IN THE HIGH COURT OF JHARKHAND AT RANCHI

(CRIMINAL WRIT JURISDICTION)

W.P.(PIL) NO. _____ OF 2017.

In the matter of:

An application under Articles 226 of the Constitution of India

In the matter of:

1. Stan Swamy, Convenor, Persecuted, Prisoners Solidarity, Committee at Bagaicha, A.T.C. Campus, Namkum, PO: Namkum, PS: Namkum, Ranchi.

2. Xavier Soreng, Director, Bagaicha, A.T.C. Campus, Namkum, PO: Namkum, PS: Namkum, Ranchi ….....… Petitioners.

-Versus-

1. State of Jharkhand, through the Chief Secretary, Project Bhawan, P.O., P.S. – Dhurwa, District – Ranchi.

2. Secretary, Department of Home, Government of Jharkhand, Project Bhawan, P.O. & P.S. – Dhurwa, District – Ranchi.

3. Director General of Police, Jharkhand, Police Headquarter, Dhurwa, P.O. & P.S. – Dhurwa, District - Ranchi;

4. Deputy Commissioner, Chaibasa, P.O. & P.S. – Chaibasa, District West Singhbhum.

5. Superintendent of Police, Chaibasa, P.O. & P.S. – Chaibasa, District West Singhbhum.

6. Inspector General of Prisons, Jharkhand, Hotwar, P.O. – Hotwar, P.S. -Sadar, District - Ranchi,

7. Superintendent, District Jail , Chaibasa, P.O. & P.S. – Chaibasa, District West Singhbhum. …..… Respondents.

TO

THE HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, ACTING CHIEF JUSTICE OF THE HIGH COURT OF JHARKHAND AT RANCHI AND HIS OTHER COMPANION JUDGES OF THE SAID HON'BLE COURT.

This humble application on behalf of the above named petitioners

MOST RESPECTFULLY SHEWETH:

1. That in this writ application, the petitioners pray for the issuance of an appropriate writ / order / direction particularly:-

   (a) In the nature of a declaration that the prolonged detention and thereby denying the right to life and freedom due to protracted pre-trial or trial proceedings, for no fault of the detenues, in the cases arraigned against the deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes purportedly in a number of non-bailable

offences related to the Unlawful Activities (Prevention) Act, 1967 (as amended); 17 Criminal Law Amendment Ac 1908; Chapter VI of the Indian Penal Code; and/or offences under the other Sections and Acts, as found rampant at District Jail, Chaibasa, has amounted to a gross violation of their fundamental rights to life and personal liberty as guaranteed under Article 21;

(b) That an appropriate writ / order / direction in the nature of mandamus commanding upon the Respondent Nos. 1 to 8 that in the above-said cases, interim relief be granted immediately, releasing the above-specified prisoners forthwith on interim bail, on personal bonds during the pendency of this petition, or until the appropriate report reaches this Hon'ble Court, as per prayer (d) herein below, and further actions are directed.

(c) That an appropriate writ / order / direction directing the Respondents to safeguard the rights of the detenues to speedy trials as guaranteed under Article 21, in the following groups of detenues identified:

(i) The group of persons languishing in the jails of Jharkhand for want of sanction for prosecution for as many as 3 to 4 years, in whose cases the learned courts below have caused inordinate

delay in the pre-trial and trial proceedings in the absence of the specified government sanction prescribed for cognizance of offences under different chapters of the Unlawful Activities (Prevention) Act, 1967 (as amended) as provided under Section 45 of the Act, and thereby the cases were held up at the stage of cognizance for no fault of the detenues.

(ii) The group of persons languishing in the jails of Jharkhand due to delays in charge-framing, again for no fault of the detenues.

(iii) The group of persons languishing in the jails of Jharkhand due to non-production of witnesses of the Prosecution, and other systemic shortcomings, official callousness, administrative measures and deliberate ploys, from the side of the State, and the State seeking continuous adjournments resulting in endless delays, again for no fault of the detenues.

(d) That the necessary interim order may be passed to constitute a Commission of Inquiry to be monitored by this Hon'ble court to meticulously conduct an in-depth and comprehensive fact-finding inquiry in all the 24 districts of the state of Jharkhand, and record the present status of affairs in the light of the leadings in this case, in all

categories of detenues and submit to this Hon'ble Court for issuance of appropriate direction (s) by way of remedies and reliefs;

AND

For issuance of any other appropriate writ(s) or order(s) or direction(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case.

