

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DIST : AHMEDABAD

CRIMINAL MISC. APPLICATION NO. 10200 OF 2018

Javed Anand & Anr...

Applicants

v/s

State of Gujarat

Respondent

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23.5.2018
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CRIMINAL MISC. APPLICATION NO. OF 2018

Javed Anand & Anr...

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v/s

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Respondent

LIST OF EVENTS

2010 to 2013- Date of alleged offence.

2018 - FIR is registered at

23.5.2018 - Date of impugned order by the Ld. Addl. City Sessions Judge,
Ahmedabad.

Hence this application.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DIST : AHMEDABAD

CRIMINAL MISC. APPLICATION NO. OF 2018

1. Javed Anand,
Age: 68 years
Residing at: Nirant,
Juhu Tara Road, Juhu,
Mumbai - 400049

2. Teesta Atul Setalvad,
Age: 56 years
Residing at: Nirant,
Juhu Tara Road, Juhu,
Mumbai - 400049

...Applicants

(Orig. Accused)

Versus

State of Gujarat through
Notice to be served through
Ld. PP, Gujarat High Court,
S-G Highway, Ahmedabad City
Gujarat

.... Respondent

Application under Section 438 r/w 482
of the Criminal Procedure Code for
anticipatory bail in connection with the
offence registered as CR No I - 20/2018
with DCB Police Station, Ahmedabad,

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

This is an application for Anticipatory bail as on behalf of the Applicants above named as per the provisions of S. 438 of the Code of Criminal Procedure.

1. The Applicants herein are apprehending their arrest in connection with FIR No. I/20/2018 registered with DCB Police Station, Ahmedabad City, Gujarat, for offences punishable under Sections 120B, 153A, 153B, 406, 409 and 420 of the Indian Penal Code and Sections 13(1)(d)(i) and 13(2) of the Prevention of Corruption Act.

The allegations as per the FIR are as follows:

- a. The Applicants have misappropriated through Sabrang Trust the amount allotted to the Trust, allegedly for their personal use;
- b. The Applicants through Sabrang Trust were not eligible for the grant and yet got the grant through collusion with the officials of the HRD Ministry and it is further alleged that the HRD ministry did not seek any expense reports from the Applicants to ensure that the grant was not used for personal purpose;
- c. That Applicant No.2 despite the purported conflict of interest (on account of her being a member of CABE committee) proceeded to collect grants under the Scheme of Assistance under Innovative and Experimental Education Programmes – Grants to Voluntary agencies under Sarva Shiksha Abhiyan.

For details of the allegations the applicants crave leave to rely and annex the copy of the FIR as **ANNEXURE “A”** to this application.

2. The Applicant No.1 is a journalist and activist working in Mumbai for more than 37 years. He is a columnist and writing regularly for the Indian Express, Times Of India, Hindustan Times, Asian Age, The Week and many periodicals and newspapers. The Applicant No.1 is a founding trustee of Sabrang Trust, Citizens for Justice and Peace and a co-editor of Sabrang India an online news magazine. The Applicant was awarded with the ‘Knight of the Order of Merit’ by the then French President in the year

2005 and in 2007 Applicant No.1 was awarded with Minorities Rights Award by the National Minorities Commission and many other awards for his writing and his work on communal harmony.

3. The Applicant No.2 is a Writer, Award Winning Journalist and Educationist and Human Rights Activist and Founding Trustee and Secretary, Citizens for Justice and Peace(CJP), founding Trustee. She has been journalist since 1983 and was a reporter with The Daily and The Indian Express apart from being Senior Correspondent with The Business India. Since August 1993, the Applicant No.2 has been the Editor of Communalism Combat. Apart from her work in the field of journalism the Applicant No.2 is also recognized as a prominent Educationist, Social and Human Rights Activist due to her work with organizations like Citizens for Justice and Peace (as Secretary) and KHOJ, Education for a Plural India Programme (as Director). In the year 2007 the Applicant No.2 was conferred with Padma Shri for her contribution in the field of Public Affairs in Maharashtra.

4. Facts of the case are as follow:
 - a. Over two decades ago (1994) the Applicants conceived a programme for school children which was christened as 'KHOJ: Education for a Plural India'. As a project of Sabrang Trust, the KHOJ innovative educational modules evolved by the Applicants have been successfully implemented in both privately run and civic corporation-run schools in Mumbai and elsewhere in Maharashtra over the years. Prior permission for a

team of KHOJ teachers to run these classes in the Mumbai Municipal Corporation run schools, for example, was granted by the BMC's Education Officer, year after year. A Copy of one of the BMC's permission letter is annexed hereto and marked as **ANNEXURE "B"**. KHOJ has been active since 1994 and has been working on the crucial area of Education Policy related to Democratization of the Social Studies and History Syllabus and Text-books. The Applicant No.2's work in the field of Education has been widely recognized and she was appointed to the Central Advisory Board of Education (CABE) Committee (CABE is a board constituted by the Parliament) in 2004 and served on the board till the year 2014.

