

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL

APPLICATION NO. OF 2015

DIST.: MUMBAI

In the matter of section 438
of the Code of Criminal
Procedure

And

In the matter of C.R. No. E00006 of 2015 registered with CBI-EOW, Mumbai, u/s 120-B IPC, r/w 35,37 r/w Section 3,11 and 19 of the FCRA 2010 corresponding to section 23,25 r/w Section 4,6 and 13 of the FCRA 1976.

In the matter of

1. Teesta Setalvad)
Nirant, Juhu Tara Road,)
Mumbai)
...Applicant No.1
2. Javed Anand)
Nirant, Juhu Tara Road,)
Mumbai)
...Applicant No. 2

VERSUS

1. Central Bureau of Investigation)
Economic Offence Wing, 4th floor)
Universal Insurance Building)
PM Road. Fort)
Mumbai 400001)
2. State of Maharashtra)
...Respondents

MOST RESPECTFULLY SHOWETH:

1. That the present application is for seeking anticipatory bail to Applicants in the matter arising out of CR No. E0006 of 2015 registered with the CBI-EOW, Mumbai, u/s 120-B, of the Indian Penal Code, r/w 35,37 r/w S.3,11, and 19 of FCRA 2010 corresponding to S. 23,25 r/w S.4,6, and 13 of FCRA 1976. The said FIR is false and malicious in nature and has been filed with

the sole purpose of harassment of the Applicants.

2. The Applicants had sought bail from the Hon'ble Sessions Court for Greater Bombay, at Mumbai and the same came to be rejected on 24.07.2015. The Applicants have not received the copy of the order. The same will be furnished to this Hon'ble Court at the time of arguments.

3. On 17.07.2015 and 21.07.2015 the Hon'ble Sessions Court for Greater Bombay at Mumbai, granted interim protection from being arrested to the Applicants. Hereto annexed is the order dated 17.07.2015 and 21.07.2015 and collectively marked as 'Annexure 1'.

4. That the Applicants herein are Directors of Sabrang Communication and Publishing Pvt. Ltd. which was registered under the Companies Act, 1956 in 1993. Sabrang Communications & Publishing Private Limited, since the time of its incorporation, has its main objectives being to create awareness by maintaining data bank and a library, publishing books, reports, pamphlets, journals covering various aspects of Indian and the world's socio-economic and political issues; and to enter into contracts, agreements and arrangements with any other company or entity to carry out these objectives; as also to conduct research,

organise meetings, conferences; to render services and assistance to all sections of the public including governmental and non-governmental bodies, federations of commerce, universities, institutes whether in India or abroad; and towards this end purchase materials and properties and invest. The Applicants/Applicants crave leave to produce the Memorandum of Association as and when required.

5. *Communalism Combat* was/is a monthly publication published by Sabrang Communications since August 1993 and was honoured with the Prince Claus International Award for Exceptional Initiative in the field of Journalism and Development in December, 2000. In order to receive the said award amount, the Applicants had made an application under Section 31 of the Foreign Contribution (Regulation) Act, 1976, seeking an exemption from Section 4 of the Act and the same was granted on April 10, 2001. A true copy of the said order dated April 10, 2001, issued by the Ministry of Home Affairs, granting permission to Communal Combat to receive the said award money is annexed herewith and marked as **Annexure 2**.

6. In 2003, Applicant No. 1 was awarded the 'Nuremberg International Human Rights Award'. She also received the Prakash Kaphley Award in 2003. The award money of

both these awards was accepted after following the due process of law. A true copy of the order dated 22.4.2003 issued by the Ministry of Home Affairs, granting permission to Applicant No. 1 to receive the Prakash Kaphley Award is annexed herewith and marked as **Annexure 3**. A true copy of the order dated 5.1.2004 issued by the Ministry of Home Affairs, granting permission to Applicant No. 1 to receive the 'Nuremberg International Human Rights Award' is annexed herewith and marked as **Annexure 4**. An acknowledgment of work by Applicant No. 1 and a Message regarding her receiving the Nuremberg International Human Rights Award was issued by Kofi Annan, the then Secretary-General of the United Nations. A true copy of the same is being annexed herewith and marked as **Annexure 5**. The magazine *Communalism Combat* received an International award for Excellence in Journalism and Development from the Prince Klaus Foundation and applied for permission to receive the award amount that was duly granted by the Ministry of Home Affairs (MHA). Attached is a copy of the said permission granted by the MHA as **Annexure 6**. These documents show that the applicants are aware of the provisions of the laws of the land and have, in fact, whenever legally necessary applied for permission from the mha for receipt of foreign awards etc.

