

***IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD***

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**CIVIL MISC. HABEAS CORPUS WRIT PETITION NO.            OF 2018**

(Under Article 226 of the Constitution of India)

DISTRICT – SONBHADRA.

On behalf of

1. Smt. Sokalo Gond wife of Nanak Gond  
Resident of Village Majhauri, P.S. Duddhi, District Sonbhadra
2. Smt. Kismatiya Gond wife of Sri. Pankh Lal Gond  
Resident of- Lilasi, P.S. Muirpur,  
District-Sonbhadra
3. Anshuman Singh son of Sarvadaman Singh  
22 New Quarters, Mohan Meakin Road, Dollyganj  
Nirala Nagar, Lucknow.  
(Executive Member of All India Union of Forest Working People)  
222 Vidhyak Nivas, Aish Bagh Road, Rajendra Nagar, Lucknow.
4. Teesta Setalvad daughter of Atul Motilal Setalvad  
Resident of- Juhu Tara Road, Nirant, Juhu, Mumbai  
Vice President of All India Union of Forest Working People  
(AIUWFP) and Secretary, Citizens for Justice and Peace, Mumbai  
----- Petitioners.

**VERSUS**

1. State of U.P. through Principal Secretary, Home,

Govt. of U.P. Lucknow

2. District Magistrate, Sonbhadra

3. Superintendent of Police, Sonbhadra

4. Station House Officer, P.S. Muirpur, District Sonbhadra

----- Respondents.

To,

Hon'ble the Chief Justice and his other companion Judges of the aforesaid Court.

The Humble petition of the above named petitioners Most Respectfully Showeth as under.

1. That this is first habeas corpus writ petition seeking a writ of habeas corpus directing and commanding the respondents to produce corpus of petitioner No.1 and 2 who are in illegal detention of respondent No.3/4 w.e.f. 8.6.2018. The petitioner No.1 and 2 who are actually victims of being illegally deprived of their personal freedom and are in the custody of state without authority or following due legal process and, it is believed, detained on some frivolous excuse in the garb of some forest land violations. The last time they were physically seen was on 8.6.2018 at Chopan Railway Station, District-Sonbhadra, while they were returning from a meeting of U.P. Forest Minister at Lucknow. No notice of caveat has been received from the side of respondents in this regard.
2. That present writ petition is most urgent and it requires immediate attention by this Hon'ble Court, as postulated in

second part of Sub-Rule (1) and Rule 10 of Chapter-5 of the Rules of the Court, 1952, because the respondent No.4 has illegally detained the petitioners since 8.6.2018, as such the present writ petition is being preferred during the summer vacation.

3. That the petitioner No.3 and 4 are the office bearers of All India Union of Forest Working People, which is an organization committed to protect livelihood and also to protect the resources.
4. That the petitioners No.1 and 2 are forest dwellers and traditionally their livelihood is dependent upon the forest and they are the actually forest dwelling schedule tribes, which is a community of the schedule tribes who primarily reside in and who depend upon the forest or forest's land for their bonafide livelihood.
5. That as the petitioner No.1 and 2 and other similarly placed forest dwelling schedule tribes were deprived of their traditional land and livelihood in the garb of alleged forest development and they were fighting for their rights under the schedule tribes and other traditional forest dwellers (recognition of forest rights) Act, 2006 (in short Act No.2 of 2007). The Act No.2 of 2007 recognizes forest rights on ancestral land and their habitat are

not adequately recognized in the consolidation of state forest since the colonial period resulting in historical injustice to these tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest eco system.

6. That the affected persons who are actually the persons who were evicted or deprived of their rights being traditionally dependent upon forest as well as its habitat. The act No.2 of 2007 known as Forest Rights Act, 2006 recognizes that they were deprived of their traditional forest and their ancestral land situated in forest and as such the issue was being raised to rehabilitate as well as to recognize their traditional rights under the said Act.
7. That the petitioners No.1 and 2 as well as other similarly placed forest dwelling schedule tribes were either deprived of their rights or were removed by using force by the forest authorities as well as the state authorities prior to implementation of Act No.2 of 2007. As these forest dwelling schedule tribes and other traditional forest dwellers were residing in forests for generations but whose rights could not be properly recognized or realized under provisions of the earlier existent Indian Forest Act.
8. That All India Union of Forest Working People is an organization

fighting for the rights of Forest Dwelling Schedule Tribes and other traditional forest dwellers, all over India as well as in the District of Sonbhadra also since year 2000.

9. That as stated earlier, these tribes had not been granted their rights as recognized by Central legislation i.e. Act No.2 of 2007 (Forest Rights Act), and hence have been organizing and struggling to restore their rights under this Act No.2 of 2007 to ensure their right to life, to provide their livelihood as well as the rights to the traditional habitant.
10. That on 23.03.2018, in actualization of the rights guaranteed to Adivasis and forest dwelling communities, claims for access to this land were filed as per the provisions of Act no. 2 of 2007 in the district of Sonbhadra.
11. That on 27.3.2018, the petitioner No.1 and 2 along with office bearers of the All India Union of Forest Working People and other such affected persons met the Forest Minister of State of U.P. and requested him to immediately implement the provision of Act No.2 of 2007 in letter and spirit otherwise, the affected persons are on the verge of starvation because they are deprived of their livelihood and there is no other source of income and to have any living space.
12. That it will be relevant here to mention that regularly the police

authorities in connivance with land Mafias and forest officers are pushing these forest schedule tribes out of their traditional land in the garb of provision of Forest Act ignoring the relevant provisions of Act No.2 of 2007 including section 4 of the said Act.