- b. The Government of India reconstituted the Central Advisory Board of Education (CABE) vide Resolution 6.7.2004. The first meeting was held on August 10-11, 2004. After extensive discussions on several critical issues connected with education in this meeting, the Minister for Human Resource Development had set up seven committees to deal with important issues pertaining to different aspects of school, higher and technical education. The Applicant No.2 was appointed as a member of the CABE on 'Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in Schools outside the Government System'.
- c. The terms of reference (TOR) of the Committee were:
 - a. To study and report on textbooks in government schools not using the CBSE syllabus;

- b. To study the textbooks and curriculum of schools outside the government system, including those run by religious and social organizations;
- c. To suggest an appropriate regulatory mechanism for institutionalizing the issue of preparation of textbooks and curricular material.
- d. The Applicants in the course of their work came to know about the grant by the Ministry of Human Resource Development for Scheme of Assistance under Innovation and Experimental Education Programmes (Sarva Shiksha Abhiyaan).

The Applicants state that Applicant No.2 on behalf of Sabrang Trust submitted the proposal for grant from the Ministry of Human Resource Development to the then Joint Secretary of the Ministry of Human Resource Development Ms. Anita Bhatnagar on 9th March 2010. The said proposal was in the prescribed form along with the necessary Application Form. Sabrang Trust sought 100% grant from the Ministry of Human Resource Development for a period of three years i.e. 2009-10, 2010-11 and 2011-12. Through the infusion of the grant in the said project the Trust sought to reach out to 6000 students in 75 schools, which would include the 2000 students in 33 schools across Maharashtra where KHOJ classes were already being conducted. The said Application Form also laid down the budgetary details of the Trust's spending on the said project for the fiscal years 2009-10 and 2010-11. The total amount of grant requested for the fiscal year 2009-10 was Rs. 1,58,55,000 (Rupees one crore fifty eight lakh and fifty five hundred) for 2010-11 stood at Rs. 1,00,55,400/- (Rupees One Crore Fifty

Five Thousand Four Hundred only). A copy of the Project Proposal dated 09.03.2010 submitted by Sabrang Trust to Ministry of Human Resource Development is annexed hereto and marked as **ANNEXURE “C”**.

e. The Applicants state that the Project Proposal submitted by Sabrang Trust was scrutinized by a sub-committee set up by National Council of Educational Research and Training (NCERT) and a scrutiny report dated 19.04.2010 was made by the said sub-committee. Placing reliance on the said scrutiny report, the Under Secretary of Ministry of Human Resource Development addressed a letter dated 05.05.2010 to the Trust seeking resubmission of the proposal by incorporating the observation about the viability of the Proposed Project and the projects efficacy in the 33 schools where it was already implemented. A copy of the scrutiny report dated 19.04.2010 by the sub-committee of National Council of Educational Research and Training (NCERT) and letter dated 05.05.2010 by the Under Secretary of Ministry of Human Resource Development are annexed hereto and marked as **ANNEXURE “D”** and **ANNEXURE “E “** respectively.

f. The Applicant states that the Ministry of Human Resource Development was pleased to nominate Ms. Seema Rajput, Consultant, ALS Unit of TSG, Ed. CIL while the State of Maharashtra was pleased to appoint Smt. M. S. Nimbalkar, In-charge Deputy Director to carry out field appraisal of Sabrang Trust to satisfy themselves about the viability and efficacy of the proposed project. Thus, subsequently the aforesaid two-member field appraisal committee conducted a thorough

appraisal of the project and submitted its report to the Ministry of Human Resource Development after perusing the said report the Ministry of Human Resource Development was pleased to invite the Applicants for its 59th Meeting of the Grant-in-aid Committee for Innovation and Experimental Scheme to be held on 09.08.2010 by a letter dated 21.07.2010. The Applicants were required to make a presentation about the Trust's Innovation and Experimental Scheme before the Grant-in-aid Committee. A copy of the Ministry of Human Resource Development's letter dated 21.07.2010 is annexed hereto and marked as **ANNEXURE "F."**

- g. The Applicants state that at the said 59th Meeting of the Grant-in-aid Committee for Innovation and Experimental Scheme to be held on 09.08.2010 the Project Proposal of Sabrang Trust was approved and passed and the same was communicated to the Trust by a letter dated 13.09.2010. Further, the Trust was asked to file a detailed break up of their budget and the same was sent to the Joint Secretary of the Ministry of Human Resource Development along with a covering letter dated 16.08.2010. A Copy of the Ministry of Human Resource Development to Sabrang Trust communicating the decision of Grant-in-aid Committee and Sabrang Trust's letter dated 16.08.2010 providing detailed break up of their budget are annexed hereto and marked as **ANNEXURE " G"** and **ANNEXURE "H"** respectively.
- h. The Applicants state that Ministry of Human Resource Development again wrote a letter dated 20.10.2010 and conveyed the following observation after perusing the detailed break-up of the Trust's budget.

- a. Salary and administrative expenses should be kept within 15% of the project cost.
- b. Increase in the number of children and schools may be accepted.
- c. Activities like Children's library, evaluation, dissemination of multi-media kits and purchase of vehicles which are not approved by the Grant-in-aid Committee were being dropped.