2. That the petitioners have not moved before this Hon'ble Court earlier for the reliefs as prayed for in the instant writ application.

3. That the cause of action has arisen within the territorial jurisdiction of High Court of Jharkhand.

4. That the main points of law involved in this writ application for consideration before this Hon'ble Court are as follows:

(i) Whether the detenues, the subject matter of this case, have a fundamental right to speedy trial and other ancillary rights as interpreted by the Hon'ble Supreme Court in several cases, and would the denial of these rights amount to violations of Articles 14, 15 and 21 of the Constitution of India?

(ii) Whether the detenues in the jails of Jharkhand can continue to be detained and allowed to continue to languish in jails for want of sanction for prosecution for as many as 3 to 4 years, with the learned courts below having caused inordinate delay in the pre-trial and trial proceedings of the cases?

(iii) Whether such delays as described above under (ii) may have amounted to unjust and disproportionate extension of the detention of the deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes incriminated in alleged left wing extremist activities/serious offences against the state, but many of whose cases may, in the absence of concrete and substantive evidence, and/or on account of non-compliance of the directions of the Hon'ble Apex Court in *D.K. Basu vs State of West Bengal (1997) 1 SCC 216* for arrest procedure, post-arrest procedure, and seizure procedure, be deemed to end up in acquittals?

(iv) Whether the delays caused in the above-said cases for the alleged offences amounted to a failure of justice?

(v) Whether the 1983 Report of the All India Committee on Jail Reforms (Mulla Committee), which documented numerous violations of rights in jails in India, and recommended various rights for the prisoners, especially those under Chapter IV, including the prisoners' right to interaction with society, as under section 4.1.13, particularly the rights to interview and to socialise, were being properly implemented in the jails of Jharkhand?

5. That Petitioner No. 1, namely Shri Stan Swamy, Convenor of Persecuted Prisoners Solidarity Committee (hereinafter, PPSC), leads a voluntary civil society group of activists, lawyers, and ex-prisoners, and having had a long history of academic work in the field of social sciences and service to the underprivileged and downtrodden sections of society, is also the founder and an active functionary from the centre for social action called, Bagaicha at Ranchi.

6. That Petitioner No. 2, namely Dr. Xavier Soreng, is a lawyer and Director of Bagaicha, a centre for social action, which is a registered N.G.O. engaged in espousing the particular needs and aspirations of the deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes from the rural parts of

Jharkhand and its neighbouring states, and in spreading awareness and evolving leadership and social initiatives from among the said sections of the society about their rights and entitlements vis-à-vis the Constitution of India.

7. That the issues referred to in this application emerged before Petitioner No. 1 and Petitioner No. 2, as and when they, along with their colleagues, collected and compiled data, notes, and reports on the basis of research and investigations conducted on the subject matter of this petition in successive phases from 2012 to 2016, and thus resolved to seek justice from the Hon'ble court for the appropriate remedies and reliefs.

8. That, as part of the said research and investigation, Petitioner No. 1 and Petitioner No. 2 had initiated and supervised conducted study with the help of a qualified team of well-meaning experts and others into the incarceration of the said deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes of Jharkhand in the year, 2012, on the basis of indirect and direct sources, such as newspaper reports, replies by the Jail Administration to R.T.I. queries, interviews with bailed out prisoners, and in the final stage,

through direct interviews with the under trials in some of the jails of Jharkhand, particularly District Jail, Chaibasa.

9. That the findings of the above-said investigation were first compiled in the form of a research study report published by Bagaicha in February 2016, along with a foreword by Dr. Joseph Marianus Kujur, S.J., Provincial Superior, Ranchi Jesuit Province, from which we may quote the following end note that helped allay our initial apprehensions about the issues raised in the said research study:

'The research study does not subscribe to any violent solutions to the existing problems of exploitation and repression. On the contrary, it promotes a peaceful and just solution to the longstanding issue of the equity and rights of adivasis and moolvasis over natural resources in a dignified manner. It, therefore, contests all forms of violence, including the structural or institutional violence perpetrated by the state under the pretext of tackling the "internal security threat". The fact of the matter, as shown in the case study, is that majority of the under-trials had no connection with the naxals. The research study is a big question on the criminal justice system as well.'

