing sinister design of having committed and in the process of committing criminal offences having the potential of destabilizing the society. The

documents clearly reflect the preparation, planning and coordination not only amongst the stated accused persons but with others subsequently arrested,

to carry out violence including planned ambush/rebellionagainst the enemy (which is our country and security forces).

11.He has further stated that all the documents recovered during the search from the custody and possession of the respective accused will be

produced beforethe Court, perusal of which would reveal that the accused persons are notmerely political dissenters but involved in sinister design,

planning, preparation and commission of criminal offences to destabilize the society. After the incriminatory material came to light, further offences

under Sections13, 16, 17, 18, 18-B, 20, 38, 39 and 40 of the UAPA are added on 17th May, 2018against the following individuals:

- 1)Surendra Gadling, R/o Nagpur
- 2)Rona Wilson, R/o Delhi
- 3)Shoma Sen R/o Nagpur
- 4) Mahes Raut R/o Nagpur and Gadchiroli
- 5)Comrade M. alias Milind Teltumbade [underground]
- 6)Comrade Prakash alias Navin alias Rituparn Goswami R/o Assam [underground]
- 7)Comrade Manglu [underground]
- 8)Comrade Dipu and other underground members.

Theaffidavit further states that during the on-going investigation, followingpersons came to be arrested on 6th June, 2018:

- 1)Surendra Gadling, R/o Nagpur
- 2)Rona Wilson R/o Delhi
- 3)Sudhir Dhanwale

Further, two more persons were arrested and also searched on 6th June, 2018, namely, Shoma Sen, R/o Nagpur and Mahesh Raut, R/o Nagpur and

Gadchiroli. It is then stated that the searches carried out against these persons were also videographed from the beginning to the end as was done on

the earlier occasionin respect of the searches carried of other accused. Even during this search, it is alleged that the material seized was in the form of

computers, laptops,pendrives and memory cards which have been forwarded to Forensic ScienceLaboratory, which in turn provided clone copies to

the Investigating Agency forfacilitating further investigation.

12.It is then stated in the affidavit that the further investigation unraveled that the five persons who came to be arrested on 28th August, 2018 were

alsoinvolved in the criminal conspiracy and their role was not merely peripheral innature. Based upon the incriminating material, they were arrested

from theresidential or work places under similar fashion in the presence of independentpanchas who were Government Officers. It is also stated that

one of them,namely, Vernon Gonsalves has been convicted by the Special Court, Nagpur foroffences under the UAPA.

13. The sum and substance of the reply affidavit is that sufficient material hasbecome available during the investigation, which is still in progress,

toindicate the complicity of the concerned accused who have been arrestedincluding the five named persons in respect of whom the present writ

petitionhas been filed by third parties. They are arrested not because of theirpolitical activities but for their involvement in the planning and execution

ofoffences to destabilize the society and their association with the bannedorganization. Their involvement is noticed in selecting and encouraging

cadresin the banned organizations to go underground in $\tilde{A}\phi\hat{a}, \neg \hat{A}$ struggle area $\tilde{A}\phi\hat{a}, \neg$, mobilizing and distributing money, facilitating selection and purchase of

arms, deciding the rates of such arms and suggesting the routes and ways of smuggling such arms into India for its onward distribution amongst the

cadres. Some of themhave suggested training and laying booby traps and directional mines. Theirinvolvement is also for providing strategic inputs in

furtherance of theobjective of armed rebellion, on lines of strategic documents of the bannedterrorist organization. It is stated that all the material

collected during theinvestigation will be eventually placed on record of the jurisdictional Courtalong with the police report to be filed in due course.

Further, the question of showing that material to anyone muchless accused, would defeat thein vestigation in progress and that is not the requirement of

law. The affidavitalso emphasizes that house arrest of the concerned accused merely restrictsphysical movement but there is no way of ensuring that

these persons would not indulgein destruction of evidence and alert other potential accused while sitting athome. As a matter of fact, their custodial

interrogation may become necessaryduring further investigation and for which reason the Investigating Agency begranted liberty to take them in police

custody in accordance with law.

14. The petitioners have filed exhaustive rejoinder affidavit. Besides therejoinder affidavit, formal applications have been filed on behalf of

SudhaBharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalves, who are presentlyunder house arrest, that they be permitted to pursue the writ

petition as filedby them. This application is in response to the issue of locus of fivepetitioners as being strangers to the offence under investigation.

Besides, anapplication has been filed by the petitioners for permitting them to amend the prayer clause of the writ petition and permit the petitioners to

seek followingmodified prayers:

 \tilde{A} ¢â,¬Å"(i)Issue an appropriate writ, order or direction for setting up of a SpecialInvestigating Team (SIT) comprising of senior police officers with

impeccablecareer records of professionalism, integrity and independence, reporting directly to this Hon \tilde{A} $\phi \hat{a}$, $\neg ble$ Court, for conducting a fair and

independentinvestigation and inquiry into the offences stated in the zero FIR lodged atPimpri Police Station on 02.01.2018 (now Cr. Case No.2/2018),

and the FIR4/2018 lodged and all other related matters and allegations; or

(ii)Issue an appropriate writ, order or direction for the investigation into theoffences 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 PoliceStation on 08.01.2018, and all other related matters and

allegations, to becarried out by an independent agency which shall be monitored directly by this Hon \tilde{A} $\hat{\phi}$ \hat{a} , \neg ble Court through regular filing of status reports

of the investigation bythe investigating agency; and/or

(iii)Issue an appropriate writ, order or direction directing that all electronicdevices, records and materials allegedly seized from the detenues or

evenotherwise, if relied upon/being relied upon for denial of liberty to thedetenues, to be examined by a Forensic Sciences Laboratory outside the State

ofMaharashtra to ensure fair play and in the interest of justice; and/or

(iv)Issue an appropriate writ, order or direction, directing the release fromcustody of the arrested activists as per law, upon such terms and conditions

asmay be deemed necessary and appropriate, to the satisfaction of this Honââ,¬â€√bleCourt; and/or

(v)Pass any such further order(s) as this Honââ,¬ble Court may deem fit andappropriate in the facts and circumstances of the present case, and in the

interestjustice.ââ,¬â€<

15.During the arguments, Dr. Abhishek Manu Singhvi, Dr. Rajeev Dhawan, Dr. AshwaniKumar learned senior counsel and Mr. Prashant Bhushan,

learned counselappearing for the writ petitioners and Mr. Anand Grover, learned senior counselappearing for the arrested persons, have argued that

the stated five personshave not been named in the FIR nor were they present during the event referredto in the FIR. Registration of two FIRs in

respect of the same incident, firston 2nd January, 2018 at Pimpri (Urban) Police Station and the second, atVisharam Bagh Police Station, Pune City,

was impermissible and was a ploy todeflect the inaction of the Pune Urban Police for the reasons best known tothem. Moreover, the offences under

the draconian law (UAPA) have been addedwithout due authorization of the competent authority. It is contended that liberty of individual and dignity of

the accused are the facets of coreconstitutional values.

They submit that this case is not about ordinary criminal jurisprudence but of actualization of constitutional values and to expose the

unjustifiedincarceration of innocents who happen to be human rights activists. They submitthat the liberty and dignity of the accused persons must be

preserved. According to them, the Investigating Agency was not discharging its statutoryobligation of fairness in investigation but was indulging in

selective leaks ofdocuments which contain unsubstantiated insinuations against the accusedpersons solely with a view to malign their reputation and

create public opinionagainst them. The Pune Police had the audacity to rush to the Press fordivulging the documents which they claim to have

recovered during the seizurefrom one of the accused and not the five persons arrested on 28th August, 2018. They submit that the clarificatory

statement issued by the two former Judgescannot be discarded. However, no effort has been made by the InvestigatingAgency to ascertain the

factual position from those two Judges. According tothem, it is a case of persecution of the five persons named in the writpetition as multiple cases

have been registered against them since 2005 andeach of them have been acquitted in the concerned case. 25 criminal cases were registered against

Varavara Rao, 11 cases have been registered against ArunFerreira and 18 cases against Varnon Gonsalves. They have been acquitted in allthe cases

except one against Gonsalves, which matter is pending in appeal. Theyhave relied upon the report prepared by the Committee headed by the

DeputyMayor which clearly points towards the complicity of Sambhaji Rao Bhide andMilind Ekbote in particular, for having caused incitement and

violence on 1stJanuary, 2018. However, no action has been taken by the Pune Police against thepersons who were responsible for causing riots and

violence. It is submittedthat it is unfathomable that two FIRs are registered in respect of the same incident and two different investigating agencies are

going ahead with theinvestigation. More so, the basis of arrest of five persons on 28th August,2018 was their involvement in planning the assassination

of the current PrimeMinister but there is no allegation to that effect in the FIR nor has any freshFIR been registered by the Police, although the same

is a serious matterwarranting investigation by an Investigating Agency no less then NationalInvestigating Agency or at least the CBI. The persons

arrested, however, arewell-known for their track record of human rights activism and have beenunjustly put behind bars on the basis of

unsubstantiated allegations and without any evidence against them. The entire sub-text of creating a realthreat is a figment of imagination of the

Investigating Agency and that hasbeen done for reasons best known to them. Obviously, it is politicallymotivated. The transit remand applications

preferred by the InvestigatingAgency also do not mention the letters indicative of involvement of the personsconcerned in planning and execution of

Maoist plot nor have those letters been produced before the Court thus far. The letters which were flashed to the mediaare obviously fabricated.

Further, no plausible explanation is forthcoming asto why the Investigating Agency had taken panchas along with them forconducting search outside

the State of Maharashtra. The role of theinvestigating team in FIR No.4 of 2018 in the manner in which they causedarrest of five persons named in

the writ petition, has been seriously questioned and it is earnestly prayed by the learned counsel that the modified reliefs as claimed ought to be granted.

The counsel have filed exhaustivewritten submissions to buttress the plea for entrusting the investigation of the case to an independent Investigating

Agency.