13. That on 18.5.2018 and 22.5.2018 the police authorities of Muirpur police station as well as officers of forest department committed atrocities on the women of the forest schedule tribes although at the said time, neither the police was accompanying any woman police officer nor any preventive measures were adopted by the police not to commit any atrocities. The local police, at the behest of vested interests and the mafia mercilessly beat women and children Adivasis by entering into their homes.
14. That on 22.5.2018, the police authorities entered forcibly into the hut of petitioner No.2 and attacked her in which she as well as young girl Sunita aged about 15 years, Anita aged about 13 years were humiliated and police personnel also tried to outrage their modesty. Thereafter Sukhdev Gond was also attacked by the police personnel, his son was also attacked and a woman Sohadri wife of Keshav Ram was also attacked and she also received injuries. Actually, the police was attacking each and every person from the Adivasi and Forest Dwelling

communities with what appears to be an agenda to terrorize the entire community. The entire action was initiated on the allegation that these women were cutting the trees in the forest, although neither there is any definite proof in this regard nor there is any information in this regard to the police provided by any authentic source except bare fake assumptions just to evict these forest dwellers from their traditional livelihood.

15. That the issue with regard to strict implementation of Act No.2 of 2007 was being regularly raised through various modes and various public hearings were conducted in the district as well as at other places. The forest schedule tribes were actually deprived of their land and as such they are just seeking lawful remedy as provided by Act No.2 of 2007 but were facing stiff resistance locally. As such they sought again an appointment with forest minister of State of U.P. and they went to meet him on 6.6.2018 around 5.30 p.m. making complaint about the police atrocities as well as making a demand that their rights be recognized in accordance with the provision of Act No.2 of 2007. Upon meeting with the Hon'ble Minister concerned, he assured the entire delegation comprising of about 25 forest dwellers as well as office bearers of All India Forest Union by saying that enquiry will be conducted and no one will be unnecessarily harassed. The delegation also handed over a representation to the Minister concerned, signed by petitioner

No.2, Kismatiya Gond, Secretary of the Village Forest Rights Committee (VFRC), Village, Lilasi, formed under the Forest Rights Act, 2006 as well as by Sri. Nandu Gond who is President of Village Level Forest Rights Committee (VFRC). Copy of the application submitted to the forest minister concerned dt. 5.6.2018, is being filed herewith and is marked as Annexure No.1 to this writ petition.

16. That after meeting the minister, the petitioners No.1 and 2 along with Sukhdev Gond, were returning at Sonbhadra on 8.6.2018. When they were at Chopan Railway Station in District Sonbhadra, the police of concerned police station illegally detained them. It is a matter of deep concern and trepidation that their whereabouts are not known since that time and location despite several days having passed. Despite enquiries family members have no idea of their whereabouts and no legal intimation of any criminal case against them has been served. The family members feeling panic as the whereabouts the petitioners No.1 and 2 was not known to them. Thereafter, several persons called upon the respondent No.2 and 3 to enquire about the whereabouts of these tribal women and they are now rumours that they have been somehow wrongfully confined at some unknown place.

17. That fact of the possible illegal and unlawful detention of the



petitioner No.1 and 2 was disclosed by Sukhdev Gond resident of Village Lilasi to the petitioner No.3 on 10.6.2018, who is presently in jail in connection with case crime No.30 of 2018.

18. That as whereabouts of the petitioners No.1 and 2 were not known and the police was non-committal about their detention, finding no other alternative, petitioner No.4 as well as the secretary of All Indian Working of Forest People had submitted a complaint before National Human Rights Commission New Delhi on 14.6.2018 regarding illegal detention of tribal women and activist. Copy of the application dt. 14.6.2018, is being filed herewith and is marked as Annexure No.2 to this writ petition.
19. That with regard to the incident dt. 18.5.2018 a complaint was moved by Secretary of the All Indian Union Forest Working People, before National Human Rights Commission, New Delhi, upon which notices were issued to the District Magistrate, Sonbhadra and Superintendent of Police, Sonbhadra. Copy of the notice issued by National Human Rights Commission, New Delhi dt. 30.5.2018, is being filed herewith and is marked as Annexure No.3 to this writ petition.
20. That as petitioner No.1 and 2 are members of All India Union Forest Working People and they are under illegal detention of the respondent No.4 hence petitioner No.3 and 4 who are also office bears of the said union are filing present writ on their

behalf.