Based on the said points Sabrang Trust was asked to rework the budget and resubmit the same. The Trust was also sent a reminder letter dated 23.11.2010 regarding the same. Copies of letter dated 20.10.2010 and 23.11.2010 are annexed hereto and marked as **ANNEXURE "I "** and **ANNEXURE "J"** respectively.

- i. Pursuant to the letter dated 20.10.2010 and letter dated 23.11.2010, the Applicant No.2 on behalf of Sabrang Trust replied by a letter dated 06.12.2010 and submitted revised budget details as per the observation in Ministry of Human Resource Development's letter dated 20.10.2010. A copy of Sabrang Trust's letter dated 06.12.2010 with the revised budget is annexed hereto and marked as **ANNEXURE "K."**
- j. The Applicants state and submit that by a letter dated 13.01.2011 Sabrang Trust was directed to furnish a Bond and an authorization letter so that the first installment of the grant amounting to Rs. 58,72,500/- (Fifty Eight Lakhs Seventy Two Thousand and Five Hundred Only) could be released by the

Ministry of Human Resource Development in favour of the KHOJ Project of Sabrang Trust, under their Scheme of Assistance under Innovative and Experimental Education Programmes – Grants to Voluntary agencies under Sarva Shiksha Abhiyan. Accordingly, the Trust furnished the requisite bond and authorization letter along with a resolution. Copies of the Ministry of Human Resource Development's letter dated 13.01.2011 along with necessary bond and resolution are annexed hereto and marked as **ANNEXURE "L"**, **ANNEXURE "M"** and **ANNEXURE "N"** respectively.

k. The Applicants state that upon the Trust furnishing the required bond, authorization letter and resolution the Ministry of Human Resource Development, Department of School Education & Literacy was pleased to direct the Pay and Accounts Office of the Ministry of Human Resource Development to release the first installment of the grant for the first year of the approved project amounting to Rs. 58,72,500/- by a letter dated 03.02.2011. The terms and conditions of the grant laid down in Annexure-I. A Copy of the letter dated 03.02.2011 from the Department of School Education & Literacy to the Pay and Accounts Office of the Ministry of Human Resource Development and a copy of Annexure-I provided to the Trust by a letter dated 24.02.2011 are annexed hereto and marked as **ANNEXURE "O"** and **ANNEXURE "P"** .

l. The Applicants state and submit that by a letter dated 15.02.2011 the Ministry of Human Resource Development in continuation to their sanction letter dated 03.02.2011 was pleased to approve an itemised budget for the running of the sanctioned project. The said itemized budget approved a budget

of Rs. 1,17,45,000/- and Rs. 88,75,000/- for the first and second year respectively. A Copy of the Ministry of Human Resource Development's letter dated 15.02.2011 approving an itemised budget for the project is annexed hereto and marked as **ANNEXURE "Q"**

m. In the meanwhile the Ministry of Human Resource Development, Department of School Education and Literacy by an office order dated 03.01.2012 and 06.02.2012 constituted a Joint Evaluation Team (JET) comprising of Ms. Venita Kaul (Member, Grant-in-Aid Committee), Mr. A. K. Tewari (Government of India Representative) and Mr. Nandan Nangare (State of Maharashtra Representative). The said evaluation took place on 09-10.02.2012. The Joint Evaluation Team's Evaluation Report was provided to Sabrang Trust by a letter dated 29.05.2012. The Trust responded to the said recommendations by a letter dated 09.08.2012, broadly accepting the said recommendations. The said Joint Evaluation Team (JET) reviewed the progress of the project mid-way and were satisfied by the work undertaken and accomplished by the Trust and apart from some course correction suggestions in their Report the Joint Evaluation Team concluded:

"Overall, the objectives and efforts under the KHOJ project are undoubtedly laudable since not only do they cater to the need to promote secularism and peace education, which should be a priority, but also since there is hardly any effort otherwise in mainstream schools to address these aspects. How crucial it is to reach out to the children especially of the urban poor from the slum areas comes across very strongly in the anecdotes shared by KHOJ teachers with the JET."

The Joint Evaluation Team through the said report also recommended re-allocation of funds amounting to Rs. 23,80,000/-. A copy of the Joint Evaluation Team's Evaluation Report and Sabrang Trust's reply to same dated 06.08.2012 are annexed hereto and marked as **ANNEXURE "R"** and **ANNEXURE "S"**.