16.Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Stateof Maharashtra on the other hand, submitted that the Court should

be loath toentertain the writ petition of this nature when the investigation of a seriouscrime is in progress as per the statutory provisions and the

material gatheredduring the investigation justifies the arrest of the concerned accused. Hesubmitted that the investigation is being conducted

responsibly and impartially and strictly in accordance with the provisions of Cr.P.C. by an officer of therank of Assistant Commissioner of Police under

the supervision of DeputyCommissioner of Police and further monitored by Joint Commissioner and finallyby the Commissioner of Police who is of the

rank of Additional Director Generalof Police. There is no allegations against the investigating officer of workingunder dictation or that he had any

personal malice against the named accused. Further, there is active involvement and monitoring of senior police officials and pre-existing safeguards

have been put in place by the State in order toensure a fair investigation and in order to maintain independent and impartiality of all sorts, coupled with

the fact that the action of theInvestigating Agency would be monitored by the jurisdictional Courts atdifferent stages, the question of appointing Special

Investigation Team or to allow investigation by independent Investigating Agency under the monitoring of the Court, should be eschewed. He submitted

that the Court may look at the documents already gathered during the investigation to satisfy its conscience as to whether the arrest of concerned

accused was justified or otherwise. Inany case, there is robust mechanism of overseeing the actions of theInvestigating Agency by the jurisdictional

Courts while considering not onlythe application for police remand or judicial remand and bail application butalso the remedy of discharge and quashing

of the prosecution. In other words, the issues raised by the petitioners may be germane for pursuing relief of bailor discharge/quashing, but not relevant

to consider prayer for change of investigating agency, that too at the instance of accused themselves. He hashanded over a compilation of documents

or incriminatory material collectedduring the investigation allegedly showing the involvement of the concernedaccused, for our perusal. He has also

handed over the Case Diary and twoRegisters of documents recovered during the search from the accused persons. Hefurther states that the subject

FIR in respect of which action is being takenagainst the accused was registered on 8th January, 2018 for offences punishableunder 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 ofnow there are 22 accused named, including the 5 accused referred to in thispetition who

were added as accused on 22nd August, 2018 for the reasons stated in the Case Diary, and only thereafter the investigating team proceeded toarrest

them on 28th August, 2018. He submits that the Investigating Agency hadto proceed against the named accused after the revelation of their

involvementwith the banned organization, as was noticed from the documents and material recovered during the searches conducted in respect of the

premises of co-accused. The named accused (A16 to A20) cannot be heard to question that part of the investigation regarding the manner of search.

which the concernedco-accused alone may do at the appropriate stage before the jurisdictional court.

17.He submits that even though the Court may have jurisdiction to examine allaspects of the matter, considering the fact that the investigation is at

anascent stage and is being done by senior police officials under the supervision of their superior officers up to the level of Commissioner of Police, it is

not a case for grant of reliefs as prayed. The accused personsmust take recourse to the remedy prescribed by law instead of directlyapproaching this

Court under Article 32 of the Constitution and can getcomplete justice from the jurisdictional Court. He submits that in criminalmatters, interference in

the garb of public interest litigation at the instanceof strangers has always been discouraged and rejected by this Court. Further, the present petition is

nothing but abuse of the process and as the namedaccused Varavara Rao, Sudha Bharadwaj and Gautam Navalakha have filed theirrespective

petitions before the jurisdictional High Courts, which proceedings are pending for adjudication, the same persons have now filed affidavits before this

Court for transposing them as petitioners and allowing them to adopt the prayer of the writ petitioners. They ought to elect their remedy to be

pursuedand in particular, before the jurisdictional Courts. Therefore, this petitionmust be discouraged. He submits that the modified relief claimed in

the writpetition to release the accused persons is in the nature of habeas corpus whichis not maintainable in respect of the arrest made during the

ongoinginvestigation. He submits that no right can enure in favour of the accused toseek relief of investigation of the crime through an independent

agency and forthe same reason, even strangers to the offence under investigation or nextfriends of the accused, cannot be permitted to pursue such a

relief in theguise of PIL. He submits that the foundation of the present writ petition is the perception of the writ petitioners (next friends) that the

accused areinnocent persons. He submits that that basis is tenuous. For, there are enoughexamples of persons having split personality. In a criminal

case, the action isbased on hard facts collected during the course of investigation and not onindividual perception. He contends that the argument of

the writ petitionersthat liberty of the five named accused cannot be compromised on the basis of surmises and conjectures is wholly misplaced and can

be repelled on the basisof the material gathered during the ongoing investigation indicating the complicity of each of them. He relies on Section 41 of

Cr.P.C. which enables the police to arrest any person against whom a $\tilde{A}\phi\hat{a}, \neg \mathring{A}$ "reasonable suspicion $\tilde{A}\phi\hat{a}, \neg$ exists that he has committed a cognizable offence.

Therefore, the integrity of theInvestigating Agency cannot be doubted as there is enough material against eachof the accused. He further submits that

the argument of the writ petitionersbased on the circumstances pressed into service for a direction to change theInvestigating Agency is completely

against the cardinal criminal jurisprudenceand such a relief is not available to persons already named as accused in acrime under investigation.

18.Mr. Harish Salve, learned senior counsel appearing for the complainant at whoseinstance FIR No.4/2018 came to be registered at Vishram Bagh

Police Station(Pune City), submits that there is no absolute right, much less a fundamental right, to market ideas which transcend the line of unlawful

activity. The Courtmust enquire into the fact as to whether the investigation is regarding suchunlawful activity or merely to stifle dissenting political

voice. If it is theformer, the investigation must be allowed to proceed unhindered. In any case, the affected persons, namely, the named accused must

take recourse to remedyprescribed by law before the jurisdictional Court as it is not a case ofunlawful detention or action taken by an unauthorized

Investigating Agency.

According to him, the Court must lean in favour of appointing a SIT or an independent Investigating Agency or Court monitored investigation only when

the grievancemade is one about the investigation being derailed or being influenced by someauthority. In the present case, the grievance is limited to

improper arrest ofindividuals without any legal evidence to indicate their complicity in the commission of any crime or the one registered in the form of

FIR No.4/2018. The allegation of motivated investigation is without any basis. No assertion is made by the writ petitioners or the named accused that

the investigation by thePune City Police is mala fide in law. If the allegation is about mala fide infact, then the material facts to substantiate such

allegation, including namingof the person at whose instance it is being so done, ought to have beenrevealed. That is conspicuously absent in this case.

According to the learnedcounsel, the reliefs claimed in the writ petition do not warrant any indulgenceof this Court.

19. After the high-pitched and at times emotional arguments concluded, each sidepresenting his case with equal vehemence, we as Judges have had to

sit back andponder over as to who is right or whether there is a third side to the case. The petitioners have raised the issue of credibility of Pune

Policeinvestigating the crime and for attempting to stifle the dissenting voice of the human rights activists. The other side with equal vehemence argued

that theaction taken by Pune Police was in discharge of their statutory duty and wascompletely objective and independent. It was based on hard facts

unraveledduring the investigation of the crime in question, pointing towards the sinister ploy to destabilize the State and was not because of difference

inideologies, as is claimed by the so called human rights activists.

20. After having given our anxious consideration to the rival submission and uponperusing the pleadings and documents produced by both the sides,

coupled withthe fact that now four named accused have approached this Court and have askedfor being transposed as writ petitioners, the following

broad points may arisefor our consideration:-

- (i)Should the Investigating Agency be changed at the behest of the named fiveaccused?
- (ii)If the answer to point (i) is in the negative, can a prayer of the same naturebe entertained at the behest of the next friend of the accused or in the

garbof PIL?

(iii)If the answer to question Nos.(i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing

SpecialInvestigating Team or directing the Court monitored investigation by anindependent Investigating Agency?

(iv)Can the accused person be released merely on the basis of the perception of hisnext friend (writ petitioners) that he is an innocent and law abiding

person?

- 21. Turning to the first point, we are of the considered opinion that the issue isno more res integra. In Narmada Bai Vs. State of Gujarat and Ors.
- (2011) 5 SCC79, in paragraph 64, this Court restated that it is trite law that the accusedpersons do not have a say in the matter of appointment of

Investigating Agency. Further, the accused persons cannot choose as to which Investigating Agencymust investigate the offence committed by them.

Paragraph 64 of this decisionreads thus:-

 \tilde{A} ¢â,¬Å"64. \tilde{A} ¢â,¬Â¦.. It is trite law that accused persons do not have a say in the matter ofappointment of an investigation agency. The accused persons cannot

choose as towhich investigation agency must investigate the alleged offence committed bythem.ââ,¬â€€

(emphasissupplied)

22. Again in Sanjiv Rajendra Bhatt Vs. Union of India and Ors. (2016) 1 SCC 1, the Court restated that the accused had no right with reference to the

manner ofinvestigation or mode of prosecution. Paragraph 68 of this judgment reads thus:

 \tilde{A} ¢â,-Å"68.The accused has no right with reference to the manner of investigation or modeof prosecution. Similar is the law laid down by this Court in

Union of India v.W.N. Chadha 1993 Supp.(4) SCC 260, Mayawati v. Union of India(2012) 8 SCC 106, Dinubhai Boghabhai Solanki v. State of

Gujarat (2014) 4 SCC 626, CBI v.Rajesh Gandhi (1996) 11 SCC 253, Competition Commission of India v. SAIL (2010)10 SCC 344 and Janta Dal v.

H.S. Choudhary (1991) 3 SCC 756. ââ,¬â€<

(emphasissupplied)

23.Recently, a three-Judge Bench of this Court in E. Sivakumar Vs. Union of Indiaand Ors. (2018) 7 SCC 365, while dealing with the appeal

preferred by theââ,¬Å"accusedââ,¬â€≀ challenging the order of the High Court directing investigation byCBI, in paragraph 10 observed:

 \tilde{A} ¢â,-Å"10.As regards the second ground urged by the petitioner, we find that even thisaspect has been duly considered in the impugned judgment. In

paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai SolankiVs. State of Gujarat Supra @ Footnote 5, wherein it

has been held that in awrit petition seeking impartial investigation, the accused was not entitled toopportunity of hearing as a matter of course.