Photocopy of the *Bagaicha* Report, dated February 2016, is annexed herewith and

marked as Annexure-1 to this writ application.

10. That subsequently, Petitioner No. 1 and Petitioner No. 2 and their colleagues engaged with the Jharkhand Legal Services Authority (hereinafter, JHALSA) at Nyaya Bhawan, Doranda, Ranchi and submitted an application through their colleagues of the PPSC, dated 26.07.2016, to the Hon'ble Executive Chairman, JHALSA, through the then Member Secretary, seeking help in the form of providing the necessary channels for their further investigations, and for legal remedies to the said delays in the case proceedings of the said prisoners at District Jail, Chaibasa, so as to ensure speedy disposal even while providing them a modicum of legal services. In this application to the JHALSA, the investigators of the PPSC had also reported at length the data compiled by them, as of 26.07.2016, on the said nature of delays in the proceedings of the said category of cases. However, the prayers in this application were declined and the same categorically conveyed verbally to the applicants by the then Member Secretary after about a month, on grounds, such as their not being part of any of the organisational structures of JHALSA, and the JHALSA's inability to help in facilitating the required interviews in the jails with the prisoners.

Photocopy of the PPSC's Application to the Executive Chairman, JHALSA through the Member Secretary, dated 26.07.2016, is annexed herewith and marked as Annexure-2 to this writ application.

11. That, thereafter, the colleagues of the petitioners somehow filled up the gaps in the data reported in the above application to the JHALSA, and compiled an updated version, as of 30.10.2016, after a series of restricted and constrained interviews with some of the said prisoners at District Jail, Chaibasa, and after due verification and cross-checking with the help of the defense lawyers already engaged by them, and with the e-courts data as of February 28, 2017, provided the findings to the petitioners.

12. That though the above-said data was derived from only one source, district West Singhbhum, the inferences that may be drawn there from regarding the pattern and causes of the delays in speedy disposal of the above-said cases matched with the random reports made available to the petitioners through interviews with similar under trial prisoners conducted by their colleagues at some other jails and through interaction with the concerned defense lawyers at various courts of Jharkhand, such as those in East Singhbhum, Seraikela-

Kharsawan, Khunti, Gumla, Latehar, Daltonganj, Hazaribagh, Tenu Ghat, Dhanbad, Giridih and Ranchi. Therefore, it is the contention of the petitioners that the data about various kinds of delay in the case proceedings at Chaibasa may be considered largely representative of the state as a whole. This contention is further supported by the fact that District Jail, Chaibasa happened to be the prison having the largest concentration of the above-specified category of under trial prisoners among the various District Jails, Sub-jails and Central Jails in the state.

13. That, as the available data would show, the above-said cases, the delays in the proceedings of which this application is concerned with, involved offences made up from any combination of the following: Sections 121, 121 A, 122, 123, 124 A, 147, 148, 149, 153 B, 302, 307, 323, 324, 325, 326, 332, 333, 353, 431, 435 of the Indian Penal Code; Sections 17 (1), 17 (2) of the Criminal Law Amendment Act, 1908; Sections 10, 13, 16, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 [as amended on 31.12.2008]; Sections 25 (1A), 25 (1B) a, 27, 35 of the Arms Act, 1959 and Sections 3, 4, 5 of the Explosives Substances Act, 1908.

14. That the investigation into the said cases at Chaibasa, which led to the identification of various kinds of delay in the above-said cases, was

conducted between the months of March and October 2016. The data thus compiled was first updated as of October 30, 2016, and then as of February 28, 2017. The findings of this very investigation are faithfully reported below in this application.

15. That, at the jail at Chaibasa, a total of 72 prisoners were identified in the above-specified category, as of 28.02.2017, who together faced a total of 108 cases registered at about half a dozen police stations in the district of West Singhbhum, often against unknown and unnamed offenders.

Copy of tabulated data-sheet bearing the findings of the said investigation of the specified cases pending at Chaibasa, as of 28.02.2017, is annexed herewith and marked as Annexure-3 to this writ application.