- n. The Applicant No.2 states that she was requested to attend the 61st Meeting of the Grant-in-Aid Committee on 06.05.2013 with a letter dated 22.04.2013. The Applicant No.2 attended the said meeting and informed the Grant-in-Aid Committee about the delay in release of funds and the need for re-allocation of funds in order to ensure better utilization of the grant. At the said Meeting of the Grant-in-Aid Committee, the committee approved the Joint Evaluation Team's report and granted cost neutral extension to Khoj Project for a period of six months i.e. upto 31.07.2013. Further the committee also allowed the Trust to develop audio visual teaching aids for children for which the Trust had sought re-allocation of funds through aforementioned communications. Moreover, the committee also approved the release of funds to the tune of Rs. 54,20,848/- as second installment of the second year. The said decision of the Grant-in-Aid Committee was communicated to Sabrang Trust with a letter dated 03.06.2013. Copies of the Ministry of Human Resource Development's letters dated 22.04.2013 and 03.06.2013 are annexed hereto and marked as **ANNEXURE "T"** and **ANNEXURE "U"**.
- o. The Applicants state and submit that by letters dated 21.04.2012, 02.04.2014 and 15.05.2014 the Trust

communicated to the Ministry of Human Resource Development the progress of the said project along with the necessary utilization certificates and audited accounts for the grant installments received. Thus concluding the project, over the period of three years the Ministry of Human Resource Development released total grants worth Rs. 1,42,23,797/- (inclusive of bank interest) of which the Trust utilized a total of Rs.1,36,31,686/- and the un-used funds which amounted to Rs. 5,91,871/- was duly returned to the Ministry of Human Resource Development in 12.06.2014. The Applicant states that the Ministry of Human Resource Development released grants worth Rs. 58,72,500/-, Rs. 26,66,570/- and Rs. 54,20,848/- in the fiscal years 2011-12, 2012-13 and 2013-14 respectively and the Applicants furnished relevant utilization certificates. Further the Applicants also returned a sum of Rs.5,91,871/- because the same remained unused. Copies of the letters dated 21.04.2012, 02.04.2014, 15.05.2014, 12.06.2014 along with Utilisation Certificate, Receipts and Payments, and a Schedule detailing expenses under various budget heads, where KHOJ Project was implemented by Sabrang Trust are annexed hereto and marked as **ANNEXURE "V1", "V2", "V3" and "V4"** and **ANNEXURE "W"** respectively.

5. The Applicants state that the project was conceptualized and executed in the aforesaid factual matrix and the same was appreciated by many schools. Under the said scheme, 16 teachers were employed during the duration of the project. The said project benefitted 192 schools through direct teaching and teacher training programmes. A Copy of the list of schools which benefitted through the KHOJ project during the duration when the grant from the Ministry of Human Resource Development was

received by Sabrang Trust is annexed hereto and marked as **ANNEXURE “X”**. 10 Libraries were setup across Maharashtra and most of the books for the libraries were procured from Government publishing houses. An online project was set up and the same is still in existence. 7 short films were made and one book was conceptualized and published as curriculum for 5th standard students. Through this curriculum which was a child centric pedagogy India’s constitutional values and pluralism was imparted to around 6000 students across the State of Maharashtra.

6. The Applicants state that on 31.03.2018 they were served with the notice u/s 41A of the Code of Criminal Procedure and asked to appear before the Respondent No.1 Police Station at 11.00 AM on 01.04.2018. The said notice stated that the offences was registered u/s. 120-B, 153A, 153-B, 406, 409, 420 of IPC and S.13(1)(d) and 13((2) of Prevention of Corruption Act. A Copy of the notice dated 30.03.2018 is annexed hereto and marked as **ANNEXURE “Y”**.
7. The Applicants were shocked to get the said notice as they were not aware about the complaint and hence through their well-wishers got the copy of the FIR and were shocked to know about the complainant and allegations in the complaint. The Applicants after getting a copy of the FIR realized that the same was registered with the Respondent No.1 on 30.03.2018 at 10.00p.m. and the same was sent to the court around 10.15p.m. on 30.03.2018.
8. The Applicants state that the said allegations are being leveled against them by one Mr. Raees Khan Azeekhan Pathan for purely malicious reasons and the same is devoid of any merit. Mr. Raees Khan Azeekhan Pathan is a disgruntled ex-employee of Citizens for Justice and Peace, who was relieved of his duties and employment by Applicant No.2

because of his dubious conduct towards the victims of the riots for which Citizens for Justice and Peace was working. The terms of service and termination of Raees Azeekhan Pathan are brought in an affidavit dated 27.3.2014 filed by Applicant No 2 in the High Court of Gujarat at Ahmedabad in Miscellaneous Criminal Application No 4677 of 2014. A Copy of the relevant extracts of the affidavit dated 27.3.2014 filed by Applicant No 2 in the High Court of Gujarat at Ahmedabad in Miscellaneous Criminal Application No 4677 of 2014 is annexed hereto and marked as **ANNEXURE “Z”**.

9. In order to seek vengeance, Raees Khan made various false and frivolous allegations against the Petitioners at the behest of the political parties in Gujarat. This campaign of vendetta was 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.2. He has also given interviews stating his ambition is to get Applicant No.2 arrested (*Times of India*, Ahmedabad, December 2010). A Copy of the *Times of India*, Ahmedabad report is annexed hereto and marked as **ANNEXURE “AA”**. However, none of these allegations survived and in fact the Courts directed an enquiry against Raees Khan Pathan. A Copy of the Additional Sessions Court, Mehsana directing perjury proceedings against Raees Khan Pathan by an order dated 20.12.2010 is annexed hereto and marked as **ANNEXURE “BB”**.
10. The Applicants state and submit that the Applicants and Applicant No.2 in particular have been victimized and sought to be falsely arraigned time and again and the Courts of Gujarat and Maharashtra have granted protection to the Applicants by way of Anticipatory Bail orders. Copies of the Anticipatory Bail orders passed by Sessions and High Court at Maharashtra and Sessions Courts at Gujarat are annexed hereto and

marked as **ANNEXURE “CC Colly”**. Vile charges like tutoring witnesses, coercion and threatening them were also leveled, but the same have been held to be completely baseless on multiple occasions.

a. Registrar General BM Gupta’s Report of August 2005.