Reliance has also been placed inNarender G. Goel Vs. State of Maharashtra (2009) 6 SCC 65, in particular, paragraph 11 of the reported decision

wherein the Court observed that it iswell settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to

CBI which, as aforesaid, was imperative inthe peculiar facts of the present case, the fact that the petitioner was notimpleaded as a party in the writ

petition or for that matter, was not heard, inour opinion, will be of no avail. That per se cannot be the basis to label theimpugned judgment as a

nullity.ââ,¬â€∢

24. This Court in the case of Divine Retreat Centre Vs. State of Kerala and Ors. (2008) 3 SCC 542, has enunciated that the High Court in exercise of

itsinherent jurisdiction cannot change the investigating officer in the midstreamand appoint an investigating officer of its own choice to investigate into

acrime on whatsoever basis. The Court made it amply clear that neither theaccused nor the complainant or informant are entitled to choose their

ownInvestigating Agency to investigate the crime in which they are interested. TheCourt then went on to clarify that the High Court in exercise of its

powerunder Article 226 of the Constitution can always issue appropriate directionsat the instance of the aggrieved person if the High Court is

convinced that thepower of investigation has been exercised by the investigating officer malafide.

25.Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights,

WestBengal and Ors (2010) 3 SCC 571. In paragraph 70 of the said decision, the Constitution Bench observed thus:

 \tilde{A} ¢â, $-\hat{A}$ "70.Before parting with the case, we deem it necessary to emphasise that despitewide powers conferred by Articles 32 and 226 of the

Constitution, while passingany order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The

very plenitude of the power underthe said articles requires great caution in its exercise. Insofar as thequestion of issuing a direction to the CBI to

conduct investigation in a caseis concerned, although no inflexible guidelines can be laid down to decidewhether or not such power should be exercised

but time and again it has beenreiterated that such an order is not to be passed as a matter of routine ormerely because a party has levelled some

allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and inexceptional situations where it becomes

necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where

such an order may be necessary for doingcomplete justice and enforcing the fundamental rights. Otherwise the CBI wouldbe flooded with a large

number of cases and with limited resources, may find itdifficult to properly investigate even serious cases and in the process loseits credibility and

purpose with unsatisfactory investigations.ââ,¬â€€

26.In the present case, except pointing out some circumstances to question themanner of arrest of the five named accused sans any legal evidence to

link themwith the crime under investigation, no specific material facts and particularsare found in the petition about mala fide exercise of power by

theinvestigating officer. A vague and unsubstantiated assertion in that regard isnot enough.

Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) $\tilde{A}\phi\hat{a}$, "regarding the manner in which arrest

was made. Further, the plea of the petitioners of lack of evidence against the namedaccused (A16 to A20) has been seriously disputed by the

Investigating Agencyand have commended us to the material already gathered during the ongoinginvestigation which according to them indicates

complicity of the said accused n the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of

arrest because of mere dissentingviews expressed or difference in the political ideology of the named accused,but concerning their link with the

members of the banned organisation and itsactivities. This is not the stage where the efficacy of the material orsufficiency thereof can be evaluated

nor it is possible to enquire into whetherthe same is genuine or fabricated. We do not wish to dilate on this matter anyfurther lest it would cause

prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to

legal remedies before the jurisdictional Court and the sameare pending. If so, they can avail of such remedies as may be permissible inlaw before the

jurisdictional courts at different stages during theinvestigation as well as the trial of the offence under investigation. Duringthe 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 appropriatestage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their

complicity in the subject crime.

27.In view of the above, it is clear that the consistent view of this Court isthat the accused cannot ask for changing the Investigating Agency or to

doinvestigation in a particular manner including for Court monitored investigation. The first two modified reliefs claimed in the writ petition, if they were

to bemade by the accused themselves, the same would end up in being rejected. In thepresent case, the original writ petition was filed by the persons

claiming tobe the next friends of the concerned accused (A16 to A20). Amongst them, SudhaBhardwaj (A19), Varvara Rao (A16), Arun Ferreira

(A18) and Vernon Gonsalves(A17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ

petition. That applicationdeserves to be allowed as the accused themselves have chosen to approach thisCourt and also in the backdrop of the

preliminary objection raised by the Statethat the writ petitioners were completely strangers to the offence underinvestigation and the writ petition at

their instance was not maintainable. Wewould, therefore, assume that the writ petition is now pursued by the accusedthemselves and once they have

become petitioners themselves, the question ofnext friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can

continue to espouse the cause of the affected accused aslong as the concerned accused is not in a position or incapacitated to takerecourse to legal

remedy and not otherwise.

28.Be that as it may, we are conscious of the fact that prayer clause (i) and (ii)also make reference to FIR No.2/2018 registered at Pimpri (Urban)

PoliceStation on 2nd January, 2018. However, that is an independent FIR registered at different police station against the Hindutva right wing leaders

MilindEkbote and Sambhaji Rao Bhide. It is, at best, in the nature of a cross FIR inrespect of the same incident against the alleged aggressors filed by

aneye-witness. Neither the writ petitioners nor the named accused in FIRNo.4/2018 in that sense, can pursue relief in respect of FIR

No.2/2018registered at Pimpri (Urban) Police Station. Admittedly, Criminal Writ PetitionNo.1875 of 2018 has alrady been filed in the Bombay High

Court by Anita R.Sawale (the complainant in FIR No.2/2018) herself for issuing directions to theInvestigating Agency in that crime. As presently

advised, we find force in theargument 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 violentactivities. Further, such activities were purportedly carried out by Kabir KalaManch, 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 roaddramas and distribution of objectionable and provocative pamphlets and booksalso. 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. Taking any

view of the matter, the reliefs claimed in the modifiedprayer clauses (i) and (ii) in respect of FIR No.2/2018, cannot be takenforward at the instance of

the named five accused persons in FIR No.4/2018registered at Vishram Bagh Police Station (Pune City) on 8th January, 2018 orfor that matter their

next friends.

29.A fortiori, it must follow that the writ petitioners, who are strangers to theoffence under investigation (in FIR No.4/2018); and since they are

merelyespousing the cause of the arrested five accused as their next friends, cannotbe heard to ask for the reliefs which otherwise cannot be granted

to the accused themselves. What cannot be done directly, cannot be allowed to be done indirectly even in the guise of public interest litigation.

30.We find force in the argument of the State that the prayer for changing theInvestigating Agency cannot be dealt with lightly and the Court must

exercisethat power with circumspection. As a result, we have no hesitation in taking aview that the writ petition at the instance of the next friend of

the accusedfor transfer of investigation to independent Investigating Agency or for Courtmonitored investigation cannot be countenanced, much less

as public interestlitigation.

31.As the answer to point Nos. (i) and (ii) are in the negative and against thewrit petitioners and named accused, we do not wish to dilate on

thecircumstances pointed out to us by the accused regarding the manner of their arrest. For, any observation in that regard by this Court may prejudice

thesaid accused including the co-accused who are not before this Court or the prosecution, which must be eschewed. We are of the considered opinion

that theinvestigation of the offence in question is at a nascent stage and, therefore, it is not desirable to elaborate further as the modified reliefs (i) and

(ii)as prayed cannot be granted for the reasons noted hereinbefore.

32. That takes us to the third modified relief claimed in the writ petition to issue directions that all electronic devices, records and materials,

allegedlyseized from the detenue/accused, be examined by Forensic Science Laboratoryoutside the State of Maharashtra to ensure fair play and in the

interest ofjustice. Even this prayer cannot be taken forward. If any one of the twenty twonamed accused have any grievance or apprehension about

the same, he is free tomake that request before the jurisdictional Court, which can be considered atthe appropriate stage in accordance with law. We

are not expressing any opinioneither way in the present writ petition in that regard.

33. The fourth modified relief is to direct release of the arrested activists fromcustody as per law. The accused persons must pursue this relief before

theappropriate court, which can be considered by the concerned court on its ownmerits in accordance with law. As noted earlier, the concerned

accused personshave already taken recourse to remedy before the jurisdictional High Courts. Hence, they are free to pursue all legal remedies

available to them as per law. We are not expressing any opinion either on the issue of maintainabilitythereof or on merits of the reliefs that may be

claimed therein. All questionswill have to be considered by the concerned Court in accordance with law. Accordingly, even the fourth modified relief

cannot be considered in thepresent writ petition.

34.In view of the above, we have advisedly refrained from dealing with the factualissues raised by the parties and including the named accused

represented bytheir counsel before us, as any observation made by this Court may causeserious prejudice to them or the co-accused who are not

before this Court or, for that matter, the prosecution case, resulting in serious miscarriage of justice. Similarly, we do not wish to burden the judgment

with the otherreported judgments relied upon by the counsel for the parties and dealing withlegal propositions canvassed by them, which are not

necessary to be answered in he present writ petition.

35.We may hasten to mention that we have perused the Registers containing relevantdocuments and the Case Diary produced by the State of

Maharashtra. But we haveavoided to dilate on the factual position emerging therefrom, lest anyprejudice is caused to any accused or the prosecution,

in any manner.

36. The record/files/documents and the Case Diary handed over to the Court in asealed cover by the State be returned to the counsel for the State in a

sealedcover.

37.Accordingly, this writ petition is disposed of with liberty to the concernedaccused to take recourse to appropriate remedy as may be permissible in

law. The interim order passed by this Court on 29th August, 2018 shall continue for a period of four weeks to enable the accused to move the

concerned court. Thesaid proceedings shall be decided on its own merits uninfluenced by anyobservation made in this judgment, which is limited to the

reliefs claimed inthe writ petition to transfer the investigation to an independent InvestigatingAgency and/or Court monitored investigation. The

Investigating Officer is freeto proceed against the concerned accused as per law. All the accompanying applications are also disposed of in terms of

this judgment.

DrDhananjaya Y Chandrachud, J

1The intersection between criminal law and constitutional rights has led to the evolution of judicial precedent which originates in this Court. Our

recentdecisions reiterate the value of individual dignity as essential to ademocratic way of life. But lofty edicts in judicial pronouncements can have

nomeaning to a citizen unless the constitutional quest for human libertytranslates into securing justice for individuals whose freedom is under threatin

specific cases. The role of the Court involves particularly sensitivebalances when the state seeks to curb freedom to investigate perceived

breachesinvolving offences against the state. Custodial interrogation involves thebalancing of diverse and often conflicting values: the effective

administration of criminal justice, an impartial process of investigation and the liberty andreputation of the individual. The invocation of our jurisdiction

under Article32 in this case is founded on the grievance that a group of five human rightsactivists is sought to be persecuted for espousing the cause

of themarginalised which is considered to be $\tilde{A}\phi\hat{a}, \neg \tilde{E}\omega$ unpopular $\tilde{A}\phi\hat{a}, \neg \hat{a}, \phi$. Conscious as the Court isof the public interest in the effective administration of

criminal justice, itcannot be oblivious to the overriding constitutional concern to secure the dignity of the individual. The key to the balance between the

two lies in afair, independent and impartial investigation of crime. As a matter ofprinciple, I am unable to agree with the views expressed by the

learned ChiefJustice and my learned brother Justice AM Khanwilkar.