7. That the brief facts in the present case are as follows:

a) A two year Consultancy Contract in 2004 and another one in 2006 was entered into by Sabrang Communication and Publishing Pvt. Ltd. with Ford Foundation, as per which Sabrang Communications received consultancy fees from Ford Foundation. This agreement was entered into after seeking legal advice regarding legality of the same and that as per the provisions of Foreign Contribution (Regulation) Act, 1976, consultancy fees was not treated as foreign contribution. In fact, while transferring the fees, as per the Agreement, Ford Foundation deducted TDS as well.

b) On 27.02.2002 Godhra Train incident occurred at Gujarat and riots broke out. The communal political outfits targeted the life and property of the minority community and as a result a lot of people lost their lives. The attacks were systemically organized with the support of the State of Government and in all 300 locations over 19 districts of the State were witness to mass carnage and riots. Gulberg Hsg. Co-op. Soc. Ltd. was totally burnt by politically motivated antisocial elements and around 69 people lost their lives in the massacre.

c)The Applicant No. 1 set up the organization Citizens for Justice and Peace (hereinafter for the sake of brevity referred to as "CJP") to provide assistance and legal aid to the victims of mass carnage at Gujarat in February 2002. The founder members and trustees of the said organization included renowned like Vijay Tendulkar, Alyque Padamsee, Javed Akhtar, Anil Dharkar, Cyrus Guzder and others. The Applicant No. 1 and others strived to set up Citizens Tribunal to go into the root cause of communal violence in Gujarat headed by two retired judges of the Hon'ble Supreme Court. The Sabrang Trust had been formed earlier in 1995 for building peace and harmony in society even prior to the formation of CJP and the Applicants are also the Trustees of the said Trust.

d)The NHRC, then headed by late Justice J.S.Verma, former Chief Justice of India and its other members and team visited the area. They gave detailed reports after talking extensively to various victims.

e)In its final report, the NHRC recommended certain major cases related to the riots were recommended to be transferred to CBI for investigation in addition to giving detailed guidelines about how the cases would be subsequently tried.

f) In 2002 itself various petitions came to be filed in the Supreme Court of India seeking inter alia transfer of investigation. The Applicants were Applicants in certain petitions. One of the petitions in which transfer investigation was sought was the case known as "Best Bakery". In the trial that was on-going, the star witness turned hostile and the case resulted in an acquittal.

g) Two months after turning hostile, she got in touch with the Applicant no.1 herein and informed her that she was coerced to change the statement. After interviewing her at length, the Applicant no.1, after consulting all her trustees, and after being satisfied that she was telling the truth, flew with her to Delhi and appeared before the National Human Rights Commission where the full commission recorded the statement of Ms. Sheikh wherein Ms. Sheikh reiterated that she was coerced to turn hostile. It is pertinent to note that Ms. Sheikh had travelled from Baroda to Mumbai along with Raees Khan who was employed with the Applicant's trust at that time.

h) That in July 2003, the NHRC filed a special leave petition before the Hon'ble Supreme Court against the acquittal in the trial court in the case of Bakery. The Applicant

no.1 and Ms.Zahira Sheikh also filed a special leave petition.

i)That on August 8, 2003, the Hon'ble Supreme Court converted the NHRC petition into a writ petition and issued notice in the matter. Notice was also issued in the petition filed by the Applicant subsequently. On the same day, to pre-empt any adverse comments, the State of Gujarat hurriedly filed an appeal against the order or acquittal in the Best Bakery case.

j)Applicant along with the family member of the victim filed a revision petition in this Hon'ble High Court against the acquittal. The appeal of the State government and the revision petition filed by the Applicant was dismissed by this Hon'ble Court.

k)That the State of Gujarat as well as the Applicant no.1 along with Ms.Zahira Sheikh filed special leave petitions in the Hon'ble Supreme Court against the dismissal. being SLP Cr1 Nos 538-541/2004.The Hon'ble Supreme Court allowed the petition filed by the Applicant, ordered re-trial and transferred the trial to Mumbai.

l)The Hon'ble Supreme Court by its order dated April 21, 2004 in Cr.M.P. Nos. 8198 and 8165 of 2003 in Special Leave Petition (Cr1.) No.3770 of 2003, directed the Government of

India to provide adequate protection to the Applicant No. 1 as she was being issued threats regularly. The said security arrangement continues till date and the Applicant No. 1 is under constant day and night protection of the CISF.

m) That sometime in October 2004, while the trial was pending in Mumbai, Ms. Zahira Sheikh made malafide allegations against the Applicant No. 1. She addressed a press conference in Baroda and with active support of the state government, made serious allegations against the Applicant no.1. A FIR got registered against the Applicant no.1 on the basis of statement issued by Ms. Sheikh. This is the first of the many FIRs that have been registered against the Applicant no.1 in the last 12 years that she has been supporting the victims. The Applicant took temporary anticipatory bail in this matter from the Bombay High Court.

n) The Applicant filed an application before the Hon'ble Supreme Court seeking an enquiry into the manner on which Ms. Sheikh had changed her stand. The Hon'ble Supreme Court issued notice on this application and appointed the Registrar General of the Court to conduct a detailed enquiry into the matter. The report of the Registrar General exonerated the Applicant no.1 and found Ms. Shaikh guilty. The Hon'ble Supreme Court

accepted the report and held her to be in contempt of court and also ordered an income tax inquiry against her.

o) Sometime in 2007-8, the members of Gulberg Society and Sabrang Trust considered the idea of setting up a memorial by way of a museum - "Museum of Resistance" at the remains of Gulberg Society area. Various discussions were held regarding set up of the Museum of Resistance. A proposal was put up by letter dated January 14, 2008 wherein it was *inter-alia* stated that the Gulberg Society would sell the plot of land to the Sabrang Trust and further directed the Society to appoint independent surveyors to assess the cost of the land to work out financials of the project.