The Applicants state and submit that Ms. Zahira Shaikh had alleged that Applicant No.2 was threatening, coercing and inducing her to give a statement which was contrary to the facts. Thus faced with two contradictory statements made by Ms. Zahira Shaikh, the Hon’ble Supreme Court was pleased to institute an inquiry by the Registrar General of the Supreme Court of India. The said voluminous report completely exonerated Applicant No.2 of any wrong doing and came down heavily on Ms. Zahira Shaikh, the Applicants crave leave to refer and rely upon the said report as and when called upon to do so by the Hon’ble Court. The relevant excerpts of Shri BM Gupta’s Report in CrI. M.P. NOS 6658-6661, 11884-11887- 12515-12518 & 12519-12522 in CRL AppealNos446-449/2004 are annexed hereto and marked as **ANNEXURE “DD”**.

b. Sardarpura Special Court (Trial) Judgement of 9.11.2011.

In Sessions Case No.275/2002, 120/2008 and 7/2009 registered at Vijapur Police Station of Mehsana District, Gujarat, well known as “Sardarpura Riots” allegations of tutoring the witnesses were made against Applicant No.2 and the trial court in its Judgment dated 09.11.2011 observed as under:-

“57. In this regard when we consider the evidence, witness could be tutored only by a person who knew the facts. It is difficult for a person who was not present at the time of occurrence to tutor an occurrence witness and if at all this can be done, it would be based on the records of the case, which does not seem to have happened in the present case. Furthermore the happenings and the manner in which in the present case took place, is also not much in dispute, so the aspect of tutoring would be confined to the identification only. It is not easy to tutor one to identify another as victim and accused are previously known to each other but not known to tutoring persons. Tutoring of this type would require the persons tutoring, the concerned accused and the concerned witness to be together for a reasonable period or one or more occasion. Further, tutoring in such cases would be in consonance with police record or prosecution case which does not appear to be happened in this case. Further, it is also important to be considered that, before identification in the Court by the witness accused were asked to sit in the Court as per their own choice, they were not forced to sit at serial number given to them in Chargesheet or any other fixed order and their names were never loudly being called out in the court in the presence of witnesses. The identification of accused have taken place under the observation of the Court. So the court can view the actions/reactions of the witnesses. All precautions were taken by the Court while identification of accused were carried out in the Court room. Further, precautions were also taken by the Court

whether witness could see the persons sitting in the Court room. Similarly accused were given liberty to sit in the court in any manner, anywhere.”

c. Best Bakery Special Court Judgment (Trial) of February 2006 & Appeal dated 4.7.2012

Applicant No.2 was accused of tutoring witness in the Best Bakery Case and the said allegation was rejected by the Session Court. The Session Court held as follows:

“849. The contention that the witnesses had been tutored by Smt. Teesta Setalvad is based only on the undisputed fact that Raees and Shehzad were in contact with her and had spoken to her about the case. The interest of Smt. Teesta Setalvad and her organisation in the present retrial is obvious and no attempt has been made by the concerned organisation to deny that. It also appears that Raees and Shehzad were contacted by them to ensure that they appear as witnesses before this Court. These witnesses have specifically denied Smt. Teesta Setalvad having told them as to what evidence was to be given in the case. I have considered the matter. Mere discussion about the case would not necessarily indicate ‘tutoring’. It is not an accepted proposition that the witnesses are never to be contacted by anyone, or spoken to about the matter regarding which they are to depose. A number of things can be told to the witnesses, such as, not to be nervous, carefully listen to the questions put to them, state the facts before the Court without fear; and I do not think that this can be considered as objectionable, morally or legally. Tutoring a witness is quite different

from guiding him as to his behaviour, as it should be in the witness box. In this case, the injured witnesses were obviously in such a state of mind that without the active support of someone, they might not have come before this Court, to give evidence at all. If such support, encouragement and even advice is provided to them, it cannot be called as 'tutoring'. Since the witnesses were in contact with Smt. Teesta Setalvad and were speaking to her about the case, the possibility of they having been tutored by her is certainly required to be examined, but simply because of that, an inference that they were tutored, cannot, automatically, be drawn."

Further to the above, the Hon'ble Bombay High Court has held that Raees Khan has defamed Applicant No.2 in a suit filed seeking damages for defamation. A Copy of the order passed by the Hon'ble Bombay High Court in Suit No. 1440 of 2012 is annexed hereto and marked as **ANNEXURE "EE"**. A table giving the details of the FIRs filed against Applicant No.2 is annexed hereto and marked as **ANNEXURE "FF"**. Now the vilification of Applicant No.2 has intensified and the same has been extended to her family members and organizations that she has been involved in. Meanwhile the Applicants have been consistently exonerated of vile charges.