2On 29 August 2018, the jurisdiction of this Court under Article 32 was invoked by five distinguished academics to seek an \tilde{A} ¢ \hat{a} , $-\tilde{A}$ "independent and

comprehensive inquiry $\tilde{A} \notin \hat{a}$, in the circumstances relating to the arrest of five human rightsactivists on 28 August 2018. The arrests by the Pune police

took placefollowing the raids which were conducted at their homes and offices. Thearrests 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 credibleinvestigation is made by persons nominated by and subject to the supervision ofthis 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

rightsactivists who have been working to protect the rights of the poor and themarginalised, particularly Dalits. This is set forth in the prefatory

avermentsof the writ petition, extracted here:

 \tilde{A} ¢â,-Å"Thecharges against them on the face of it appear indiscriminate, unwarranted, partof a malicious campaign to threaten human rights defenders,

independentjournalists, writers and thinkers in this country, from critiquing thegovernment and its policies and an attempt to muzzle dissent. The

activists whohave been arrested are pro democracy workers who have been leading peacefulpeoples rights based movements especially among the

poor and marginalisedcommunities, Dalits and adivasis, for several years, in different parts of thecountry. 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 urgentintervention by this Honââ,¬â,¢ble Court.ââ,¬â€€

Thegrievance 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.

3First, as to the locus of the petitioners:

(i)The first petitioner ââ,¬" Romila Thapar is an eminent historian and ProfessorEmeritus at Jawaharlal Nehru University. She was selected on two

occasions for the conferment of the Padma Bhushan award by the Union Government, which shedeclined. 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. Herwritings include a book titled, ââ,¬ËœA History of Indiaââ,¬â,¢;

(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 organisationsengaged in women \tilde{A} ϕ \hat{a} , \hat{a} , ϕ s studies. She is a recipient of the Padma Bhushan in 2006, the third highest civilian award from the

Government of India, for hercontribution to social justice and the empowerment of women;

(iii) The third petitioner, Prabhat Pattnaik, was a Rhodes Scholar and is an eminenteconomist who taught at JNU for over three decades. He was

vicechairperson of the Kerala Planning Board and a member of a high-powered UN Task Force on theglobal 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 \tilde{A} ϕ \hat{a} , φ sexpert committee on the proposed Equal

Opportunity Commission. He has heldvisiting appointments at the University of Chicago and in Paris; and

(v)The fifth petitioner, Maja Daruwala, is a member of the Board and a senioradvisor to the Commonwealth Human Rights Initiative. In that capacity

she hasbeen associated with significant research on the implementation of human rightsnorms in the country. She has been working in the field of

advocacy for rightsand social justice for over fourty years.

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

ââ,¬Å"i.Gautam Navalakha (Human Rights activist and journalist New Delhi). He was the President of the Peopleââ,¬â,,¢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 personsabducted by left wing extremists in Chhattisgarh.

ii.Sudha Bharadwaj (Advocate, Chhattisgarh High Court, currently residing inFaridabad) Prominent cause lawyer of Bilaspur High Court who has

representedworkers, poor and marginal farmers and others in Chhattisgarh. She is thenational green secretary of PUCL and since 2017 been teaching

at the NationalLaw University, Delhi. As a member of the Indian Association of Peopleââ,¬â,¢slawyers, advocated Sudha Bharadwaj was vocal against

the arrest of lawyers likeSurendra Gadling in recent times. Sudha Bharadwaj has been a member ofcommittees and provided legal aid and is a

recognised human rights defender.

iii. Varavara Rao (Age 79, based in Hyderabad, political worker, commentator and renownedpoet). He was a professor of English and Telegu

literature.

iv. Arun Ferreira, (Mumbai) Practising as a lawyer since 2015 and a Human Rightsactivist.

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 Satheââ,¬â,¢s ââ,¬Å"Gold from the Graveââ,¬from Marathi to English published in

David Davidarââ,¬â,,¢s ââ,¬Å"A Clutch of Indianmasterpiecesââ,¬â€<.

Threeof the above individuals were prosecuted in the past for offences primarilyunder the Indian Penal Code, 1860, the Arms Act, 1959 and the

UAPA. ArunFerreria is stated to have been acquitted in all eleven cases instituted against him. Vernon Gonsalves was acquitted in seventeen out of

the nineteencases instituted against him (an appeal is pending in one case where he standsconvicted while an application for discharge is pending

before the Gujarat HighCourt in one case). Vara Vara Rao was acquitted in all twenty cases where hewas prosecuted .

5During the course of the hearing, a preliminary objection was raised by MrTushar Mehta, the learned ASG to the maintainability of these

proceedings. Heurged that the petitioners have no locus to question the circumstances relatingto 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 iswide enough to reach out to injustice in any form and

originating in anysource. Securing human liberty and dignity must occupy an important space in the judicial docket. Liberty and freedom are defining

values of ourConstitution. 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 $\tilde{A} \not c \hat{a}, \neg$ " in the present case no less than

fivedistinguished citizens with a track record of service to the nation have doneso ââ,¬" the Court must look beyond locus into the heart of the matter.

Whether thegrievance has any substance is indeed a distinct matter which must be determined objectively. The Court will not interfere in every case

merelybecause it has the jurisdiction. But its duty to scrutinise, perceive andremedy violations of human rights is non-negotiable. However, the issue

oflocus, even in a technical sense, has receded into the background. During thecourse of the hearing, the Court has been apprised that each of the

fiveindividuals who were arrested has subscribed to the averments in the petitionand would stand by what is urged before this Court in protection of

theirrights. The objection to maintainability lacks substance, in either view of thematter.

6A brief historical background is necessary. On 1 January 1818, a few hundredsoldiers of the East India Company comprising of Dalits, tribals,

Muslims, Christians and backward communities defeated the Peshwa army led by Bajirao IIat 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 avictory pillar, the $\tilde{A}\phi\hat{a},\neg \dot{E}\omega Vijay$ Stambh $\tilde{A}\phi\hat{a},\neg \hat{a},\phi$. The pillar is a symbolic rallying groundfor an annual event to mark the victory.

The event represents the aspirationsof those who have been subject to discrimination and prejudice in the caste-ridden structure of our society.

7In keeping with tradition, a public meeting was scheduled to commemorate the 200th anniversary of the Bhima-Koregaon victory on 31 December

2017. Amongthose who were associated with the event were two judges: one of them, JusticePB Sawant is a former judge of this Court. Justice BG

Kolse Patil is a formerjudge 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 RepublicanParty. The event was titled:

 \tilde{A} ¢â,¬Å"Bhima-KoregaonShourya Din \tilde{A} ¢â,¬" Elgar Parishad \tilde{A} ¢â,¬. The petitioners claim that \tilde{A} ¢â,¬ \tilde{E} œElgar \tilde{A} ¢â,¬ \tilde{a} ,¢ is a clarioncall. The state reads into it a sinister

symbolism of an attack. On 1 January2018, a communal disturbance took place at Bhima-Koregaon when, as theallegation goes, a group of Dalits was

attacked in the process of offering asalutation to the victory pillar. News of the incident spread across the stateof Maharashtra, resulting in a violent

agitation in the state.

8Following these incidents, a First Information Report in regard to the incidentwas lodged on 8 January 2018 by one Tushar Damgude. The FIR

specifically namesthe following individuals:

iSudhir Dhawale; ii Sagar Gorakhe; iii Harshali Potdar; iv Dipak Dhengale; vJyoti Jagtap; and vi Ramesh Gaychore. Sudhir Dhawale was arrested on

6 June2018. As the investigation progressed, Section 120B of the Penal Code was addedon 6 March 2018 and two more persons ââ,¬" Surendra

Gadling and Rona Wilson - were suspected to be involved. On 17 April 2018, the Pune police conducted searchesat the residences and offices of the
following persons:
1Rona Wilson, a resident of Delhi;
2Surendra Gadling, a resident of Nagpur;
3Sudhir Dhawale and Harshali Potdar, residents of Mumbai;
4Sagar Gorakhe, a resident of Pune;
5Dipak Dhengale, a resident of Pune; and
6Ramesh Gaychore and Jyoti Jagtap, residents of Pune
Inthe counter affidavit which has been filed by the Assistant Commissioner ofPolice, Pune city, it has been stated that the material retrieved from
thecomputers, laptops, pen drives and memory cards of the above accused personsimplicated them as active members of the Communist Party of
India (Maoist), abanned organisation, and reflected a design of being involved in the commission of offences having the potential to destabilise the
country. Based on theinvestigation, 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;
(ii)Rona Wilson; (iii)Shoma Sen;
(iii)Shoma Sen;
(iii)Shoma Sen; (iv)Mahesh Raut;
(iii)Shoma Sen; (iv)Mahesh Raut; (v)Comrade M. alias Milind Teltumbade (underground);
(iii)Shoma Sen; (iv)Mahesh Raut; (v)Comrade M. alias Milind Teltumbade (underground); (vi)Comrade Prakash alias Navin alias Rituparn Goswami (underground);
(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
(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.
(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. On6 June 2018 five persons were arrested namely:
(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. On6 June 2018 five persons were arrested namely: (i)Surendra Gadling;
(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. On6 June 2018 five persons were arrested namely: (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. On6 June 2018 five persons were arrested namely: (i)Surendra Gadling; (ii)Rona Wilson; (iii)Sudhir Dhawale; (iv) Shoma Sen; and (v) Mahesh Raut. Thecounter affidavit filed by the Assistant Commissioner of Police states that itis on the basis of the material recovered during the
(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. On6 June 2018 five persons were arrested namely: (i)Surendra Gadling; (ii)Rona Wilson; (iii)Sudhir Dhawale; (iv) Shoma Sen; and (v) Mahesh Raut. Thecounter affidavit filed by the Assistant Commissioner of Police states that itis on the basis of the material recovered during the course of the

and which would be placed for consideration and perusal of this Hon ââ,¬â,¢ble Court in a sealed cover], the following persons were also clearly found to be a part of thecriminal conspiracy and their role was not merely peripheral role but they werefound to be playing a very vital role in the criminal

offences committed and/orplanned by others. Based upon the said incriminating material, the followingpersons came to be arrested on 28.8.2018 and

searches were conducted at theirresidential/work places in a similar fashion, under videography in presence ofindividual Punchas who were

Government officers.