p) That around the same time, services of one of the employees of "Citizens of Justice and Peace"- Raees Khan were discontinued by letter dated January 18, 2008 for his dubious conduct towards the victims of the riot. The fact of his removal from the organization was made public by getting the same published in the newspaper as well as communicated to the State and Central Government. In order to seek vengeance, Raees Khan made various false and frivolous allegations against the Applicants at the behest of the political parties in Gujarat. He has been instrumental in getting various

criminal cases registered against the applicant herein and the details of the same is mentioned later in the petition.

q) In the meanwhile, the Hon'ble Supreme Court, in the petition filed by the NHRC and other petitions where the Applicants were parties, a Special Investigation Team (SIT) was appointed by the Supreme Court to further investigate eight major trials as recommended by the NHRC. The SIT was headed by the former Director of CBI. The composition of the SIT changed over the period of time and the application made by the applicant herein, officers from the Gujarat cadre were primarily excluded.

r) Meanwhile, the Gulberg Society accepted the proposal of the Trust to set up the "Museum of Resistance" and issued a Resolution dated June 29, 2008 to that effect. However, no formal agreement was entered into for the same. The applicants took the responsibility of raising the resources and accordingly initiated the process. It is submitted that the decision was a collective one and the complainant was conscious of these discussions

s) That on April 27, 2009, in a petition filed by the wife of the late Ahsan Jafri, who was brutally burnt to death in the Gulberg Society in the riots, the Hon'ble Supreme

Court directed that the SIT also looks into the complaint made by Smt Zakia Ahsan Jafri which was also taken to the Supreme Court by way of a special leave petition following its rejection in the High Court.

t) That on May 1, 2009, the Hon'ble Supreme Court in the batch of petitions filed by NHRC, applicants herein and others directed the SIT to file supplementary chargesheets and ordered that the trials should continue on a day to day basis by designated courts appointed by the High Court.

Soon after this period, a campaign of Vendetta launched by former employee Raees Khan Pathan who went shopping for fora in various courts and filed about half a dozen applications making baseless allegations against Applicant No.1. He also gives interviews stating his ambition is to get Applicant No 1 arrested (Times of India, Ahmedabad December 2010). The following table will give the details of the FIRs filed and their status. The Gujarat state through its police has since 2004 lodged a vilification and intimidation campaign against Setalvad and her organisations. A couple of witnesses (survivors) have been used, as also a former employee of CJP who went shopping for fora in various courts and filed about half a dozen applications making baseless allegations against Teesta Setalvad. Now

this has intensified and extended to her family and organisations.

Mesamwhile we have been consistently exonerated of vile charges:

Registrar General BM Gupta's Report of August 2005.

Sardarpura Special Court (Trial) Judgement of 9.11.2011

Naroda Patiya Special Court (Trial) Judgement of 29.08.2012

Best Bakery Special Court Judgement (Trial) of February 2006 & Appeal dated 4.7.2012

The following table will give the details of the FIRs filed against Teesta Setalvad and their status.

(A) FIR No.	Details	Status
Registered in Best Bakery case		
CR 1-3-2006	Filed by an officer of the government at 1.30 Am on 2.1.2006. This is a FIR filed following some digging of the ground by some persons seeking to retrieve some	There is a stay of further proceedings in the matter by order dated 29.7.2011 in SLP (Cr1) No.5275-76/2011

	debris of their dead relatives who were buried hurriedly. The FIR was filed after the High Court ordered the CBI to enquire into the matter and the victims were directed to give samples for DNA testing. Teesta Setalvad was added as an accused in this case in 2011	
M.Case No.2/2011, PS Navrangpura, under sections 193-196, 197, 200 and 120B	Filed by the Registrar of the Court following an application made by Raees Khan that Teesta Setalvad created false	There is a stay granted by the Supreme Court in SLP (crl) No.6754-56 of 2011 dated 2.9.2011

	affidavits.	
Defamation case filed by Raees Khan (37/12 dtd 20.6.2012 10/12 dtd 23/07/2012)	A simple defamation case was used to conduct a roving Inquiry by the DCB Crime Branch, Ahmedabad	This roving Inquiry has been challenged in a petition before this Hon'ble Court (SCA No 2825/2012)
Cr.1 of 2014 dated 4.1.2014	A case of alleged embezzlement of funds.	Petitioners have been granted protection by the Hon'ble Supreme Court in Cr1. Appeal No.338 of 2015
CR 162/2014 dated 23.08.2014	Case of inflammatory speech for a tweet that Teesta Setalvad apologised for and removed within 40 minutes to an hour on	Anticipatory transit Bail granted by first Bombay Court, then confirmed by Ahmedabad Sessions Court. Condition that she deposit her

