

IN THE HIGH COURT OF JUDICATURE BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. \_\_\_\_\_ OF 2018

In the matter of Article 14,  
19 & 21 of the  
Constitution of India,  
1950

AND

In the matter of Article  
226 of the Constitution of  
India, 1950

AND

In the matter of Section  
482 of the Criminal  
Procedure Code, 1973

AND

In the matter of CR.NO.4  
of 2018, registered at  
Vishrambaug Police  
Station, Pune

AND

In the matter of quashing  
and setting aside  
proceedings initiated in  
pursuance of CR.No.4 of  
2018

Stan Swamy )  
Occupation- Founder )  
Bagaicha )  
Aged 81 Years )  
Residing at- Bagaicha )  
ATC Campus, Nankum )  
Ranchi -835210. )...Petitioner

Versus

1. State of Maharashtra )  
Through its Secretary for )  
Ministry of Home Affairs )  
Mantralaya, Maharashtra, )  
Mumbai-400032 )  
2. Vishrambaug Police Station )  
Through Senior Police Inspector )  
Having office at-Narayan Peth,P-160 )  
Pune, Maharashtra 411002 )  
3. Commissioner of Police, )  
Pune, State of Maharashtra )  
Having office at- Police Department )  
Sadhu Vaswani Chowk, )  
Pune -411001 )...Respondents

TO  
THE HON'BLE CHIEF JUSTICE AND  
THE OTHER HON'BLE PUISNE JUDGES  
OF THIS HON'BLE COURT OF  
JUDICATURE AT BOMBAY

THIS HUMBLE PETITION OF  
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

**PARTIES**

1. The Petitioner is an adult citizen of India. The Petitioner is the founder of Bagaicha, an organization dedicated to empowering the Adivasi and Moolvasi communities. The Petitioner is one of the leading tribal rights activists in Jharkhand, and has written and researched extensively on issues of caste, religion, land rights, and people's struggles. The Petitioner is a Catholic Priest.

2. The Respondent No.1 is the State of Maharashtra through its Ministry of Home Affairs. The Respondent No.1 is the body responsible for the overall administration of law and order in the State of Maharashtra.

3. The Respondent No.2 is the Vishrambag Police Station, through the Senior Police Inspector. The Respondent No.2 is the Police Station where the

impugned First Information Report (hereinafter referred to as 'FIR' for the sake of brevity and convenience) dated 08.01.2018 in CR.No.4/2018 has been registered.

4. The Respondent No.3 is the Commissioner of Police Pune. The Respondent No.3 is the authority which is responsible for the overall police administration in Pune.

All the parties are amenable to the writ jurisdiction of this Hon'ble High Court.

**ISSUE-**

5. The Petitioner is filing the present Petition seeking quashing and setting aside the criminal proceedings initiated against him in pursuance of the FIR dated 08.01.2018 in CR.No.4 of 2018. The Petitioner has been implicated in a false and fanciful case by acts of omissions, commissions, and vengeance on part of the Respondents. It is submitted that the Petitioner on false and unreasonable grounds, is accused of offences registered in the FIR dated 08.01.2018 in CR. NO. 4 of 2018. The Petitioner is charged for offences registered u/s 153-A, 505(1)(b), 117, 120(b), and 34, of the Indian Penal Code, 1860, and u/s 13, 16, 17, 18, 21, 18 (b), 20, 38, 39, and 40, of the Unlawful Activities Prevention Act, 2012.

6. The Petitioner is also filing the present application seeking relief that no coercive steps be taken against the Petitioner in pursuance of the F.I.R dated 08.01.2018 in CR. NO. 4 of 2018 with the Pune Police Station for alleged offences under the Indian Penal Code, and the Unlawful Activities Prevention Act, 2012.

7. The FIR in CR.NO.4 of 2018 came to be filed on 08.01.2018. The F.I.R. dated 08.01.2018 in the original CR No. 4 of 2018 does not include the name of the Petitioner as an accused, and the Petitioner's name has been added to the said FIR only as an afterthought to falsely accuse him. A copy of the FIR dated 08.01.2018 in CR.No.4 of 2018 has been marked and annexed hereto as **“Exhibit A”**.

## **FACTS OF THE CASE**

### **Background of the Petitioner**

8. The Petitioner states and submits that, on the academic and professional front, the Petitioner has a good record. The Petitioner holds an M.A. in Sociology from the Ateneo de Manila University in Phillipines; and a specialization in Social Analysis in the Catholic University of Louvain, Belgium. He has also taught at, and served as the Director of the Indian Social Institute, Bangalore.