1Vara Vara Rao R/o Hyderabad

2Arun Ferreira R/o Thane

3Vernon Gonsalves R/o Mumbai

4Sudha Bhardwaj R/o Faridabad

5Gautam Navlakha R/o Delhiââ,¬â€<

The counter alleges that each of the five individuals is found to be working for and to be an active member of a $\tilde{A}\phi\hat{a}, \neg \tilde{A}$ "banned terrorist organisation $\tilde{A}\phi\hat{a}, \neg \tilde{A}\phi\hat{a}, \neg \tilde{A}\phi\hat{a$

the CommunistParty of India (Maoist). Paragraph 26 of the counter affidavit states that eachof them has been found, from the material gathered from

others duringinvestigation, to be involved in unlawful activities which are described thus:

 \tilde{A} ¢â,-Å"Thematerial gathered from others based upon which the five accused persons namedhereinabove are arrested, clearly show that they were

involved in selecting and encouraging cadres to go underground in $\tilde{A}\phi\hat{a}$, $\neg \tilde{E}$ estruggle area $\tilde{A}\phi\hat{a}$, $\neg \hat{a}$, ϕ , mobilizing and distributing money, facilitating selection and

purchase of arms, deciding therates of such arms into India for its onward distribution amongst the cadres. Some of them have suggested training and

laying of booby traps and directionalmines. They are also found to be providing strategic inputs in furtherance of the objective of armed rebellion as per

the strategic document of the bannedterrorist organisation namely Communist Party of India (Maoist).ââ,¬â€€

Thepetition was initially taken up for hearing on 29 August 2018. Interimdirections to place the five individuals under house arrest were issued, interms

of the request made by their counsel:

ââ,¬Å"Wehave considered the prayer for interim relief. It is submitted by Dr. AbhishekManu Singhvi, learned senior counsel appearing for the petitioners

that inpursuance of the order of the High Court, Mr. Gautam Navalakha and Ms. SudhaBharadwaj have been kept under house arrest. It is suggested

by him that as aninterim measure, he has no objection if this Court orders that Mr. VaravaraRao, Mr. Arun Ferreira and Mr. Vernon Gonsalves. if

arrested, they are keptunder house arrest at their own homes. We order accordingly. The house arrestof Mr. Gautam Navalakha and Ms. Sudha

Bharadwaj may be extended in terms of ourorders.ââ,¬â€€

Sincethe case was being heard, the house arrest has since been extended by theinterim directions of this Court of 6 September 2018 and 17

September 2018. During the course of the hearing, permission has been sought to formally amendthe writ petition to seek the constitution of a Special

Investigating Teamunder the directions of this Court, so as to ensure an independentinvestigation.

9Unfolding his submissions, Dr Abhishek Manu Singhvi, learned senior counselstated that a First Information Report in respect of the violence which

tookplace on 1 January 2018 (FIR 2/2018) was lodged by Anita R Sawale at PS Pimprion 2 January 2018. The FIR alleges that violence was

unleashed against Dalitsby a mob armed with swords, rods and other weapons. The FIR specifically namesSambhaji 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 isstated to have secured bail within a month of his arrest. The FIR relates tooffences under the Penal Code, Arms Act

and the SC/ST Act .

Noprovision of the UAPA has been invoked. Since the police were allegedly notinvestigating the FIR, a writ petition has been filed before the Bombay

HighCourt . FIR 4/2018 was lodged on 8 January 2018 at PS Vishrambagh by TusharDamgude who is alleged to be a self-professed follower of

Sambhaji Bhide. TheFIR adverts to a speech delivered by Sudhir Dhawale at the Elgar Parishad on 31December 2017 in which allegedly an

incendiary speech was made, with thefollowing lines:

ââ,¬Å"JabJulm ho to Bagawat Honi Chahiye shahar mein, Jab Julm Ho to bagawat honichahiye shaharmein, aur agar bagawat na ho to behatar he ke,ye

raat dhalane sepehle ye shahar jalkar rakh ho jaye, yesatra hein, ye satra ki title hi, apneaap mein, ladhai k ailan hein, ye nayi peshwai ko hamko

shamshan ghat mein,Kabrastaan mein dafnana hein.ââ,¬â€‹

DrSinghvi submits that these lines are but a translation of Bertolt Brechtââ,¬â,¢splay, ââ,¬Å"The Good Person of Szechwanââ,¬, (1942). Notably, according

to the submission, FIR 4/2018 does not allude to any conspiracy to attack the PrimeMinister. It has been submitted that it is undisputed that none of

theactivists 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 1January 2018. Moreover, according to the submission, the State of Maharashtraopposed the anticipatory bail of Milind Ekbote on the

ground that the violencewas committed as a part of a pre-planned conspiracy by him and by others. Thearrests of the five persons were affected

nearly nine months thereafter.

10The next limb of the submission of Dr Singhvi is that certain letters which arealleged to have been authored by the arrested activists are ex-

faciefabricated. 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 atelevision programme called $\tilde{A}\phi\hat{a}, \neg \hat{A}$ "Truth v Hype $\tilde{A}\phi\hat{a}, \neg$ on NDTV on 1 September 2018 and stated that the letters which were

placed before the media by senior policefunctionaries were yet to be verified. According to the petitioners, thirteensuch alleged letters were leaked to

the media by the police during the courseof press briefings. They are now available in the public domain. These letters, it has been submitted, do not

find mention even in the transit applicationsfiled by the Pune police before the concerned court. The letters are unsignedand do not bear any

identifiable particulars including e-mail addresses orheaders. Curiously, the recovery is stated to have been made from theelectronic devices of a third

person who is neither the author nor theaddressee of the letters. Hence, it has been urged that:

(i)While it was alleged that a plot against the Prime Minister has been uncoveredin 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 thefact that no fresh FIR has been registered and the investigation

continues toremain 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 \tilde{A} ¢â, \neg Å"Comrade

Prakashââ,¬. TheSessions Court at Gadchiroli in its judgment dated 7 March 2017 convicting GNSaibaba in Sessions Case 13/2014 held that he had

used the pseudonym $\tilde{A}\phi\hat{a}$, $\neg \tilde{E}$ Φ Prakash $\tilde{A}\phi\hat{a}$, $\neg \hat{a}$, ϕ in letters scribed by him. It is a matter of record that Saibaba has beenlodged in Nagpur Central Jail since 7

March 2017 and hence the alleged lettersattributed to him after that date are ex-facie fabricated.

DrSinghvi has drawn the attention of the court to the consistent pattern andhistory of the police targeting human rights activists and incarcerating

themby foisting false criminal cases. This is buttressed by adverting to the prosecutions launched against three of the August 2018 detenues. Vara

Vara Raowas implicated in 25 cases out of which 13 ended in acquittal, 3 in dischargeand 9 in the withdrawal of the prosecution. He has not been

convicted in anycase and is 79 years of age. Arun Ferreira has been acquitted in all the 11cases in which he was implicated. Vernon Gonsalves has

been acquitted in 17 outof the 19 cases in which he was accused; a discharge application is pending inone case while an appeal against conviction in

another case is pending beforethe Nagpur bench of the High Court, where he has already served his sentence.

11During the course of his submissions, Dr Singhvi urged that there was a grossviolation of law rendering the arrest, search and seizure unlawful. The

panchwitnesses were $\tilde{A} \not \in \hat{a}$, $\neg \tilde{E} \not = \hat{A} \not= \hat{A} \not=$

with the Pune policeand are stock witnesses. Hence it has been submitted that there has been aclear 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 August2018 that her remand was necessary since other individuals who were arrested inJune 2018 had made disclosure

statements in regard to incitement of the riotsin Koregaon. Significantly, no such disclosure has been made by the arrestedpersons nor is there a

mention of a Maoist conspiracy in the alleged letters orin the remand application.

12In summation, Dr Singhvi urged that each of the persons who were arrested on 28August 2018 is an active defender of human rights. They have

taken a positionon human rights violations. The submission is that this targeted persecution ismeant to strike fear amongst human rights \tilde{A} ¢ \hat{a} , \tilde{a} , ¢ lawyers,

activists and writers to deterthem from speaking against or critiquing governmental policies and policeactions. Persecution of this nature would, it has

been urged, shake thefoundation of the rule of law and render the freedoms guaranteed by theConstitution illusory. Learned counsel submitted that the

purpose of theseproceedings is not to thwart an investigation but to ensure that theinvestigation is fair and impartial. It was urged that in a long line

ofprecedent, this Court has ordered the constitution of Special InvestigationTeams (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

anythingbut fair and impartial. The targeting of human rights activists for theiropposition to the governing regime implicates a serious violation of

democraticvalues and necessitates either the setting up of a SIT or the monitoring of theinvestigation by this Court.

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

(i)No interference by the Court is permissible in a criminal case in the garb of apublic interest litigation. A PIL is not maintainable at the behest of a

thirdperson for seeking reliefs which can be granted only under Sections 438 or 439and Section 482 of the Criminal Procedure Code (Rajiv Ranjan

Singh ââ,¬ËœLalanââ,¬â,¢(VIII) v Union of India (2006) 6 SCC 613, Gulzar Ahmed Azmi v Union of India(2012) 10 SCC 731, Simranjit Singh Mann v

Union of India (1992) 4 SCC 653 and Ashok Kumar Pandey v State of West Bengal (2004) 3 SCC 349;

(ii)There is an abuse of process in the present case since three of the arrestedpersons ââ,¬" Vara Vara Rao, Sudha Bhardwaj and Gautam Navlakha

have filedpetitions before the jurisdictional High Courts which are pending adjudication. Hence it would be impermissible to allow their prayer for

transposing them oradopting the averments in the petition (Pratibha Ramesh Patel v Union of India(2016) 12 SCC 375, Udyami Evam Khadi

Garmodyog Welfare Sanstha v State of UP (2008) 1 SCC 560);

(iii) A PIL under Article 32 would not be maintainable for the purpose of seekingrelief 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 thepresent proceedings under Article 32 are not maintainable (State of

Maharashtrav Tansen Rizwan Siddiquee (2018) 10 SCALE 711);

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

(vi)The investigation in the present case is being conducted responsibly andimpartially by an officer of the rank of an Assistant Commissioner of

Police. Theinvestigation is being carried out under the supervision of a DeputyCommissioner of Police and is being monitored by the Joint

Commissioner of Police who is of the rank of an Additional Director General.