16. That, at Chaibasa, a Principal District and Sessions Judge, and a total of 4 District and Additional Sessions Judges, 2 Assistant Sessions Judges, a Chief Judicial Magistrate and a Sub-divisional Judicial Magistrate were the concerned judicial officers posted at the learned courts below where these cases and trials were pending.

17. That on analyzing the data for the above-specified cases at Chaibasa, the disposal of as many as 101 of the above-said 109 cases, amounting to about 93.5 percent of the cases, were found held up on account of some inordinate or undue delay or the other.

Xerox copy of graph showing no. of cases suffering in ordinate delay at Chaibasa is annexed herewith and marked as Annexure-4.

18. That it was found that as many as 58 out of the total of 108 cases were unduly delayed at the trial stage, some of them pending for 3-10 years, even though the number of Prosecution Witnesses (hereinafter, P.W.s) required to depose was in general not more than 15 or 20.

A bar graph showing the years for which the delayed trials have been pending, along with the corresponding list of detenues, and their available case details, are annexed herewith and marked as Annexures-5A and 5B, respectively, to this writ application.

19. That in many cases the courts hearing the trial frequently displayed undue leniency in granting adjournments to the prosecution as its witnesses failed to turn up from one date of hearing to another. Apparently, the Investigation Officers could not produce the witnesses for a variety of reasons. Once the I.O.s had arrested the accused and submitted their Final Reports, they seldom bothered about the fate of the accused whose incarceration they had caused. Such callousness was but expected in respect of suspected local agitationists and rebels from police personnel representing the state, especially when the latter were very much a party to a painful armed conflict in the region. These were precisely the circumstances that called upon the learned courts below to exercise extraordinary judicious neutrality towards the festering context of the criminal cases registered by the police, and exhibit true empathy towards the accused in accordance with the basic premise of "innocent until proved guilty," so as to be responsive towards the accused persons' fundamental right to speedy trial.

20. That the experience of the defence side was quite the contrary. In spite of the current initiatives from the higher judiciary to monitor the trials for expeditious disposals with the view to address the issues of backlog and pendency, the ground realities at the level of the learned court below had

reduced the provision to conduct trials as expeditiously as possible, and once the examinations had begun, from day to day until all the witnesses are examined, as specified in Section 309 of the Code, especially in the said category of cases, to an empty promise.

21. That in some instances, the trial court would issue a warrant against the P.W.s who would fail to comply with the summons issued earlier, but that was all it would do. There would be no further progress beyond that. Strict punitive or disciplinary action as per the provisions of the Statutes would never be initiated when the erring witnesses were personnel of the state police or central paramilitary forces. In case of transferred and retired personnel residing far away from the concerned district, the trial courts appeared particularly helpless.

22. That among the 58 inordinately delayed trials, there also were instances where the trial had been totally stalled for a long period on account of issues that reflected the sordid state of affairs in the judicial process. For example, S.T. Nos. 202/07, 157/08 and 49/10, all amalgamated into one, in which a few P.W.s had deposed long before by 2012, the trial court of the learned 1st District and Additional Sessions Judge suddenly decided to hold up the trial on account of his inclination to send the case to a special POTA court for

trial instead of trying it at that same Sessions court, even though POTA had long been repealed and no government sanction could now be possibly issued for prosecution under that Act. As a result, as many as six accused persons currently incarcerated at Chaibasa jail in these three trials, arising out of P.S. Gua Case No. 17/10, have been left in the lurch, with their trials stalled for the last 5 years. Another is the instance of S.T. No. 124/09, in which some evidence was initially taken when the trial began in 2013, but subsequently, the trial remained stalled for many years with the accused person languishing behind bars helplessly, on account of the fact that one of his co-accused happened to be lodged in another jail of the same state, from where he was not being produced for this trial owing to the inability of the Jail Administration to do so. These were instances which demonstrated what could actually happen if strong measures were not initiated by this Hon'ble court to ensure speedy disposal of the said category of cases.

23. That the Hon'ble Supreme Court has spoken before on the issue of under trials, their rights, and the need to provide for speedy trials, as in *Hussainara Khatoon &* Ors. vs Home Secretary, State of Bihar (1979 SCR(3) 169).

24. That the analysis of the data from Chaibasa further revealed that 25 out of the same 108 cases were found stuck up at the point of charge-framing, in

some cases not for a few weeks, months or a year or two, but even for as long as 3 and 4 years.