9. The Petitioner states and submits that, on the suggestion of several social activists, the Petitioner revived the Jharkhand Organisation for Human Rights, in Chaibasa, Jharkhand, an organization dedicated to the organization and education of Moolvasis and Adivasis, and for taking up their legal issues .

10. The Petitioner states and submits that, in 2006, the Petitioner founded Bagaicha, an organization dedicated to empowering the Adivasi and Moolvasi communities, through training, action based research, and documentation. Baigaicha also enables these communities to claim their constitutional and legal rights through legal action and people's movements.

11. The Petitioner states and submits that, the Petitioner is widely respected and well-known for his original insights and research on issues of Adivasi and Moolvasi rights, land rights and the rights of undertrials in academic circles in Jharkhand and across India. The Petitioner has written extensively, has published several books and articles in print and online.

12. The Petitioner states and submits that, amongst his extensive research, the petitioner has conducted a detailed research study on undertrial Adivasis and Moolvasis in the Jharkhand jails, titled Deprived of Their Rights over Natural Resources, Impoverished Adivasis Get Prison: A Study of Undertrials in Jharkhand and which

exposed the misuse of criminal justice procedures in Jharkhand. He has been also associated with the Jharkhand Organisation Against Uranium Radiation.

**Nexus of Bhima Koregaon riot and involvement of the Petitioner**

13. The Petitioner states and submits that, the Petitioner has no nexus with the Bhima Koregaon incident which occurred in December 2017. There have been systematic efforts to implicate the Petitioner by adding his name in the said FIR, and by giving his name to the media, making allegations that he is associated with a Maoist conspiracy. It is stated that, the Petitioner is not associated with the Communist Party of India (Maoist) [hereinafter referred to as 'CPI (M)'] ideologically, politically, or organizationally. He is a researcher and a writer, and is a person of high repute.

14. It is the case of the Prosecution that, an event known as 'Elgar Parishad' was organised at Shanivarwada in Pune to commemorate the 200th anniversary of the battle of Bhima Koregaon which was fought on 1st of January, 1818. The said event was attended by several well-known dignitaries such as sitting Gujarat Member of Legislative Assembly Jignesh Mevani, Justice (Retd.) B. G. Kolse Patil, Prakash Ambedkar, Ulka Mahajan among others.

15. It is the case of the Prosecution that, certain persons/presenters at the said event made statements that were hateful and incited hatred amongst the Dalit community. A complaint was filed by one Tushar Ramesh Damgude and the same was registered as an FIR having CR. No. 4 of 2018 by the Respondent No. 2 police station. It was the case of the Complainant that the statements made by the persons present at the said event promoted enmity against the State and that a large gathering of people was to be thus encouraged and organised on 01.01.2018 to create mischief. Thus the said FIR was lodged for offences registered u/s 153-A, 505(1)(b), 117, and 34 of the Indian Penal Code. Vide an Application dated 06.03.2018, an additional offence registered u/s 120-B Indian Penal Code, 1860 was added. It is pertinent to note that the Petitioner's name is nowhere to be found in the FIR. Later, the Respondent No. 3 moved Application dated 06.03.2018 adding offence registered u/s 120-B, which has been marked and annexed hereto collectively as **Exhibit B**. It is nobody's case that the Petitioner participated in the Elgar Parishad of 31.12.2017.

16. It is the case of the Prosecution that, on 17.05.2018, an application was made before the 9th Joint Civil Judge Junior Division and Learned J.M.F.C., Pune for adding sections 13, 16, 17, 18, 21, 18 (b), 20, 38, 39, and 40, of

the Unlawful Activities Prevention Act, 2012 by Respondent No.2.

17. The Petitioner states and submits that, the petitioner resides at the Bagaicha campus, Namkum, Ranchi, Jharkhand. At 6:10 AM on 28.08.2018, the Pune police, accompanied by a contingent of the Namkum police, a cyber-expert, and a photographer, reached the Bagaicha campus to conduct a search in the Petitioner's room without any warrant. The police conducted the raid in the presence of the Petitioner.

18. The search order which was produced prior to the search was in Marathi, a language which the Petitioner did not understand nor could anybody in the area or his colleagues understand. Further, the Pune police did not translate the order for the Petitioner. The report-cum-inventory of the seized articles was also in Marathi, and the petitioner was forced to sign the same. A translation of the report-cum-inventory was provided to the Petitioner only three days later. Thus, the search was conducted forcibly, and the Petitioner did not have any knowledge of the articles seized in the search, at the time of the search. The basic procedures as per Code of Criminal Procedure for the purpose of search and seizure have not been followed by the Respondent.

Further, the Respondent No.2 had taken with them two panch from Pune to be witness during the search and

sign as witnesses, rather than calling for two respectable civilians from the area as per the CRPC. Thus, the search was conducted in an improper manner, and not in accordance with the procedure laid down in the Cr.P.C.