14While entertaining these proceedings, this Court is conscious of the fact thatordinarily, 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 ofinvestigation such as remand, bail (including anticipatory bail) and quashingof proceedings, recourse must be taken to the provisions of the

Code. Theseprinciples have been highlighted in the decisions to which a reference has beenmade by the ASG. In Rajiv Ranjan Singh (supra) the trial

had commenced in acriminal case involving a charge of amassing wealth disproportionate to theknown source of income of a public servant. This

Court held that a PIL is notmeant to advance a political agenda and would be alien to pending criminal proceedings. The petitioners were not de facto

complainants and if at all theyhad a grievance regarding the removal of a public prosecutor, they should havemoved 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 bydenying a fair trial. In Gulzar Ahmed Azmi (supra) a petition under Article 32sought an investigation of all

bomb blast cases since 2002 with a direction forthe 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 theindividual against whom a criminal proceeding is lodged to work out his or herremedy. In Simranjit

Singh Mann (supra) the Court declined to exercise its jurisdiction under Article 32 where the petitioner did not seek to enforce hisown fundamental

rights but the fundamental rights of two $\tilde{A}\phi\hat{a}$, $\neg \hat{A}$ "condemned convicts $\tilde{A}\phi\hat{a}$, $\neg who had not themselves complained of a violation. This Court noted that it wasnot$

open to $\tilde{A}\phi\hat{a}, \neg \hat{A}$ and every person $\tilde{A}\phi\hat{a}, \neg$ to challenge a conviction and unless the aggrieved individual suffers from a disability recognised by law, it would

be unsafeand hazardous to allow a third party or stranger to question the correctness of aconviction and sentence imposed after trial. These principles

were alsoadverted to in the earlier decision in Ashok Kumar Pandey (supra). They arewell settled. As a court which is governed by precedent, we

are bound by themand by a consistent line of authority which requires that during the course of investigation, it is to the competent court that an

accused must ordinarilyturn for the remedies that are available under substantive or procedural provisions of the criminal law.

15But 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

invokednot only by the petitioners but by the five individuals who were arrested on 28August 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 arrestedpersons be placed under house arrest. At the earliest

possible point in time, these five individuals have moved this Court indicating that they abide by theaverments and reliefs sought in the petition and seek

that they should betransposed as petitioners under Article 32. The petitioners have not in their submissionssought recourse to the jurisdiction of this

Court for espousing a remedy whichis 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 humanrights $\tilde{A} \notin \hat{a}, \neg \hat{a}, \notin \text{violations}$. When the petition was initially filed, the relief which was sought

was in regard to the circumstances relating to the arrest of the humanrig0hts activists. By an application for amendment, the reliefs have been sought

to be amended to inter alia seek the constitution of a SpecialInvestigating Team (to be monitored by this Court). For clarity, the abovereliefs are

extracted below:

 \tilde{A} ¢â,¬Å"i)Issue an appropriate writ, order or direction for setting up of a SpecialInvestigating Team (SIT) comprising of senior police officers with

impeccablecareer records of professionalism, integrity and independence, reporting directly to this HonÃ ϕ â,¬â, ϕ ble Court, for conducting a fair and

independentinvestigation and inquiry into the offences stated in the zero FIR lodged atPimpri police station on 02.01.2018 (now Cr.Case No 2/2018),

and the FIR 4/2018lodged at Vishrambagh police station on 08.01.2018 by Tushar Damgude, and allother related matters and allegations; or

ii)Issue an appropriate writ, order or direction for the investigation into theoffences 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 policestation on 08.01.2018, and all other related matters and

allegations, to becarried out by an independent agency which shall be monitored directly by this Hon \tilde{A} ¢ \hat{a} , $\neg \hat{a}$,¢ble Court through regular filing of status

reports of the investigation bythe investigating agency;ââ,¬â€€

16Though the prayer seeking the appointment of a Special Investigating Team issought to be introduced by way of an application for amendment, it is

necessaryto note that in the petition as it was originally filed, it has been statedthat the object of the petition is not to stop an investigation but to

ensureanindependent and credible investigation. The relevant averment in that regardreads as follows:

 \tilde{A} ¢â,¬Å"Petitionersare seriously concerned about the erosion of democratic values and are movingthis Hon \tilde{A} ¢â,¬â,¢ble Court not to stop investigation into

allegations but to ensureindependentand credible investigation by such persons as may be deemedfit undersupervision of this $Hon\tilde{A}\phi\hat{a}, \neg\hat{a}, \phi$ ble Court.

Anything short of this will damage thefabric of nation irreparably.ââ,¬â€((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 havealready been made in the petition as it was originally filed.

17This Court, as a constitutional adjudicator, has been entrusted with thejurisdiction under Article 32 to secure the fundamental freedoms guaranteed

byPart III of the Constitution. While the discipline of the law of criminalprocedure must at all times be kept in view, it cannot be gainsaid that

theprotection of fundamental liberties is a subject so integral to democraticconstitutional values that technicalities should not be allowed to override

thecause of substantive justice. The court must undoubtedly tread withcircumspection for in the guise of seeking access to its wide jurisdictionunder

Article 32, the normal remedies under the criminal law should not bedisplaced. Again, as the court has repeatedly emphasised, public interestlitigation

should not become a weapon for settling political scores or ofpursuing extraneous ends. In the present case, we have no manner of doubt thatthe

initiation of the proceedings under Article 32 is not motivated byextraneous 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

inextraordinary circumstances where they claim that a group of human rightsactivists has been targeted by the state police. Each of those five

individualshas joined in these proceedings.

18Over the course of the last decade, the jurisdiction of this Court has evolvedunder Article 32 to order the constitution of a SIT. In National Human

RightsCommission v State of Gujarat, (2009) 6 SCC 342 a SIT was constituted in amatter involving a serious element of communal disharmony.

Further directionswere issued by this Court for regular status reports to be filed by the SIT(NHRC v State of Gujarat (2009) 6 SCC 767).In Ram

Jethmalani v Union of India,(2011) 8 SCC 1 this Court observed that in several instances in the past, whenthe issues were of a complex nature, yet

requiring the intervention of the Court, SITs were ordered to be constituted to enable the Court, the Uniongovernment and other organs of the state to

fulfil their constitutionalobligations. In Common Cause v Union of India, (2017) 3 SCC 501 the test forthe 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, (2018)3 SCC 664 an independent and impartial SIT was constituted where it was foundthat the investigation into the

murder of a family was lackadaisical and thereal 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 exercise of this jurisdiction meets exigencies which arise in unforeseen situations.

warranting the intervention of this Courtunder Article 142. While the Court does not determine the course of theinvestigation, it acts as a watchdog to

ensure that a fair and impartialinvestigation takes place. A fair and independent investigation is crucial tothe preservation of the rule of law and, in the

ultimate analysis to libertyitself.

19Mr 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 hasadvisedly 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

jurisdictionunder Article 32 is not hedged in by technicalities nor would it be wise toconfine 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

PartIII of the Constitution is in issue.

20Besides the jurisdiction to order the constitution of a SIT, the proceedings of this Court are replete with instances where an investigation has been

monitoredunder the authority of this Court. In Vineet Narain v Union of India, (1996) 2SCC 199 this Court in the context of the widely publicised Jain

Hawalatransactions case ordered a court monitored investigation to ensure thatgovernment agencies discharged their duties and functions bearing in

mind thetenets of equality and the rule of law. In doing so, this Court emphasised theneed to retain public confidence in the process of investigation. In

BabubhaiJamnadas Patel v State of Gujarat, (2009) 9 SCC 610 a two judge Bench, whilenoting that investigation of offences is normally the function

of theinvestigating agency emphasised that where extraordinary facts or situations are involved, it is the duty of the High Courts and of this Court to

interveneto ensure that the rights of citizens are duly protected:

 $\tilde{A}\phi\hat{a}$, $-\mathring{A}$ "Thecourts, and in particular the High Courts and the Supreme Court, are thesentinels of justice and have been vested with extraordinary powers

of judicialreview and supervision to ensure that the rights of the citizens are dulyprotected.ââ,¬â€€

InCentre for Public Interest Litigation v Union of India, (2011) 1 SCC 560 acourt monitored investigation was ordered in a public interest litigation

whichfocused on the need for a thorough and impartial investigation into the 2GSpectrum scam. In Bharati Tamang v Union of India, (2013) 15 SCC

578 this Courtheld that in an appropriate case, or when exceptional circumstances have beenmade out, the jurisdiction under Article 32 can be

exercised to constitute aSIT or to transfer the investigation to a Central Agency and monitor it, oreven to order a de novo investigation into criminal

cases.

21With this body of precedent on the subject, the maintainability of a prayer forrelief, seeking that the investigation should be either monitored by this

Courtor should be entrusted to an independent SIT under the directions of this Courtcannot be in doubt. Though wide-ranging submissions have been

urged before thisCourt on merits, it is necessary that the court must eschew a detailed ormeticulous examination of the material produced by the ASG

together with thecase diary, particularly when the investigation is in progress. The expression of a finding by this Court would affect the administration

of criminal justiceor 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 beenmade out for the constitution of a SIT and matters having a bearing on thatdecision.

22I must, at the outset, dwell on the fairness of the manner in which the policehave approached this investigation. On 29 August 2018, this Court

issuednotices 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 Commissionerof Police proclaiming that the Pune police had more

than sufficient evidenceagainst the five individuals whose transit remand was stayed by this Courtwhile ordering them to be placed under house arrest.