11. Further, the Applicants state and submit that the Gujarat Police has no jurisdiction to investigate the present complaint. No part of the cause of action arises in the State of Gujarat. It is stated that the registration of the FIR in Gujarat is nothing but a blatant attempt at forum hunting because the complainant prior to filing the present FIR had also addressed a complaint regarding the same issue to the Central Bureau of Investigation.

It is only after the Central Bureau of Investigation refused to act on the complaint due to its complete lack of merits has the complainant approached the State of Gujarat, which according to him might be more amenable to his mala fide designs. It is further submitted that the Applicants have learnt from various media sources that a report by a three member committee, headed by Gujarat Central University vice-chancellor Syed A Bari, also comprised Supreme Court advocate Abhijit Bhattacharya and HRD ministry director Gaya Prasad is the genesis of the present. The Applicants state and submit that before the news report relating to the Bari Committee Report was published by the *Indian Express*, a questionnaire was sent by the *Indian Express* to the Applicants seeking their response to said allegations on 07.10.2016 and the Applicants replied to the said questionnaire by an email dated 07.10.2016. Thereafter the *Indian Express* published a report dated 15.10.2016 regarding the said subject matter. Copies of the Email exchange dated 07.10.2016 and the *Indian Express* article dated 15.10.2016 are annexed hereto and marked as **ANNEXURE "GG"** and **ANNEXURE "HH"** respectively.

12. The said Committee has purported to submit its report in June 2015. Neither the Applicants nor any of the Trustee of Sabrang Trust were questioned and further the said Committee Report has never been provided to the Applicants or the Trust. The Applicants had addressed a letter dated 28.12.2016 to Human Resource Development Minister Mr. Prakash Javdekar seeking the Bari Committee Report, but the same has never been provided to the Applicants till date. A copy of the letter dated 28.12.2016 to Human Resource Development Minister Mr. Prakash Javdekar is annexed hereto and marked as **ANNEXURE "II"**.

13. The Applicants are sought to be arraigned in their capacity as trustees and executives of Sabrang Trust which is registered in Mumbai and the activities carried out by the Trust pursuant to the release of the grants were also carried out in the State of Maharashtra and none of the activities have any connection with Gujarat. Even if the allegations are considered to be correct for the sake of argument, none of the alleged offences have taken place in Gujarat. Thus, no part of the cause of action has taken place within the territorial jurisdiction of the State of Gujarat and hence the FIR could not have been registered in Gujarat. This also shows that the State of Gujarat was chosen to register the FIR out of political Vendetta. The police in the State of Gujarat has tried to file cases against the Applicants through Raees Khan several times and in all the cases the Hon'ble Court have granted relief to the Applicants from being arrested.
14. The Applicants by a letter a dated 01.04.2018 informed the Respondent No.1 that they were unable to visit on 01.04.2018 and sought some time to visit and cooperate with the investigation. Hereto annexed is the letter dated 01.04.2018 and the same is marked as **ANNEXURE "JJ"**.
15. The Applicants state and submit that they in the meanwhile approached the Hon'ble Bombay High Court seeking transit anticipatory bail. The Hon'ble Bombay High Court was pleased to grant transit anticipatory bail to the Applicants till 02.05.2018 and directed the Applicants to appear before the investigating authority in Ahmedabad on 06.04.2018 and cooperate in the investigation by an order dated 05.04.2018. (Applicant No.1 will further appear before the investigating authority as and when required). Pursuant to the said order of the Hon'ble Bombay High Court the Applicants appeared before the investigating authorities and submitted to them necessary documents, further certain documents which were not in the Applicants' ready possession on 06.04.2018 were subsequently

- provided to the investigating authority. A copy of the order dated 05.04.2018 and list of documents provided to the investigating authority on 06.04.2018 along with acknowledgment of receipt are annexed hereto and marked as **ANNEXURE “KK”** and **ANNEXURE “LL”**. Further the Applicants also handed over further documents as required by the investigating authority on 17.04.2018 along with a covering letter. A Copy of the Applicants’ letter dated 17.04.2018 listing the further documents submitted to the investigating authority and showing that the same has been duly received by the investigating authority is annexed hereto and marked as **ANNEXURE “MM”**.
16. Applicant No.2 has apart from being granted transit anticipatory bail by the Hon’ble Bombay High Court, has also been allowed to travel outside the country on multiple occasions. The Applicant No.2 has also been granted permission to travel abroad between 10th April 2018 and 15th May 2018 by the Magistrate Court in Bombay and the Sessions Court in Ahmedabad. Copies of both the orders granting Applicant No.2 the permission to travel abroad are annexed hereto and marked as **ANNEXURE “NN”** and **ANNEXURE “OO”** respectively. As per the condition of the Hon’ble Magistrate at Esplanade Court Mumbai, the Applicant No.2 has also paid Rs. 5 Lakhs as cash security to travel abroad and Rs. 1 lakh in the Session Court, Ahmedabad.
17. The Applicants state that the Respondent State challenged the order of the Hon’ble Bombay High Court through a Special Leave Petition before the Hon’ble Supreme Court. The Hon’ble Supreme Court was pleased to dismiss the Respondent State’s Special Leave Petition by an order dated 09.04.2018 and further extended the protection granted to the Applicants till 31.05.2018, in light of the fact that ApplicantNo.2 had been granted permission to travel abroad between 10th April 2018 and 15th May 2018by

2 different courts. A Copy of the Supreme Court order dated 09.04.2018 is annexed hereto and marked as **ANNEXURE “PP”**.