19. The articles seized from the search were the Petitioner's Acer laptop, charger, tablet, camera, mobile phone, Airtel and Telenor simcards, micro SD card, 15 audio cassettes, instrumental music CDs, DVDs, amongst other items. Nothing incriminating was found in the Petitioner's room. The entire event of the raid has been noted in the Panchnama. The copy of the Panchnama is hereto annexed and marked as **Exhibit C.**

20. The Petitioner states and submits, from the information given by the team of police, the Petitioner came to know that the said raid was conducted holding the Petitioner as an accused in the Bhima Korgaon Elgar Parishad event and in pursuance of the FIR dated 08.01.2018 in CR.No.4 of 2018.

21. The Petitioner states and submits, from the above mentioned facts that there is no prima facie evidence to show the Petitioner's participation in the Elgaar Parishad or the alleged ensuing violence after that, nor is the Petitioner connected with any of the banned organisations. The raid conducted by the team of police which was conducted by the Pune police, accompanied by a contingent of the Namkum police, was illegal.

22. The Petitioner states and submits that, no evidence has been produced by the Respondent Police which indicates the involvement of the Petitioner in the offence as has been made out in the said FIR. The Respondent Police are trying to falsely implicate the Petitioner through the said FIR. The Petitioner was not even present for the event of the Elgar Parishad and has no involvement whatsoever in the organizing of the said event.

23. The Petitioner states and submits that, the Petitioner has been targeted by the Respondent Police due to the nature of the writings of the Petitioner. The writings/literature written by the Petitioner is about the caste and land struggles of the people in India, and includes research on undertrial adivasis. The Petitioner writes about the violation of the democratic rights of the marginalized citizens of India. Through his literature, the Petitioner raises questions and holds the State authorities responsible for the injustice against the marginalized persons of the society. The Petitioner further questions misuse of State power, with regards to the suppression of undertrial detainees, and the non-implementation of the Panchayats Extensions to Scheduled Areas (PESA) Act, 1996. The Petitioner states that it is due to nature of the work of the Petitioner that he is being falsely implicated in the said FIR.

24. The Petitioner states and submits that the FIR in CR. No. 4 of 2018 was registered on 08.01.2018. The Petitioners name has been mentioned as a suspected accused for the first time only on 21.08.2018 in the Remand Application made by the Respondent Police. The Respondent Police have shown no prima-facie case against the Petitioner. This clearly indicates the malicious and wrongful intention of the Respondent Police to falsely implicate the Petitioner. Copy of the Remand Application dated 21.08.2018 has been marked and annexed hereto as **Exhibit D.** No case has been made out against the Petitioner and despite the same, the Petitioner has been named as a suspected accused.

The alleged investigation against the Petitioner is nothing but an attempt to harass and silence the Petitioner from doing his work for the poor and the marginalized sections of the society in the remote interiors of Jharkhand. The harassment is also to see that the people of the areas in which the Petitioner works are not allowed to be made aware of their rights. Massive industrialization is going on in Jharkhand and many people are being displaced from their farms and houses. The Respondents are fully aware that the Petitioner is even remotely not connected with the Elgaar Parishad or the Bhima Koregaon incident. The investigation is against the Petitioner is a farce and this court must intervene to protect the constitutional rights of

a citizen who has dedicated his life for working for the people of the most backward region of the country.

**GROUND:**

27. Under such circumstances, the Petitioner is seeking quashing of the F.I.R. dated 08.01.2018 in CR. NO. 4 of 2018 to the extent that he is alleged to be involved in any offence by this Hon'ble Court on the following grounds listed below which are without prejudice to each other:

a. The Petitioner is a researcher, writer, and founder of the organization Bagaicha. The Petitioner is well respected in the society and has a long standing reputation as an academician.

b. The Petitioner is innocent and has been falsely implicated in the present case.

c. The raid at the Petitioner's house was wrongfully conducted, as the search warrant was not in a language that the Petitioner could comprehend, and as the police had not chosen two respectable citizens from the area where the raid was conducted as per the mandate of CRPC.

d. The Petitioner never went for the Elgaar Parishad nor was he involved in any way in the event. The Petitioner has not donate any money for organizing the

event nor has he collected any money for organizing the event. The Petitioner is nowhere concerned with the said events of Elgaar Parishad and Bhima Koregaon. The Petitioner in last of Decemeber 2017 and the first week of January 2018 was in Bagaicha, Namkum, Ranchi, Jharkhand and was doing his work as usual. None of the pictures of the CC TV footage show that the Petitioner had visited Pune and participated in the events. The Petitioner is not even remotely connected to the organising or conducting of the said event. No prima facie case has been made out against the Petitioner.