A bar graph, accompanied by the list of corresponding detenues and the available details of their cases which are held up at the point of charge-framing for excessively long durations are annexed herewith and marked as Annexures - 6A and 6B, respectively, to this writ application.

25. That the common refrain to account for the delay at the stage of charge-framing was non-appearance of one or more co-accused named in the particular case. In cases where the accused persons may have turned defaulters, whether intentionally or otherwise, failing to appear for the hearings of their trial after being released on bail, the trial courts were generally found to be exceedingly slow and slipshod, unwilling to proceed as per the provisions of Sections 299 of the Cr.P.C. so as to dispense with the appearance of the defaulting accused after promptly issuing the due process u/s 82 of the Cr.P.C. against the defaulters, and splitting up the cases

of the accused persons languishing in jail – a process that should normally take just about a month.

26. That in some cases, the trial court's intransigence tended to extend far beyond its calling as a custodian of the law, by refusing to frame the charges of the accused persons languishing in its custody at the District Jail, until one or more of the accused persons named in the F.I.R. were not arrested and produced before it. The persons already arrested and languishing in jail were thus unduly punished while denying them a prompt trial, simply extending their detention indefinitely until their co-accused might possibly be arrested or might appear for the hearings after having been released on bail. This practice amounted to a kind of punishment, thus violating the judicial premise of "innocent until proved guilty."

27. That the analysis of the same set of data from Chaibasa further brought out the alarming fact that 18 out of the same set of 108 cases were found to be delayed at the point of cognizance for periods from 6 months to as long as 4 years. The Sub Divisional Judicial Magistrate, in whose court the Investigating Officer may have submitted his Final Report, remained reluctant to take cognizance of even the alleged offences under those of the Sections/Acts invoked in the case, which did not require any government

sanction, refusing to commit it to the Sessions Court for trial, even if a few of the alleged Sections/Acts required the sanction of a certain government authority.

A bar graph and the corresponding list of detenues identified to be suffering undue delays at the point of cognizance are annexed herewith and marked as Annexures-7A and 7B, respectively, to this writ application.

28. That at the Chaibasa courts, the petitioners came across only a single instance where a judicial magistrate had exercised judicious discretion, in response to a petition filed and argued by one of the defence lawyers pleading for the said category of detenues, ordering that the case be taken cognizance of in all the offences other than those which required government sanction which had not been issued till then.

Xerox copy of order dated 04.09.2013 is annexed herewith and marked as Annexure – 8.

29. That obtaining the concerned government authority's sanction for cognizance by the courts, whether as specified U/S 196 of the Cr.P. C. in case of offences under Chapter VI of the I.P.C., or U/S 45 of the Unlawful Activities (Prevention) Act of 1967 (as amended last on 31.12.2008) in case of offences under this Act, or the consent of the District Magistrate as specified U/S 7 of the Explosives Substances Act of 1908 (as amended on 01.02.2002) before proceeding to a trial in case of offences under this Act, essentially happened to be a function to be carried out by the Investigating Officer. It was, therefore, a responsibility to be borne by none other than the Investigating Officer. Yet, it turned out that the opposite side, i.e., the detenues languishing in jail in anticipation of a trial, were being penalized for the police officers' failing.

30. That whether it may be a case of non-application of mind, or of prejudice on the part of the concerned Judicial Magistrate, whose primary function it was to commit the case to the court empowered to hear the trial, the fallout was that the benefit of the doubt which could and should have gone to the

accused detenue, was allowed to be usurped by the police and the prosecution.

31. That apart from the above instances of delays in the pre-trial and trial proceedings, it was also found that the detenues were being transferred mid-way in their trials at the present district to another jail in another district to be produced in a court there for some other case, after which they were generally not returned to the earlier jail in which their earlier case was being heard. Their currently ongoing trials were thus left in abeyance until they would, if ever, be brought back to the first jail.

32. That transfers from one jail to another were found to be carried out not just for the sake of being produced for more cases pending elsewhere, but also simply on administrative grounds by the jail administration. In some high profile cases, these administrative transfers were believed to have been carried out at the connivance of the Police Department whose motive could always be to prolong the detention of such accused persons against whom they may have been unable to collect any evidence of worth that could lead to a conviction. Jail transfers, in such cases, may appear to have been engineered with malafide intentions.