18. That the Applicants are prominent public figures and have been instrumental through Citizens for Justice and Peace in conviction of high ranking officials of the ruling party, i.e. BJP, for their role in the Gujarat Riots, 2002. Thus the institution of the current case against the Applicant on the basis of this false and frivolous complaint is completely mala fide and done with the sole purpose of maligning the Applicant and curtailing their liberty. A Copy of the table showing the various riot cases spearheaded by CJP is annexed hereto and marked as **ANNEXURE “QQ”**.

19. The Applicants state that the allegation regarding the Applicants not being eligible for the project funds is also completely false and incorrect. The Applicants had applied for the funds and after a proper evaluation by the committee appointed by the HRD ministry the grant was approved by the HRD Ministry. A Copy of the Trust Deed of Sabrang Trust is annexed hereto and marked as **ANNEXURE –“RR”**.

20. The applicants respectfully submits that this Hon’ble Court in judgment reported in (1992) 1 GLR 631 has entered a view that when a accused is likely to be released on bail after his arrest, then there is no harm in releasing the accused at the stage of anticipatory bail. Annexed hereto as **ANNEXURE “SS”** is the copy of judgment reported in (1992) 1 GLR 631 and the relevant paragraph is incorporated herewith.

“5. In view of the above discussion, what then should be the guiding principles to exercise discretion under Sec. 438 of the Code ? Exercise of discretion under Sec. 438 of the Code is a stage prior to exercise of discretion under Sec. 437 or 439 of the Code. That is prior to arrest. Thus, if the Court is satisfied that by allowing the persons apprehending arrest, the investigation is either to suffer or is likely to be prejudiced, as it may appear on perusing the case diary, the Court should refuse to exercise such discretion. On the other hand, if such person remained at large, the prosecution is neither to be prejudiced nor suffer any hindrance, then the application is required to be considered like one of the person arrested of non-bailable offence asking for bail. If from the facts and circumstances and

evidence on record (including case diary), if person can be granted bail, even if arrested, then there may be no harm in granting anticipatory bail to such person, because such person is likely to be released on bail even if arrested. Keeping in mind this position of law having emerged from the discussion hereinabove, it is to be considered whether the applicants are entitled to exercise of discretion in their favour.”

21. The applicants submit that the applicants apprehend arrested and therefore filed Misc. Criminal Application No. 3025 of 2018 before the

Hon’ble City Sessions Court, Ahmedabad and the same was rejected by the order dtd. 23.5.2018. Annexed as **ANNEXURE “TT”**

is the copy of the order dtd. 23.5.2018.

21. The Applicants herein are the original accused in the said F.I.R. and are apprehending their arrest in connection with the offence registered as I/20/2018 with DCB Police Station, Ahmedabad City, Gujarat for offence punishable under Sections 120B, 153A, 153B, 406, 409 and 420 of the Indian Penal Code and Sections 13(1)(d)(i) and 13(2) of the Prevention of Corruption Act.

21. The Applicants are approaching this Honourable Court for Pre-Arrest bail on the following amongst other grounds that may be urged at the time of hearing of this application.

G R O U N D S

(A) That the Ld. Judge ought to have appreciated that the Applicants herein have not committed any offence and are falsely implicated for the offence as alleged by the present complainant and therefore this is a fit case for granting anticipatory bail to the present applicant.

- (B) That the Ld. Judge ought to have appreciated that the offence under Section 153(A) of Indian Penal Code is not attracted inasmuch as there is no element to create enmity or hatred between any two communities as has been alleged in the FIR. Thus, the impugned judgment and order of the Ld. Judge is required to be quashed and set aside.
- (C) That the Ld. Judge ought to have appreciated that the Applicants state that the entire FIR and the statement of the complainant do not show anything that creates enmity between any groups. Thus, the impugned judgment and order is required to be quashed and set aside.
- (D) That the Ld. Judge ought to have appreciated that the Applicants are prominent public figures and have been instrumental through Citizens for Justice and Peace in conviction of high ranking officials of the ruling party, i.e. BJP, for their role in the Gujarat Riots, 2002. Thus the institution of the current case against the Applicant on the basis of this false and frivolous complaint is completely mala fide and done with the sole purpose of maligning the Applicant and curtailing their liberty. Thus, the impugned judgment and order is required to be quashed and set aside.
- (E) That the Ld. Judge ought to have appreciated that the allegation of the complainant that the grant money was used for personal use is completely false and baseless. The accounts and spending of the project

money was submitted to the Central Government and the same was approved by the HRD Ministry, as per the sanctioned budgets and utilization certificates issued by Chartered Account for the same were also provided. Thus, this is the fit case for exercising discretion in favour of the applicants.