This is disconcertingbehaviour $\tilde{A} \not \in \hat{a}$, " the Joint Commissioner sought in this oblique manner to respond to the interim order of this Court by recourse to the

electronic media. On 31August 2018, a press conference was addressed by a team of senior policeofficers headed by Shri Parambir Singh, ADG

(Law and Order), Maharashtra. During the course of the press conference letters (many of which should formpart of the case diary) were selectively

flashed and read out. According to thepetitioners they were also leaked to the media. A video of the press conference annexed in the form of a CD

at Annexure R-2 of the rejoinder and has beenuploaded on

https://www.youtube.com/watch?v=PCVKfstx2Qc.On 1 September 2018 the ADG (Law and Order) appeared on a television programmetitled

 $\tilde{A}\phi\hat{a}_{,}$ - \hat{A} "Truth v Hype $\tilde{A}\phi\hat{a}_{,}$ - on NDTV, during the course of which he is stated to haveagreed that the letters which had been read out by him were still

undergoingforensic analysis together with the electronic devices. The CD of the programmeis 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 presentcase took place on 6 June 2018. On 8 June 2018 an

alleged letter was releasedby the police to the media a little before the proceedings for remand beforethe competent court (in the June arrests).

alleging that the arrested personswere plotting to attack the Prime Minister. On 4 July 2018 when the arrestedpersons were to be produced before the

Court in Pune, a letter attributed toSudha Bhardwaj was sensationally telecast on a television channel linking herwith the unlawful activities of certain

groups. A serious grievance has beenmade 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 movedbefore the CJM, Faridabad by the Pune police.

23In Rajendran Chingaravelu v RK Mishra, (2010) 1 SCC 457 this Court deprecated the tendency of the police to reveal details of an investigation to

the mediaeven before the completion of the investigation. This Court observed:

 \tilde{A} ¢â,¬Å"21.But the appellant \tilde{A} ¢â,¬â,¢s grievance in regard to media being informed about theincident 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 claimcredit for imaginary investigational breakthroughs should be

curbed. Even wherea suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the Investigation Officers to

represent to the mediathat the person was arrested with much effort after considerable investigationor a case. Similarly, when someone voluntarily

declares the money he iscarrying, media is informed that huge cash which was not declared wasdiscovered by their vigilant investigations and

thorough checking. Prematuredisclosures or $\tilde{A}\phi$ a, $\neg \tilde{E}$ celeakage $\tilde{A}\phi$ a, $\neg a, \phi$ to the media in a pending investigation will not only jeopardise and impede further

investigation, but many a time, allow the realculprit to escape from law...ââ,¬â€((emphasis supplied)

24This facet of the case of serious concern. The manner in which the JointCommissioner of Police and the Additional Director General of Police

(Law andOrder), Maharashtra have selectively disclosed purported details of theinvestigation to the media and on television channels casts a cloud on

theimpartiality of the investigative process. In its 2010 decision in Rajendran(supra) this Court was constrained to take note of this growing tendency

on thepart of investigating agencies. The use of the electronic media by theinvestigating arm of the State to influence public opinion during the

pendencyof an investigation subverts the fairness of the investigation. The police arenot adjudicators nor do they pronounce upon guilt. In the present

case, policebriefings to the media have become a source of manipulating public opinion bybesmirching 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. Theinvestigation commenced as an enquiry into the Bhima-Koregaon violence. Thecourse of the investigation was sought to be deflected by

alleging (in thecourse 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. Suchallegations require responsible attention and cannot be bandied about by policeofficers in media briefings. But during the course of the

present hearing, noeffort has been made by the ASG to submit that any such investigation is beingconducted in regard to the five individuals. On the

contrary, he fairly statedthat there was no basis to link the five arrested individuals to any suchalleged plot against the Prime Minister. Nor does the

counter affidavit makesany averment to that effect. All this has certainly a bearing on the basicquestion as to whether the Maharashtra police can

now be trusted to carry outan independent and impartial investigation.

25During the course of the hearing, the learned ASG has assisted the Court bytendering the case diary and a compilation of documentary material. As

a matterof prudence, the court must desist from adverting to the details contained inthe compilation or in the case diary save and except for indicating

broadreasons in the course of evaluating the reliefs which have been claimed. The counter affidavit, which has been filed by the State of Maharashtra

makes itabundantly clear that the arrest of the five individuals (on 28 August 2018)was based on $\tilde{A}\phi\hat{a}$, " \tilde{A} "material gathered from others $\tilde{A}\phi\hat{a}$, ". This adverts to

the materialalleged to have been gathered in the course of the raids conducted againstthose individuals who were arrested in the months of June and

July 2018.Paragraph 26 of the counter (which has been extracted earlier) states that thismaterial $\tilde{A}\phi\hat{a},\neg\hat{A}$ "clearly shows that they were involved $\tilde{A}\phi\hat{a},\neg$ in (i)

selecting and incorporating cadres to go underground in the $\tilde{A}\phi\hat{a}$, $\neg\ddot{E}$ estruggle 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 ofsmuggling such arms into India for its onward

distribution amongst the cadres.

26Next, it is alleged that $\tilde{A}\phi\hat{a},\neg\hat{A}$ some of them $\tilde{A}\phi\hat{a},\neg\hat{A}$ have suggested training and laying of booby traps and directional mines $\tilde{A}\phi\hat{a},\neg\hat{A}$ and (ii) $\tilde{A}\phi\hat{a},\neg\hat{A}$ are found

to be providing strategic inputs in furtherance of the objective of armed rebellion $\tilde{A}\phi\hat{a}$, inpursuance of a strategic document of a banned terrorist

organisation namely,the Communist Party of India (Maoist). With the assistance of the ASG I havecarefully perused the compilation produced before

the Court. Upon perusing thematerial, I find that the allegation that each of the five individuals arrested n 28 August 2018 is found to be engaged in

activities of the nature set out inparagraph 26 of the counter affidavit (extracted above) is taking liberties with the truth. General allegations against the

philosophy of a bannedorganisation, its policies and the modalities followed in the execution of itsunlawful activities constitute one thing. Linking this to

specific activities of named individuals is a distinct matter. At this stage, it is necessary tonote the submission which has been urged in regard to an

undated letter of Sudha Bhardwaj to Comrade Prakash which was also allegedly distributed to themedia. 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 scribedin Devanagari, using forms peculiar to Marathi. It has been urged that SudhaBhardwaj who does not

belong to Maharashtra and is not Marathi speaking, couldnot possibly have written a letter in Devanagari utilising essentially Marathiforms of grammar

or address. We need not delve into these aspects at this stage, since they are matters for a fair investigation.

27One of the circumstances which must certainly bear upon the fairness and impartiality of the process which has been followed by the investigating

agencyis in regard to the importation of two panch witnesses from Pune, when thearrests were carried out. Section 41B of Code of Criminal

Procedure emphasisesthe importance of an independent witness while making an arrest.

Section41B of the Code provides as follows:

ââ,¬Å"Everypolice officer while making an arrest shall-

(a)bear an accurate, visible and clear identification of his name which willfacilitate 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 personarrested 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 hisfamily, that he has a right to have a relative or a friend named by

him to beinformed of his arrest.ââ,¬â€<

(emphasissupplied)

Thetwo panch witnesses in the present case are employees of the Pune MunicipalCorporation. It is not disputed before this Court that they travelled

as partof the police team which made the arrest.

28It was in DK Basu v State of West Bengal, (1997) 1 SCC 416 that this Court laiddown requirements to be followed in all cases of arrest, which

included thefollowing:

 \tilde{A} ¢â,¬Å"(2)That the police officer carrying out the arrest of the arrestee shall prepare amemo of arrest at the time of arrest and such memo shall be

attested by atleast one witness, who may either be a member of the family of the arrestee of a respectable person of the locality from where the arrest

is made. It shallalso be countersigned by the arrestee and shall contain the time and date of arrest.ââ,¬â€‹

ThisCourt observed that the requirements it had enunciated emanated from Articles21 and 22(1) of the Constitution and \tilde{A} ¢ \hat{a} , \tilde{A} "need to be strictly

followedââ,¬â€ failingwhich action for contempt of court would be initiated.

29There is a serious allegation that the arrests have been motivated by anattempt to quell dissent and to persecute five individuals who have pursued

thecause of persons who have suffered discrimination and human rights violations. In approaching the present case, the Court must be mindful of the

need not tothwart a criminal investigation leading to the detection of unlawful acts. Equally, the Court has to be vigilant in the exercise of its jurisdiction

underArticle 32 to ensure that liberty is not sacrificed at the altar ofconjectures. Individuals who assert causes which may be unpopular to theechelons

of power are yet entitled to the freedoms which are guaranteed by the Constitution. Dissent is a symbol of a vibrant democracy. Voices in

oppositioncannot be muzzled by persecuting those who take up unpopular causes. Where,however, the expression of dissent enters upon the prohibited

field of anincitement to violence or the subversion of a democratically elected governmentby recourse to unlawful means, the dissent ceases to be a

mere expression ofopinion. Unlawful activities which violate the law have to be dealt with inaccordance with it. In the background which has been

adverted to earlier, it would be blas $\tilde{A}f\hat{A}$ to accept the submission that the investigation by the policeshould be allowed to proceed without a safeguard

for ensuring the impartiality and independence of the investigative agency. The conduct of the Pune police inutilising the agency of the electronic media

to cast aspersions on those underinvestigation fortifies the need for an investigation which is fair. When the Joint Commissioner of Police and the

Additional Director General of Police castaspersions in the public media against persons whose conduct is still underinvestigation, 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 inthis order shall be construed as any observation on the merits of theinvestigation which is to take place. The

purpose of the direction which Ipropose to give is to ensure that the basic entitlement of every citizen who isfaced 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 underArticle 21. If this Court were not to stand by the principles which we haveformulated, we may witness a

soulful requiem to liberty.

30The judgment of the majority has relied on certain decisions to hold that such apetition as in the present case is not maintainable and the prayer for

theconstitution of SIT at the behest of the five individuals under investigationcannot be entertained. In Narmada Bai v State of Gujarat, (2011) 5 SCC

79 thepetitioner filed a writ petition under Article 32 for issuance of a writdirecting the CBI to register a FIR in a case pertaining to an alleged

fakeencounter in which her son was killed. The key issue was whether after filingof the charge-sheet by the state investigative agency, this Court was

precludedfrom appointing an independent specialised agency like the CBI to go into thesame issues, if the earlier investigation was not done in

accordance with theestablished procedure. The factual determination to be carried out was whetherthe petitioner had made out a case for entrusting

the investigation to the CBI.