21. That it is categorically stated that petitioners No.1 and 2 are not named in the F.I.R. of case crime No.30 of 2018. Copy of the F.I.R. of Case Crime No.30 of 2018, is being filed herewith and is marked as Annexure No.4 to this writ petition.
22. That the petitioner no 1 and 2 are respectable law-abiding citizen of India and have been missing and possibly detained or held illegally and unlawfully since June 8, 2018 and are now confined as a detainees under no lawful judicial order of any Magistrate/Judge having jurisdiction to pass such confinements.
23. That there are no legal grounds on which the petitioner's no. 1 and 2 have been detained.
24. That the Adivasi women human rights defenders are community leaders simply defending their statutory rights and claims under the Forest Rights Act, 2006 (Act No 2 of 2007)
25. That the petitioner colleague of the All India Union of Forest Working Peoples (AIUFWP) has been advised that their arrest and detention is illegal, *mala fide* and capricious.
26. That, in any case the petitioner is advised that the continued

detention of the two women Adivasi leaders in the above circumstances are in direct violation of his fundamental rights and therefore begs to move this Hon'ble Court under Article 226 of the Constitution of India for a writ of *habeas corpus* or other appropriate writ, order or direction directing the respondents to release the petitioner forthwith.

27. That it is submitted that under Article 21 of the Constitution of India, a guarantee has been given that no person shall be deprived of his/her life or personal liberty except according to procedure established by law.
28. That the Hon'ble Supreme Court has laid down in its plethora of judgments that freedom/ liberty of a person cannot be transgressed in an illegal and arbitrary manner. The universal right of personal liberty emblazoned by Article 21 of the Constitution of India being fundamental to the very existence of not only a citizen of India but every person cannot be trifled with merely on presumption of plain. Construction/ curtailment of personal liberty cannot be justified by a conjecture dialectic. The general principle of law is the period of 24 hours post arrest on the expiry of which an accused must mandatorily be produced in a court so that his remand/ bail can be judicially considered.
29. That in the present case, the liberty of the petitioners has been curtailed by the respondent No.4 in a very arbitrary and illegal

manner.

30. That the petitioners have been detained at the police station concerned since 8.6.2018 without therebeing any lawful reason and without therebeing any criminal case against them.
31. That in view of the above facts and circumstances it is desirable in the interest of justice that this Hon'ble Court may be pleased to allow the present writ petition and issue a writ of habeas corpus directing and commanding the respondent No.4 to produce the corpus of the petitioners and release them forthwith, so that justice may be done, otherwise the petitioners shall suffer irreparable loss and injury.
32. That the petitioners have been advised that no other alternative and efficacious remedy is available except to invoke the extraordinary writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India on the following amongst other grounds.

### **G R O U N D S**

- I. Because in the present case, the liberty of the petitioners has been curtailed by the respondent No.4 in a very arbitrary and illegal manner.
- II. Because the petitioners have been detained at the police station concerned since 8.6.2018 without therebeing any lawful

reason and without therebeing any criminal case against them.

- III. Because it is submitted that under Article 21 of the Constitution of India, a guarantee has been given that no person shall be deprived of his/her life or personal liberty except according to procedure established by law.
- IV. Because it is an abuse of the process granted to the Police to detain Adivasi forest workers and deprive of their Fundamental Rights under Article 14, Article 21, the Vth Schedule of the Constitution and the Forest Rights Act, 2006 (Act 2 of 2007)
- V. Because the very enactment of the Forest Rights Act of 2006 (Act 2 of 2007) was to protect the lives and livelihood of Adivasis and Forest Dwellers who are also empowered to lay stake and claims to lands they have protected and nurtured for generations.
- VI. Because the detention is capricious and bad in procedure and malicious use of state power against vulnerable and marginalized sections of society.
- VII. Because the detention of petitioners is not in accordance with procedure established by law.
- VIII. Because it offends against the provisions of Art. 19(1) (a) (g) and (f) of the Constitution in as much as it proceeds to do

indirectly what it could not do directly in the matter of unjustifiably restricting the freedom of speech and expression, association and organization, a fundamental right to live a life of dignity granted to every Indian by the Constitution.

- IX. Because it offends similarly against the provisions of Article 19(1)(b) of the Constitution inasmuch as it operates unreasonably on peaceable assembly without arms, *vide* ground mentioned in sub-paragraphs (ii) of para 3 above.
- X. Because the illegal detention of petitioner no. 1 and 2 by respondents is directly depriving them of their fundamental rights life, liberty and free movement all over the territory of India as guaranteed by the Constitution of India.

### **PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (i) issue a writ, order or direction in the nature of Habeas Corpus directing and commanding the respondent No.4 to produce the corpus of the petitioners No.1 & 2 before this Hon'ble Court.
- (ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to

release the petitioners forthwith.

- (iii) issue a writ, order or direction in the nature of mandamus commanding the respondent concerned to pay adequate compensation to the petitioner No.1 and 2 for their illegal detention since 8.6.2018.
- (iv) issue a writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (v) award the cost of the petition in favour of the petitioners.

Dated- ...-6.2018

(Syed Ahmad Faizan) (S.F.A. Naqvi)  
Advocate. Advocate.  
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