	22.08.2014	passport. Even in this case, custodial interrogation was insisted upon by the Gujarat police crime branch. Though in between Setalvad was allowed to travel abroad, an order of 29.06.2015 has imposed a ban on her travel. She has appealed the matter (asking for a modification of the conditions of the order) and also in a separate petition prayed for a
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		quashing of the malafide FIR
CR No I CR No.45/2014 Bhavnagar Police Station	22.08.2014 FIR on same subject as above	Gujarat High Court has stayed the proceedings
Yasmeen Shaikh, another witness in the Bes Bakery case, had, instigated by the former employee of the CJP and aided by senior lawyers affiliated with the current dispensation in Gujarat (and now in Delhi) had tried to disrupt the hearing of the Best Bakery Appeal while it was being heard in the Bombay High Court in 2012.	She had filed an affidavit making false averments on affidavit that are the same as now made in her recent complaint. We had decisively intervened countering her on every point. Here is what the Bombay High Court had to say in its Final Order dated 4.07.2012 that upheld some of the	Media reports stated (June-July 2015) that following her (along with the former employee of CJP writing to the Gujarat's Director General of Police, <i>despite this decisive finding by the Bombay High Court, instead of seeing through Yasmeen</i>

	Convictions in Appeal: " Para 62. In our view these applications for re-trial cannot be entertained. In the first place, there is gross delay on the part of Yasmin in filing these applications. Her evidence was recorded in the Trial Court in 2004 and her cross-examination was over on 29th November, 2004. The appeals against the judgment and order passed by the Sessions Court were admitted by this Court	<i>Shaikh's ploy for -the DGP Gujarat has passed it on to the Crime Branch that has obviously a lot of time on its hands with a single point agenda-us!</i>
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	in 2006. These appeals have been pending in this Court almost for a period of six years and only when the matter was fixed for final hearing, at that time, these applications have been filed. "...Para 151. In our view, therefore testimony of these four injured eye witnesses is trustworthy so far as A-11, A-15, A-12 and A-16 are concerned and they have corroborated practically each other's	
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	testimony on all material particulars. Though there has been omissions and improvements in their testimony and also contradictions on some of the major particulars that by itself cannot be a ground for discarding their evidence in its entirety and it cannot be said that they have been tutored by the third party, particularly Mrs Teesta Setalvad. It cannot be forgotten that when an appeal	
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	was filed by Zahira in the Supreme Court against the judgment and order of Gujarat High Court and in the said appeal Mrs Teesta Setalvad who was a member of the NGO – Citizens for Justice and Peace, was also a party. The Supreme Court entertained the said appeal, accepted the affidavit of Zahira and others, permitted Mrs Teesta Setalvad to intervene in the matter	
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	and, thereafter, the matter was transferred to the Bombay High Court and request was made to the Hon'ble Chief Justice to assign the case to the competent trial court. <u>That being the</u> <u>position,</u> <u>Supreme Court</u> <u>having passed</u> <u>the said</u> <u>direction,</u> <u>possibly Mrs</u> <u>Teesta</u> <u>Setalvad</u> <u>wanted to</u> <u>ensure that</u> <u>these</u> <u>witnesses are</u> <u>produced</u> <u>before the</u> <u>Court and,</u> <u>therefore, in</u> <u>our view, it</u>	
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	<u>will not be proper to attribute any other motive to her. The said submission, therefore, is not accepted.</u>	
CBI (under the PMO) registers an FIR against Teesta Setalvad, Javed Anand and Ghulam Pesh Imam directors of Sabrang Communications for alleged FCRA violations	We do not have a copy	Mumbai

u)The idea of setting up the “Museum of Resistance” eventually had to be given up in view of the escalating prices of the land. The Sabrang Trust conveyed the same to the members of the Gulberg Society. The Society by its Resolution dated November 10, 2012, scrapped the idea of museum and resolved that all members of the society were free to sell or dispose of their tenements. It is thus evident that no false promises were made by the Applicants’ trust at any point of time and the entire process was transparent throughout. It is submitted that the total amount collected from

foreign donors on this account was Rs.50,000/-. The said donor is aware of the fact that the museum would not be built and has advised the trust that the amount be utilized for providing support to the victims of the riots. The total donations received for the purposes of the museum is approximately Rs.4.5 lakhs given to Sabrang trust only and all donors have advised the donations to be used for the wider purposes of the Trust.

v) During an yearly memorial meet, Applicant No. 1 received a letter purporting to be from the Society, stating that the Sabrang Trust and the "Citizens for Justice and Peace" have allegedly collected huge sums of money for building a museum which have not been disclosed to the Society and have been usurped by the Sabrang Trust. The Applicant No. 1 immediately replied to the said letter, questioning the validity of the allegations. Whereupon the office bearers of the Society told the Applicants that the letter had been forged and there was no question of the Society taking such a stand particularly when the Society had passed their Resolution dated 10.11.2010.

w) Three days thereafter the office bearers of the Gulberg CHS Ltd. lodged a complaint with Meghani Nagar Police Station, Gujarat, Ahmedabad alleging therein that the said letter was

forged. However till date no action has been initiated with regard to the said complaint.