(F) That the Ld. Judge ought to have appreciated that the Applicants state that the allegation regarding the applicants not being eligible for the project funds is also completely false and incorrect. The applicants had applied for the funds and after a proper evaluation by the committee appointed by the HRD ministry the grant was approved by the HRD Ministry. A Copy of the Trust Deed of Sabrang Trust has been annexed alongwith this application.. Thus the Ld. Judge ought to have exercised discretion in favour of the applicants in the interest of justice.

(G) That the Ld. Judge ought to have appreciated that the Aims and Objectives of Sabrang Trust as spelt out in para 3 of its Indenture of Trust (a copy of which is annexed to this Application at Exhibit - RR) are as follows: "Promoting Communal Harmony in India, Promoting Friendship between all peoples and particularly between the peoples of India and its neighbours, combating all kinds of bigotry and intolerance, which create inter-religious strife and differences among people, promoting rationalism and tolerance... AND TO DO ALL THINGS WHICHEVER

WHICH IN THE OPINION OF THE TRUSTEES
BRING ABOUT THE AFORESAID OBJECTS..."

In view of all that has been stated above, the applicants aver that Sabrang Trust was certainly eligible for the grant it applied for. Thus, the impugned judgment and order of the Ld. Judge is required to be quashed and set aside in the interest of justice.

- (H) The Applicants state that the allegations in the FIR are completely vague and on the face of it does not make out any offence.

- (I) None of the alleged offences have taken place in Gujarat. The Office of the HRD Ministry where the proposal was submitted is in Delhi, the schools where the projects took place are all in Maharashtra and there is absolutely nothing that has taken place in Gujarat. The Respondent No.1 has no jurisdiction to investigate the alleged offence. The Respondent No.1 ought to have registered the FIR and transferred the same to either Delhi or Maharashtra for investigation. The investigation into offences which have not taken place in their jurisdiction shows that the Respondent No.1 is acting with vendetta and out of political interest.

- (J) This is not a case for custodial interrogation and the case can be investigated further without arresting the Applicants.

- (K) Applicants have already appeared before the investigating officer on 6th April 2018 as per the directions of the Hon'ble Bombay High Court and provided the investigating authorities with all the necessary documents required by them.
- Applicants have tendered absolute cooperation to the investigating authorities.
- (L) The Applicants state that they are willing to further cooperate with the investigation and also willing to share any further documents in the furtherance of the investigation which the investigating agency deems necessary and which is in the possession of the Applicants.
- (M) The Hon'ble Supreme Court of India in the case of Arnesh Kumar Vs. State of Bihar AIR 2014 SC 2756 has clearly held that in an offence punishable with less than 7 years of imprisonment the police must give a notice to the Accused and give him an opportunity to explain and should not arrest the Accused automatically just because an FIR is registered.
- (N) The Applicants have not been convicted in any other criminal case.
- (O) The Applicants are innocent and have been falsely implicated in this case.

(P) The Applicants are residents of Mumbai residing at the address mentioned in the cause title and have roots in the society and there is no reason to believe that they may abscond.

(Q) The Applicants undertake to comply by the conditions imposed by this Hon'ble Court and will not tamper with evidence or witnesses in this case.

22. The applicants have not filed any other application or petition in any other Court with regard to the subject matter of this petition, except mentioned hereinabove.

23. The Applicants have no other alternative efficacious remedy available but to approach this Hon'ble Court by way of the present petition.

24. The Applicant craves leave of this Honourable Court to add, alter, delete, rescind or modify any or all the grounds stated hereinabove.

25. The application is made bonafide and in the interest of justice.

26. On the above grounds, and those that may be urged at the time of hearing of this application, it is prayed that:

(A) YOUR LORDSHIPS BE PLEASED TO order that in the event of arrest of the applicants in connection with the offence registered as CR No I- 20/2018 with DCB Police

Station, Ahmedabad City, the applicant be released on bail in the interest of justice.

(B) YOUR LORDSHIPS BE PLEASED TO order that pending admission and, or final disposal of this application the applicants be not arrested in connection with the offence registered as CR No I- 20/2018 with DCB Police Station, Ahmedabad City in the interest of justice;

(C) YOUR LORDSHIPS BE PLEASED TO grant such other and further relief in the interest of justice;

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPLICANT, AS IN DUTY BOUND, SHALL FOR EVER PRAY.

AFFIDAVIT

I Javed Anand, son of Iftikhar Ahmed, aged 68 years, Occupation Journalist-cum-human rights activist, residing at Nirant, Juhu, Mumbai, Applicant No.1 herein, do hereby solemnly affirm and state as under:-

I state that whatever has been stated in paragraph No.1 to 25 is true to my knowledge and information and are statement of facts and paragraph No. 21 contain legal submissions which are incorporated in the application upon legal advise. Its para 26 contain the prayer clause. Its annexures are true photocopies/ typed copies of the originals and I certify them to be such true copies.

Solemnly affirmed at Mumbai on this day of May 2018.

Deponent

Advocate

Identified by me,