31While this Court observed that $\tilde{A} \not \in \hat{a}, \neg \mathring{A}$ "It is trite law that accused persons do nothave a say in the matter of appointment of an investigation agency $\tilde{A} \not \in \hat{a}, \neg \tilde{A}$ ".

and that \tilde{A} ϕ \hat{a} , \neg \hat{A} "the accused persons cannot choose as to which investigation agency mustinvestigate the alleged offence committed by them \tilde{A} ϕ \hat{a} , \neg , the Court

also observed that there were $\tilde{A}\phi\hat{a},\neg \mathring{A}$ "large and various discrepancies $\tilde{A}\phi\hat{a},\neg$ in the reports and thein vestigation conducted by the police authorities of the State

of Gujarat andthat the charge-sheet filed by the state investigating agency could not be $\tilde{A} \not = \hat{a}, \neg \hat{A}$ "said to have run in a proper direction. $\tilde{A} \not= \hat{a}, \neg \hat{A}$ two judge

Bench of this Courtconcluded that even though the charge-sheet had been filed, in view of thecircumstances brought to the notice of the Court, the

involvement of the policeofficials of the State of Gujarat in the investigation was $\tilde{A}\phi\hat{a}, \neg \hat{A}$ "undesirable $\tilde{A}\phi\hat{a}, \neg A$ ". Thus, $\tilde{A}\phi\hat{a}, \neg A$ " to meet the ends of justice and in the

public interestââ,¬â€<, the CBI was bedirected to take charge of the investigation.

32This case supports my view that in the interest of justice, and particularlywhen there are serious doubts regarding the investigation being carried out,

itis not only permissible, but our constitutional duty to ensure that theinvestigation is carried out by a special investigation team or a specialinvestigative

agency so that justice is not compromised.

33In Sanjiv Rajendra Bhatt v Union of India, (2016) 1 SCC 1 the petitioner, whowas an IPS officer filed a plea before this Court seeking the

appointment of aSIT, to probe into two FIRs filed against him by the Gujarat Police. On thefacts 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 notof such wide amplitude so as to warrant the constitution of a

SIT. The Courtalso observed that the petitioner had not come to the Court with clean handsand that no relief could be granted to an individual who

came to the Court with \tilde{A} $\hat{\phi}$ \hat{a} , \neg \hat{A} "unclean hands. \tilde{A} $\hat{\phi}$ \hat{a} , \neg These facts were the distinguishing feature. I have previously discussed the established precedents of this

Court which indicate thecircumstances in which this Court can constitute a SIT.

34In E Sivakumar v Union of India, (2018) 7 SCC 365 the petitioner was named inan FIR which was being investigated in regard to the illegal

manufacture andsale of pan masala and gutkha containing tobacco and/or nicotine. Thepetitioner challenged the decision of the High Court to transfer

theinvestigation of the criminal case to the Central Bureau of Investigation. Oneof us (Khanwilkar J) who authored the judgment on behalf of this

Bench held:

ââ,¬Å"TheHigh Court has cogitated over all the issues exhaustively and being fullysatisfied about the necessity to ensure fair investigation of the crime

inquestion, justly issued a writ of mandamus to transfer the investigation to theCBI.ââ,¬â€€

Thejudgment of the High Court was upheld on the following ground:

 $\tilde{A}\phi\hat{a}, \neg \hat{A}^*\tilde{A}\phi\hat{a}, \neg \hat{A}^*$ the question regarding the necessity to ensure a fair and impartialinvestigation of the crime, whose tentacles were not limited to the State

ofTamil Nadu but transcended beyond to other States and may be overseas besidesinvolving high ranking officials of the State as well as the

CentralGovernment, has now been directly answered. For instilling confidence in theminds 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 Courtin the impugned judgment, for having entrusted the investigation to CBI.ââ,¬â€€

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

 \tilde{A} ¢â,-Å"Itis the bounden duty of a court of law to uphold the truth and truth meansabsence of deceit, absence of fraud and in a criminal investigation a real

andfair investigation, not an investigation that reveals itself as a sham one. Itis not acceptable. It has to be kept uppermost in mind that

impartial and truthful investigation is imperative $\tilde{A} \notin \hat{a}, \neg \hat{A}$ 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?...ââ,¬â€€

(emphasissupplied).

Theabove observations are a significant reminder of the function of this Court, asthe protector of the fundamental rights of citizens. These rights must

besafeguarded particularly when there is a possibility that failure to take aposition may lead to a denial of justice.

35The case of Divine Retreat Centre v State of Kerala (2008) 3 SCC 542 concerned with the maintainability of an anonymous petition to a judge of

the High Courtseeking a direction for an investigation. The anonymous petition was taken upsuo motu by the High Court under Section 482 of the

Code of Criminal Procedureand 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 thiscase was the scope of the inherent power conferred on the High Court under Section482 of the Code of Criminal

Procedure. It was held that:

 $\tilde{A}\phi\hat{a}_{,-}$ Å"TheHigh Court in exercise of its inherent jurisdiction cannot change theinvestigating officer in the midstream and appoint any agency of its own

choiceto investigate a crime on whatsoever basis and more particularly on the basisof anonymous petitions addressed to a named Judge. Such

communications cannotbe converted into suo motu proceedings for setting the law in motion. Neitherthe accused nor the complainant or informant is

entitled to choose its owninvestigating agency to investigate a crime in which it may be interested.ââ,¬â€ (emphasis supplied)

TheCourt in the context of Article 226 commented on the maintainability of publicinterest litigation as follows:

 \tilde{A} ¢â,¬Å"Itis well settled that a public interest litigation can be entertained by the constitutional courts only at the instance of a bona fide litigant. The

SupremeCourt has uniformly and consistently held that the individual who moves theCourt for judicial redress in cases of public interest litigation must

beacting bona fide with a view to vindicating the cause of justice and not forany personal gain or private profit or of the political motivation or

otheroblique considerationââ,¬Â¦Ã¢â,¬â€<

Itwas also observed that:

 \tilde{A} ¢â,¬Å"theHigh Court in exercise of its whatsoever jurisdiction cannot directinvestigation by constituting a special investigation team on the strength

ofanonymous petitions.

36These observations indicate that what found disfavour with this Court was the High Court having entertained an anonymous petition to constitute a

SIT. Thefacts of the above case are distinct from the case at hand. The observationsmade on the maintainability of public interest litigation only lend

support to the present case. The petitioners in the present case are not anonymous. Therehas been no argument that the petitioners have been

motivated by personal gainor political considerations.

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

compensation of Rs50 lakhs to a space scientist who was found upon further investigation by theCBI to have been wrongfully implicated and

subjected to custodialinterrogation. This was on an allegation that he had leaked out official secretsof the Indian Space Research Organisation. The

learned Chief Justice held:

 \tilde{A} ¢â,¬Å"...therecan be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense

humiliation. Thelackadaisical attitude of the State police to arrest anyone and put him inpolice custody has made the appellant to suffer the ignominy.

The dignity of a person gets shocked when psychopathological treatment is meted outto him. A human being cries for justice when he feels that the

insensible acthas crucified his self-respect. That warrants grant of compensation under thepublic law remedy. We are absolutely conscious that a civil

suit has been filedfor grant of compensation. That will not debar the constitutional court togrant compensation taking recourse to public law. The Court

cannot lose sightof the wrongful imprisonment, malicious prosecution, the humiliation and thedefamation faced by the appellant.ââ,¬â€∢

Thefact that the payment of compensation was ordered nearly 24 years after thewrongful arrest is a grim reminder about how tenuous liberty can be

and of the difficulty in correcting wrongs occasioned by unlawful arrest.

38There can be no manner of doubt that the deprivation of human rights seriouslyimpinges upon the dignity of the individual for which even

compensation may notconstitute an adequate recompense. This theme echoes recurrently in thejudgments of this Court in Kiran Bedi v Committee of

Inquiry, (1989) 1 SCC 494Delhi Judicial Service Association v State of Gujarat, (1991) 4 SCC 406Joginder Kumar v State of UP (1994) 4 SCC 260

and DK Basu v State of WestBengal (1997) 1 SCC 416. In DK Basu, this Court elucidated on the importance ofpersonal liberty in the constitutional

scheme:

 \tilde{A} ¢â,¬Å"17.FundamentalRights occupy a place of pride in the Indian Constitution. Article 21 provides \tilde{A} ¢â,¬Å"no person shall be deprived of his life or personal

liberty except accordingto procedure established by lawââ,¬. Personal liberty, thus, is a sacred andcherished right under the Constitution. The expression

 \tilde{A} ¢â,¬Å"life or personalliberty \tilde{A} ¢â,¬ has been held to include the right to live with human dignity and thusit would also include within itself a guarantee against

torture and assault bythe State or its functionaries.ââ,¬â€

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

acomplaint:

ââ,¬Å"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 thedynamics of misuse of police power of arrest and opined:

 \tilde{A} ¢â,¬Å"Noarrest 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. $\tilde{A} \notin \hat{a}, \neg \hat{A}'$ No arrest should be made without areasonable satisfaction reached after some investigation as to the

genuinenessand 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 hisliberty is a serious matter.ââ,¬â€€

39This 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

fairinvestigative process to issue appropriate directions under Article 142 of the Constitution.

40Hence, 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 theMaharashtra police has in the present case acted as fair and

impartialinvestigating agency. Sufficient material has been placed before the Courtbearing on the need to have an independent investigation.

41Hence, following the line of precedent of this Court which has been discussedearlier, I am firmly of the view that a Special Investigating Team must

beappointed. The investigation shall be monitored by this Court. The SpecialInvestigating Team shall submit periodical status reports to this

Court,initially on a monthly basis. The interim order passed by this Court on 29August 2018 shall continue to hold the field for a further period of

threeweeks within which it would be open to the said five individuals or any one ormore of them to apply for bail before the Court of competent

jurisdiction. Iwould direct that the petition be listed after three days for orders on the constitution of the Special Investigating Team. There shall be an

order inthese terms.