x)The Applicants were further shocked when they were informed by the office bearers of the Gulberg CHS Ltd. that a certain complaint was initiated against them by one Firozkhan Saeedkhan Pathan, who was a resident of Gulberg Society, alleging that Sabrang Trust and Citizens for Justice and Peace have received foreign and local donations in the name of providing financial and legal assistance to the riot victims and to develop Gulberg Society into a museum and have further allegedly misappropriated the funds so received.

y)In response to these allegations, Applicant No. 1 along with the other trustees wrote a detailed letter dated March 13, 2013 to the Joint Commissioner of Police, denying the allegations leveled against them and clarifying their stand regarding the purpose of their organization, the donations received by them and the suspected conspiracy by their former employee Raees Khan Pathan against them.

z)Thereafter, on March 18, 2013, the Chairman of the Gulberg Society received a letter from Dy. Commissioner of Police, Ahmedabad informing them about the complaint pending against the Applicants and directed them to maintain status

quo regarding the Society. Another letter dated March 18, 2013 was received by Applicant No. 1 asking the Applicants to furnish certain documents and information regarding their Trust and the allegations made against them.

aa) By their letter dated March 26, 2013, the Applicants replied to the abovementioned letter, once again clearly stating that there was no misappropriation of funds and that the accounts of Trust were mandatorily and statutorily audited. Relevant information was provided. Applicants received another letter dated May 8, 2013 from the Investigating Officer, asking them to submit answers and documents to the questions posed in their earlier letter dated 18.03.2013.

bb) Applicants replied to the abovementioned letter, by their letter dated May 20, 2013, wherein they explained the root-cause of the mala-fide complaint filed against them and clarified the position of donations collected by the Sabrang Trust

cc) Thereafter the Applicants neither received any summons from the Investigating Agency nor did the Investigating Agency call the Applicants for interrogation. For a period of about 9 months no requisitions and / or summons were sent to Applicants calling them for inquiry.

dd) That on 4.1.2014, a false and malicious FIR (FIR No. 1 of 2014) was registered against Applicant Nos. 1 and 2 regarding alleged misappropriation of funds by a Trust being run by them. The allegation was that a certain amount of money meant for building a museum was used for personal purposes by the Trustees. While a detailed and categorical explanation was provided for the same, the investigating agencies have gone much beyond the scope of the FIR and the false allegations. On the pretext of investigating, all the accounts and records of the organizations being run by the Applicant Nos. 1 and 2, dating back to much before the alleged incident were demanded from them. Even though most of the demands of the documents, running into several thousand pages were irrelevant for the alleged offence and clearly for the sole purpose of harassment, Applicants supplied all the documents and information sought from them.

ee) The information about these allegations had surfaced in newspapers much before the filing of the FIR i.e. February, 2013. In view of these news reports, the Applicants (and other Trustees of Citizens of Justice and Peace as well as Sabrang Trust) had proactively written to the Crime Branch of Gujarat Police furnishing all relevant documents and details regarding the allegations.

ff) That in January, 2014, in pursuance of the abovementioned FIR, the bank accounts of the Applicant Nos. 1 and 2 as well as the bank accounts of the Trusts being run by them were frozen unilaterally on the basis of letters of Crime Branch dated 14.1.2014 without giving any notice to the account holders or following any procedure.

gg) A series of correspondence took place between the Applicant Nos. 1 and 2 and the Crime Branch of Gujarat Police regarding the FIR No. 1 of 2014, by way of which documents running into thousands of pages were demanded by the Investigating agency and the same were supplied to them by the Applicants. Applicant Nos. 1 and 2 had even personally appeared before the Gujarat police and answered all the queries put to them. Further, the auditors of the Trusts had also been directed to answer certain questions, which they answered as required by the Crime Branch.

hh) That the Applicants by their letters dated 15-16.12.2015, 5-6.1.2015, 4.2.2015, 3.3.2015, 18.3.2015, 25.3.2015, 26.3.2015, 1.4.2015, and 4.4.2015, respondent to various queries made by the Crime Branch of Gujarat Police and furnished all the relevant documents as required by them.

ii) That the Applicants' application for Anticipatory bail regarding FIR No. 1 of 2014 was rejected by the Hon'ble High Court of Gujarat on February 12, after more than one year of the same being filed. Documents supporting the case of the Applicants, running into thousands of pages were on record before the Hon'ble High Court but the same were disregarded by the High Court while rejecting the application. That as soon as the order of rejection of the anticipatory bail was pronounced, the Gujarat police reached the Mumbai residence of Applicant Nos. 1 and 2 to arrest them.

jj) Aggrieved by the abovementioned order, the Applicants had immediately approached the Hon'ble Supreme Court challenging the order dated 12.2.2015 by way of Criminal Appeal No. 338 of 2015. The same is pending before the Hon'ble Supreme Court of India and an interim protection from arrest has been granted to the Applicants by the Court. True copies of the orders passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 338 of 2015 is annexed herewith and marked as **Annexure 7 Colly**.

kk) That on March, 10, 2015, a letter was issued by Gujarat Government's Home Department to the Ministry of Home Affairs urging action against both Trusts- Citizens for Justice and Peace and Sabrang Trust. The same was published on the

website: www.deshgujarat.com. A true copy of the said letter dated 10.3.2015 is annexed herewith and marked as **Annexure 8**

ll) That between April 6 and April 11, 2015, i.e. soon after this letter issued by Gujarat Government, the accounts of Citizens for Justice and Peace (CJP) and Sabrang Trust – organizations run by Applicant Nos. 1 and 2 were inspected by the FCRA Team.