33. That while carrying out jail transfers of the detenues, whether under trial or convicted and serving a sentence, the adverse emotional, economic and judicial effects of distancing them from their families and legal advisors was seldom or never considered. It needed to be considered that both the prisoners and their family members went through emotional and economic stresses as a result of these transfers, especially because of their poverty, illiteracy, ignorance, causing great difficulties, even inability to travel greater distances to other districts. The detenues so distressed also lost contact with their legal advisors, and with such severed relations leading to added uncertainties in the conduct of their legal defence, the possibility of fair trials became all the more slim, and such prisoners tended to become emotional wrecks.

34. That, therefore, there was a dire need for an appropriate order / direction from this Hon'ble court to control the practice of arbitrary jail transfers.

35. That another issue was that of a common omission on the part of the courts below in instances where the police, in their bid to prolong the detention of some from the above category of detenues, deliberately resorted to foisting one case after another in a much staggered manner, regardless of whether the new incrimination / new case may be genuine or fake. New incriminations in

cases that may be already registered somewhere were fabricated by Investigating Officers at the behest of their superiors against under trial prisoners. Or entirely new cases were fabricated and foisted upon them. Thereafter, the courts below either did not apply their mind, not examining the veracity of these new incriminations / new cases through the necessary extent of scrutiny, or there may not have been any effective mechanism in place at the level of the lower courts that could have ensured the minutest of scrutiny of the new incriminations / new cases necessary to examine their veracity. Thus, the malafide intent of the police, if any, of prolonging the detention of those among the poor, illiterate and ignorant adivasis, moolvasis, dalits, and other backward and deprived communities, who may be innocent, remained unchecked.

36. That what often happened as a result of these lacunae was that right on the eve of a detenue's release from jail either on bail or on acquittal, the detenue and his/her near and dear ones would be suddenly taken aback by the imposition of an unexpected, new case, and left shocked, helplessly broken and in a bitter state of mind.

37. Therefore, appropriate orders / directions may have to be evolved and issued by this Hon'ble court in order to help gear up the learned courts below, right

down to the level of the remand magistrates, so that effective curbs and checks may be imposed upon cases suspected to be fake with charges suspected to be fabricated, which may be foisted successively upon the said category of under trial prisoners, in order to enhance the vigilance at the level of the concerned judicial magistrates' courts, so that they may exercise the necessary discretion while taking cognizance of new cases invoked against such under trials who may already be facing earlier trials, and commensurately at the level of the trial courts.

38. That the Hon'ble Supreme Court in the case of *Abdul RehmanAntulay & others vs Nayak* noted that:

> "54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:
>
> 1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves

> the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.
>
> 2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

37. That while in its 2002 judgement in *P. Ramachandra Rao vs State Of Karnataka (2002 (4) SCC 578),* the Hon'ble Court again declined to fix hard time limits on the right to speedy trial, and reaffirmed the 1992 guidelines in A.R. Antulay, it reminded the lower courts of their obligations to ensure undertrials' rights are respected (p. 15):

> "(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases

jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions."

38. That based on the information gathered by the petitioner, the rounded off estimates of the numbers of detenues facing such cases in the various districts of Jharkhand at the time of filing this application should be close to the following: A total of about 500 in the state of Jharkhand, with a break-up of: District Jail, Chaibasa: 75; District Jail, Khunti: 50; Loknayak Jayprakash Narayan Central Jail, Hazaribagh: 40; District Jail, Latehar: 30; Central Jail, Dumka: 30; Sub-jail, TenuGhat (Bermo), District Bokaro: 30; District Jail, Giridih: 25; District Jail, Dhanbad: 20; Central Jail, Daltonganj: 20; District Jail, Garhwa: 20; District Jail, Lohardagga: 20; District Jail, Gumla: 20; Central Jail, Ghaghidih (Jamshedpur): 15; Sub-jail, Ghatsila, District East Singhbhum: 15; District Jail, Seraikela-Kharsawan: 10; District Jail, Jamtara: 10; District Jail, Deogarh: 10; District Jail, Pakur: 10; District Jail, Simdega: 10.

39. That the constitutional mandate enshrined under Article 21 provided for both under trial and convicted prisoners to enjoy protection of a certain character.