mm) During the abovementioned inspection, on April 10, 2015, a further query/notice regarding Sabrang Communications was given by hand to the Applicants, alleging contravention of Section 11 of Foreign Contribution (Regulation) Act, 2010. A questionnaire was enclosed therewith and the Applicants were directed to furnish the said information within 15 days. A true copy of the letter dated April 10, 2015 addressed to Sabrang Communications is annexed herewith and marked as **Annexure 9.**

nn) As the Applicant Nos. 1 and 2 at that point of time were not in Mumbai and were attending to their Anticipatory Bail Application with regard to the abovementioned FIR No. 1 of 2014, which was listed before the Hon'ble Supreme Court of India, they wrote a letter on April 21, 2015, to the FCRA wing of the Ministry of Home Affairs, requesting to be granted 2 weeks time more to

respond to the letter dated April 10, 2015. A true copy of the letter dated April 21, 2015 is annexed herewith and marked as **Annexure 10.**

oo) A detailed written response to letter dated 10.4.2015, was sent by Applicant No. 2 to the FCRA Wing of the Ministry of Home Affairs by letter dated April 27, 2015. It was explained therein that Sabrang Communications has not received any 'Foreign Contributions' and therefore did not require any permission or registration for the same. Alongwith this letter, the consultancy agreement with Ford Foundation as well as correspondence indicating TDS deductions by Ford Foundations were attached. A true copy of the letter dated April 27, 2015 is annexed herewith and marked as **Annexure 11.**

pp) That on June 3, 2015, the Applicants, via fax, received an Inspection Notice for Sabrang Communications for inspecting accounts or records of the organization for the period 2006-07 to 2014-15 in view of the alleged violation of provisions of Foreign Contribution (Regulation) Act, 2010. A true copy of the said Inspection Notice is annexed herewith and marked as **Annexure 12.**

qq) The inspection team that arrived at the premises of the Sabrang Communication on June 8, 2015, was handed over a letter explaining the consultation agreement with Ford Foundation and offering all possible co-operation with the inspection procedure. A true copy of the letter dated June 8, 2015 is annexed herewith and marked as **Annexure 13**.

rr) An Inspection Memo dated 9.6.2015 was issued by the FCRA Wing of the Ministry of Home Affairs directing the Applicants to provide certain information regarding accounts and assets of Sabrang Communications & Publishing Pvt. Ltd. The Inspection Memo was received by the Applicants on June 16, 2015, alongwith a cover letter dated June 11, 2015. A true copy of the said Inspection memo alongwith the cover letter dated June 11, 2015 is annexed herewith and marked as **Annexure 14**.

ss) That on June 18, 2015, a letter was sent by Applicant No. 2 to the FCRA Wing of the Ministry of Home Affairs in response to the abovementioned Inspection memo and it was informed that they would be furnishing the response to the queries in the Inspection memo within a week's time of receipt of the letter i.e. before or by June 23, 2015. Another letter was dispatched on Sabrang Communications letterhead to the FCRA Wing of the Ministry of Home Affairs informing that information required

by them shall be supplied by June 23, 2015. A true copy of the letters dated 18.6.2015 are annexed herewith and marked as **Annexure 15**.

tt) A letter dated 22.6.2015 was sent by Sabrang Communication to the FCRA Wing of the Ministry of Home Affairs, providing a detailed response to the Inspection Memo dated June 9, 2015. It was mentioned therein that all possible cooperation was extended and all documents demanded by the inspection team had been furnished by Sabrang Communications. All details sought under inspection memo were also provided by way of this letter. A true copy of the letter dated 22.6.2015 is annexed herewith and marked as **Annexure 16**.

uu) On June 26, 2015, through newspaper reports, the Applicants got information that Ministry of Home Affairs has handed over the investigations related to Sabrang Communications to the Central Bureau of Investigation.

vv) That on June 30, 2015 the Applicants wrote a letter to several departments of Central Bureau of Investigation providing a detailed background of the matter including the detailed List of documents provided to the FCRA Wing of the Ministry of Home Affairs Inspection Team. It was mentioned in the letter that the Applicants are willing to fully cooperate in any bonafide

inquiry/investigation and requested that sufficient notice be provided, so that a representative is available with all the required documents. A true copy of the letter dated June 30, 2015 is annexed herewith and marked as **Annexure 17**.

ww) On July 8, 2015, Applicants got information from newspaper Report that Central Bureau of Investigation has registered an FIR against them under the provisions of Foreign Contribution (Regulation) Act, 2010.

xx) That immediately, all possible efforts were made by the Applicants to obtain a copy of the said FIR were they were unable to obtain the same. The Advocate of the Applicants had made a call to various departments of Central Bureau of Investigation to supply them a copy of the FIR but they refused to furnish the same, even though it is the right of an accused to be given a copy of the FIR filed against him/her. The Applicants could get a copy of the FIR from Hon'ble Court of the ACMM, at Esplanade, Mumbai on 16.07.2015. Hereto annexed is the copy of the FIR and is marked as **Annexure -18**.

yy) On 14.07.2015 around 7.40 am more than 15 officers of the Respondent No.1 raided the house and the office of the Applicants and continued their raid until early morning on 15.07.2015. It

was only when the officers of the Respondent reached the premises of the Applicants that the Applicants realised that an FIR has been registered with the Bombay office of the CBI, vide CR Nos. E 0006/2015 on 8.7.2015 under sections 120b of the Indian Penal Code, Section 35 and 37 read with Sections 3, 11 and 19 of the FCRA Act of 2010 which correspond with Sections 23, 25 r/w Section 4, 6 and 13 of the FCRA Act 1976. The main allegation in the FIR is criminal conspiracy for illegal acceptance of foreign contribution without registration and prior permission Ministry of Home Affairs (MHA), Government of India. The Respondent seized all the account documents regarding the FCRA accounts.

zz) The Applicants fully cooperated with the CBI and allowed them to search the home and office and even to the extent of searching personal belongings of the children of the Applicants. The raid was conducted inspite of the fact that the Applicants had, on June 30, 2015 itself within four days of media reports of the MHA reference of the matter to CBI, pro-actively written to the Respondent, conveying full co-operation and requesting notice of time when requisite documents could be supplied to the CBI. Not only that, on July 10, 2015 also the Applicants made formal and telephonic attempts to get a copy of the FIR to no avail. Annexed

hereto are copies of both communications to the CBI collectively marked as **Annexure 19 Colly**.

aaa) During the course of the raid the Applicants came to know that an FIR has been registered with the Mumbai office of the Respondent under various sections of the FCRA Act, and also that the Respondent had obtained a search warrant for the premises of the Applicants. Attached hereto are copies of the two Panchnama Search Lists handed over to the applicants by the CBI Team (one for the office and one for the home) attached hereto as **P-20 Colly**.

bbb) That the present Applicants respectfully submit that they seriously and genuinely apprehend that they may be arrested in respect of the said FIR and hence approach this Hon'ble Court for direction that, in the event of their arrest, they be released on bail on the following amongst others:

G R O U N D S

A. BECAUSE the present Applicants are innocent and have been falsely implicated in the present case. The FIR lodged against the present Applicants is ex-facie malafide and has been lodged to falsely implicate the Applicants.

B. BECAUSE the FIR filed against the Applicants is based on a false and mala-fide complaint, solely for the purpose of harassing and torturing the Applicants. The Applicants have been actively involved in rehabilitation work in Gujarat after the communal riots in 2002 and also striving to ensure that a fair investigation is carried out regarding the carnage. As the carnage was motivated and supported by communal political outfits of the party in power, the State Government is not appreciative of the efforts of the Applicants and are constantly trying to dissuade and disrupt the activities of the Applicant. The present FIR is also lodged at the behest of the political outfits and has absolutely no merit in it.

C. BECAUSE the Applicants are Journalists by profession and are responsible citizens of the society. There is no reason to believe that the Applicants would not co-operate with the investigation and administration of justice. Even till date, the Applicants have extended all possible cooperation and supplied all the documents and information as demanded by the inspection team. The present case does not warrant custodial interrogation as

the matter is based on documentary evidence and the Applicants are ready and willing to participate in the investigation.

- D. BECAUSE grave injustice would be caused to the Applicants in case Anticipatory Bail is not granted to them as the allegations made out against them are false and baseless and there is no reason to take them in custody. Their arrest would cause an irreparable injury with regard to their reputation and unnecessary harassment which is the sole intention of the complainant.
- E. BECAUSE this is a fit case for granting Anticipatory Bail to the Applicants as not only are the Applicants being falsely implicated in the complaint which has been made with a mala fide intention, but there is also no reason for disbelieving that the Applicants would interfere in any manner with the administration of justice or the investigation.

- F. The Hon'ble Supreme Court in "*Siddharam Satlingappa Mhetre v. State of Maharashtra &Ors.*", (2011) 1 SCC 694, has laid down certain guidelines for granting Anticipatory Bail and the present matter satisfies all the criterion for being granted protection from this Hon'ble Court.
- G. BECAUSE the provision under Section 438 of Code of Criminal Procedure, 1973 is concerned with personal liberty of an individual and the Applicants applying for Anticipatory Bail are entitled to the benefit of the presumption of innocence as on the date of the application for Anticipatory Bail, they are not convicted of the offence in respect of which they seek bail. This principle has been highlighted in the Constitution Bench judgment of the Hon'ble Supreme Court in *Gurbaksh Singh Sibbia&Ors. vs. State of Punjab.* (1980) 2 SCC 565. In view of this principle, Section 438 has to be given effect to, keeping in mind the importance of personal liberty guaranteed under Section 21 of the Constitution of India.
- H. BECAUSE the inspection memo issued by the FCRA Division of Ministry of Home Affairs was responded to by the

Applicants, giving a detailed explanation about the functioning of Sabrang Communications and giving information about the Consultation Agreement entered into by Sabrang Communication with Ford Foundation.