40. That the Hon'ble Apex Court reiterated in *State of Andhra Pradesh vs Challa Ramkrishna Reddy & Ors. (2000 (5) SCC 712)* as follows:

> "It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict or under trial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the Right to Life guaranteed to him under the Constitution."

41. That the petitioners beg to submit that the deprived and ignorant members of the indigenous/downtrodden communities from the scheduled tribes, scheduled castes and other backward classes are actually a specific deprived category of people who need to be cared for and served with special sensitivity. They are quite unaware of, and unaccustomed to, the machinations of the state and the functions of the judiciary, which others in many other parts of the country may be relatively aware of and accustomed to. The said communities are also severely lacking in the economic resources necessary to engage expensive lawyers, or even to make full payment of the fees sought by the lawyers who they may have engaged. The Constitution of India also recognizes their special status, as under Schedule

V. Commensurate extra attention would, therefore, have to be paid to these communities not only by the state while invoking the provisions of the criminal law against them, and but also by the judiciary in Jharkhand while implementing and complying to the Code of Criminal Procedure, and the various practices in and around the courts at least as long as the members of these communities remain in judicial custody.

42. That, on the basis of the petitioners' submission under paragraph-17 above, the need would arise, in order to guarantee the compliance of Article 14 and 15, to take special care and go out of the way while dispensing justice to the said category of under trials languishing in jails for long periods that may be far too disproportionate in comparison to their natural modes of existence.

43. That, whether the said under trials may by and large have been incriminated merely on account of their physical or geographical proximity with the alleged left wing extremists active in and around the forests in Jharkhand, or whether a few of them may be likely to be convicted for an offence and awarded sentences with fixed terms or even with life imprisonment, prolonging their detention in prisons for their pre-trial and trial proceedings together beyond three or four years would be far too disproportionate in comparison to the alleged offence as well as to the likely sentence.

44. That the petitioners have perused some of the case papers, particularly the FIRs, Final Reports, and the evidences on record, including the depositions so far recorded, as samples, and have found that in most cases, the prisoners of the said category have been incriminated in serious offences without concrete and substantive evidence, not to speak of compliance with the directions in *D.K. Basu vs State of West Bengal (1997) 1 SCC 216* for arrest procedure, post-arrest procedure, and seizure procedure. In such circumstances, acquittals would be quite likely.

45. That the petitioners believe that in view of the denial of bails to some of the under trials on grounds such as the seriousness of the offences, or their inability to be released on bails owing to their implication in so large a number of cases that it would be virtually impossible for them to arrange so many sureties. In such a situation, if the issue of delays went unaddressed, what else would it amount to but a failure of justice.

46. That the practices in the jails of Jharkhand were so inhuman that the detenues did not get the opportunity to meet their family members and friends in any human or decent manner. Interviews, whenever allowed, were held in worse circumstances than if one may be visiting a zoo meant for caged animals. The detenues to be interviewed were all kept behind a thick

mesh of wire and steel, often in darkness, at a great distance, and dozens of them would have to pore out through that mesh to see their loved ones and out-shout one another to be heard. Private communication through letters, and confidentiality, privacy, comfort and dignity while talking to one's legal advisors were completely ruled out.

47. That it was to address only one of the most glaring issues of the said prisoners - that of the denial in various different ways of the right to speedy trials guaranteed by Article 21 – that the petitioners had presented in this application a set of 101 cases suffering delays out of a total of 108 cases in one district, as concrete examples of specific cases with specific prayers for the necessary remedies.

48. That the petitioners state and submit that the issues involved in this writ application are of public interest.

49. That the petitioners state and submit that the issues involved in this writ application are of no personal interest to the petitioners, either direct or indirect.

50. That the petitioners state and submit that the learned courts below have caused inordinate delays in the pre-trial and trial proceedings of the said category of cases, causing lapse of procedure.

51. That the petitioners state and submit that such delays as described above (under 26) have amounted to unjust and disproportionate extension of the detention of the deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes incriminated in alleged left wing extremist activities / serious offences against the state, but many of whose cases may, in the absence of concrete and substantive evidence, and/or on account of non-compliance of the directions of the Hon'ble apex court in *D.K. Basu vs State of West Bengal (1997) 1 SCC 216* for arrest procedure, post-arrest procedure, and seizure procedure, be deemed to end up in acquittals.