- I. BECAUSE no case of violation of Section 3 of Foreign Contribution (Regulation) Act, 2010 has been made out against the Applicants herein because no foreign contribution has been received by them in the capacity of Directors of Sabrang Communications and Publishing Pvt. Ltd. The said allegation is baseless and made solely for the purpose of harassing and torturing the Applicants herein.
- J. BECAUSE registration under Section 11 of Foreign Contribution (Regulation) Act, 2010 is not required by Sabrang Communication as no contribution is being received by the Company.
- K. BECAUSE in pursuance of the inspection memo, accounts and records of Sabrang Communications from April 2006 onwards had been furnished to the Inspection Team. That as per Rule 17(7) of Foreign Contribution (Regulation) Rules, 2011, the accounts are required to be preserved for six years. There is thus

no violation of Section 19 of Foreign Contribution (Regulation) Act, 2010.

- L. BECAUSE the conduct of the Applicants has been impeccable and in the past on various occasions, when an award has been received consisting of foreign currency, permission has been sought and granted to them by the Ministry of Home Affairs.
- M. BECAUSE there is absolutely no violation of any provision of the Foreign Contribution (Regulation) Act, 2010 by the Applicants or the Sabrang Communications and Publishing Pvt. Ltd.
- N. BECAUSE Section 3 of FCRA, 2010 bars certain 'persons' (political parties and its office bearers, government servants and those associated with registered newspapers and those involved in the production and broadcast of news) from receiving foreign donations. However, the very next section, Section 4 which is Titled '*Persons to whom section 3 shall not apply*' states:

"Nothing contained in section 3 shall apply to the acceptance, by any person specified 3 in that section, of any foreign contribution where such

contribution is accepted by him, subject to the provisions of section 10- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source;"

Sabrang Communications and Publishing Pvt. Ltd Co. which published the monthly 'Communalism Combat' signed a Consultancy Agreement with Ford Foundation in 2004 and 2006 "to address the issues of caste and communalism" through a clearly defined set of activities which had nothing whatsoever to do with Communalism Combat or remuneration to the Applicants towards discharging editorial/managerial functions.

0. BECAUSE the Consultancy was signed by Sabrang Communications only after advice from eminent legal counsel that such an agreement was covered under the exclusion stipulated under Section 4 of the Act and therefore the consultancy fees (not grant or donation) received would not be in violation of Foreign Contribution (Regulation) Act, 1976

which was the Act in force at the time of signing the Agreement.

P. BECAUSE Ford Foundation in fact deducted TDS with every installment of consultancy fees it paid to Sabrang Communications. The activities undertaken and the expenses incurred were in accordance with the agreement. Activities and Financial Reports were submitted annual to the satisfaction of Ford Foundation.

Q. BECAUSE the allegation that no segregated vouchers or separate accounts as proof of the amounts received were maintained by Sabrang Communications and Publishing Private Limited is ill-founded and this is clear from the fact that this was so because the Consultancy amounts received from the Ford Foundation as per the agreements of 2004 and 2006 were not treated as foreign contribution under provisions of Foreign Contributions Regulation Act, 1976 and the amended Foreign Contributions Regulation Act, 2010, but as part of income in the ordinary course of business of SCPPL. Accordingly receipts and payments out of the amounts received from Ford Foundation were not maintained

separately but were part of the Income and Expenditure statement of SCPPL.

R. BECAUSE it is therefore bona fide and in the interests of justice that the Applicants be admitted to anticipatory bail.

S. BECAUSE it's a case of documentary evidence and the Respondent has already seized all the documents, and the Applicants have fully cooperated with the investigation and there is no need for custodial interrogation.

8. The Applications is made bonafide and in the interest of justice.

9. The Applicant craves leave to amend, and alter the present application.

10. There is no other application filed regarding this FIR and offence in any other court.

11. The Applicant therefore prays:

PRAYERS

In the facts and circumstances set out above is most respectfully prayed that this honorable Court pleased to:

- a. In the event of Arrest in FIR No. E00006 of 2015 registered by the CBI-EOW (Mumbai) the Applicant be released on bail;
- b. Pending the hearing and final disposal of this Application in the event of Arrest in FIR No. E00006 of 2015 registered by the CBI-EOW (Mumbai) the Applicant be released on bail;
- c. Interim and ad-interim reliefs in terms of prayer clause (a) and (b);
- d. pass such further orders as this honorable court may deem fit and proper;

**AND FOR THIS ACT OF KINDNESS THE APPLICANTS
IN DUTY BOUND SHALL EVER PRAY**

Vijay Hiremath
Advocate for the Applicants.

Mumbai

21.07.2015

Verification

I Teesta Setalvad, Resident of
'Nirant' Juhu, Mumbai, do hereby
solemnly affirm and state as
under :-

I state that whatever has
been stated in paragraph No.1 to
4 is true to my knowledge and
information and are statement of
facts and rest of the paragraphs
contains legal submissions which
are incorporated in the
application upon legal advise.

Solemnly affirmed at
_____on this
_____ day of July,
2015.

Deponent

Advocate

Identified by me,