52. That the petitioners state and submit that the delays caused in the said category of cases for the alleged offences amounted to a failure of justice.

53. That the petitioners state and submit that the 1983 Report of the All India Committee on Jail Reforms (Mulla Committee), which documented numerous violations of rights in jails in India, and recommended various rights for the prisoners, especially those under Chapter IV, including the

prisoners' right to interaction with society, as under section 4.1.13, particularly the rights to interview and to socialise, were not being properly implemented in the jails of Jharkhand.

54. That there was no other speedy & efficacious remedy before the petitioner but to move this Hon'ble Court in its extraordinary writ jurisdiction.

55. That this writ application is made bonafide and in the interest of justice.

It is, therefore, most humbly prayed that Your Lordships may graciously be pleased to issue an appropriate writ / order / direction particularly:

In the nature of a declaration that the prolonged detention and thereby denying the right to life and freedom due to protracted pre-trial or trial proceedings, for no fault of the detenues, in the cases arraigned against the deprived and ignorant members of the indigenous / downtrodden communities from the scheduled tribes, scheduled castes and other backward classes purportedly in a number of non-bailable offences related to the Unlawful Activities (Prevention) Act, 1967 (as amended); 17 Criminal Law

Amendment Ac 1908; Chapter VI of the Indian Penal Code; and/or offences under the other Sections and Acts, as found rampant at District Jail, Chaibasa, has amounted to a gross violation of their fundamental rights to life and personal liberty as guaranteed under Article 21;

AND

That an appropriate writ / order / direction in the nature of mandamus commanding upon the Respondent Nos. 1 to 8 that in the above-said cases, interim relief be granted immediately, releasing the above-specified prisoners forthwith on interim bail, on personal bonds during the pendency of this petition, or until the appropriate report reaches this Hon'ble Court, as per prayer (d) herein below, and further actions are directed.

That an appropriate writ / order / direction directing the Respondents to safeguard the rights of the detenues to speedy trials as guaranteed under Article 21, in the following groups of detenues identified:

AND

The group of persons languishing in the jails of Jharkhand for want of sanction for prosecution for as many as 3 to 4 years, in whose cases the learned courts below have caused inordinate delay in the pre-trial and trial proceedings in the absence of the specified government sanction prescribed for cognizance of offences under different chapters of the Unlawful Activities (Prevention) Act, 1967 (as amended) as provided under Section 45 of the Act, and thereby the cases were held up at the stage of cognizance for no fault of the detenues.

AND

The group of persons languishing in the jails of Jharkhand due to delays in charge-framing, again for no fault of the detenues.

AND

The group of persons languishing in the jails of Jharkhand due to non-production of witnesses of the Prosecution, and other systemic shortcomings, official callousness, administrative measures and deliberate ploys, from the side of the State, and the State seeking continuous adjournments resulting in endless delays, again for no fault of the detenues.

AND

That the necessary interim order may be passed to constitute a Commission of Inquiry to be monitored by this Hon'ble court to meticulously conduct an in-depth and comprehensive fact-finding inquiry in all the 24 districts of the state of Jharkhand, and record the present status of affairs in the light of the leadings in this case, in all categories of detenues and submit to this Hon'ble Court for issuance of appropriate direction (s) by way of remedies and reliefs;

AND

For issuance of any other appropriate writ(s) or order(s) or direction(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case.

AFFIDAVIT

I, Stan Swamy, Convenor, Persecuted, Prisoners Solidarity, Committee at Bagaicha, A.T.C. Campus, Namkum, PO: Namkum, PS: Namkum, Ranchi, do hereby solemnly affirm and state as follows :-

1. That I am the Petitioner no. 1 and as such I am well acquainted with the facts and circumstances of this case.
2. That I have been duly authorized by petitioner no. 2 to swear this affidavit on their behalf also.
3. That the contents of this writ application and affidavit have been read over and explained to me which I have fully understood the same.
4. That the statements made in paragraphs_____are true to my knowledge, those made in paragraphs _____ are true to my information derived from the records of the case and rest is by way of submission before the Hon'ble Court.
5. That the annexure are photocopies /true copies of their respective originals.

Sworn, sign and verified this affidavit on ____ day of July, 2017 in the premises of Hon'ble Jharkhand High Court at Ranchi.