e. The conclusions drawn by Respondent No.2 are based on mere suspicion, and therefore, conducting a raid at the Petitioner's house is completely vague and on baseless grounds. The raid conducted was completely illegal. There exists no substantive evidence against the Petitioner.

f. That the search and seizure of the premises of the Petitioner was not conducted as per the procedure laid down in Cr.P.C.

g. That the Petitioner's name has been added in the said F.I.R. as an afterthought by the prosecution as his name is not to be found in the original F.I.R. dated 08.01.2018 in CR. NO. 4 of 2018.

h. There is no evidence against the Petitioner for the offences mentioned under sections mentioned in the said F.I.R.

i. Because the present case pertaining to the Petitioner falls within the criterion of cases identified by the Hon'ble Supreme Court in *Bhajan Lal* and reiterated subsequently in several cases. In *State of Karnataka v. M. Devendrappa and Anr* (2002) 3 SCC 89, the Hon'ble Supreme Court declared that:

*“Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”(emphasis supplied)*

j. The continuance of criminal proceedings against the Petitioners in Case Crime No. 4 of 2018 registered with the Vishrambaug Police Station, Pune would not serve any purpose, other than to cause unnecessary hardship to the Petitioner. The complaint filed by the Respondent does not disclose the commission of any offence by the Petitioner, and does not make out a case against them. No material/evidence can ever be adduced by the prosecution to arrive at a finding of guilt so far as the Petitioner is concerned. Even if the entire complaint of the Respondent is to be believed, it would not constitute an offence against the Petitioner. Thus, in the present case, there is a need to do real and substantial justice. To quash the criminal proceedings against the Petitioners would serve the ends of justice. If the criminal proceedings against the Petitioner are allowed to continue, it will cause them severe prejudice. The Court can reach no other conclusion other than the innocence of the Petitioner. In exercise of its inherent powers, the High Court would be justified to quash any proceeding if it finds that continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

k. In the present case, it is necessary in the interest of justice that the FIR filed against the Petitioner dated 08.01.2018 be quashed and set aside as being wrong and bad in law.

27. That the Petitioners have not filed any such or similar petition earlier before this Hon'ble High Court or Hon'ble Supreme Court of India.

28. The Petition is filed bonafide and in the interest of justice.

The Petitioner highly and reasonably apprehends arrest at the hands of the police and therefore prefers this application that no coercive action is taken against the Petitioner on the following grounds:

20. The Petitioner states that this Hon'ble Court has the jurisdiction to entertain this application, as per the provisions of law and is under territorial jurisdiction of this Hon'ble Court.

21. The Petitioner submits that he has not filed any other Petition in respect of the present subject matter before this Hon'ble Court or the Supreme Court of India.

22. The Petitioner states that the impugned FIR dated 08.01.2018 in CR. NO. 4 of 2018 have been filed in ..... Pune and the Respondents also have their

offices in Pune and Mumbai, therefore, the cause of action has arisen within the Appellate Side jurisdiction of this Hon'ble Court; hence, it can admit the petition and hear it.

23. The Petitioner states that he has no other alternative efficacious remedy but to approach this Hon'ble Court and the reliefs prayed for herein, if granted, shall be complete.

24. The Petitioner will rely on documents a list whereof is annexed hereto.

25. There is no delay or laches in filing this petition.

26. The Petitioner has affixed the required court fees of Rs. \_\_\_\_\_/- to this Petition.

27. No caveat with regard to the subject matter of this petition has been received by the Petitioner from the Respondents till date.

**PRAYER:**

28. The Petitioner therefore prays as follows:

a. That this Hon'ble Court be pleased to issue Writ of Certiorari or any other direction or order in nature of Certiorari or any other appropriate writ, direction or order, to quash and set aside the proceedings against the Petitioner- Mr. Stan Swamy, in connection with the F.I.R.

dated 08.01.2018 in CR NO. 4 of 2018 registered at Vishrambaug Police Station.

b. That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other direction or order in nature of Mandamus or any other appropriate writ, direction or order, directing that no coercive steps will be taken against the Petitioner by the Respondent Police in pursuance of the FIR dated 08.01.2018 in CR.No.4 of 2018.

c. Pending hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay the criminal proceedings against the Petitioner –Mr. Stan Swamy in the F.I.R. dated 08.01.2018 in CR. NO. 4 of 2018 registered at Vishrambaug Police Station.

d. Pending hearing and final disposal of the present petition this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other direction or order in nature of Mandamus or any other appropriate writ, direction or order, directing that no coercive steps will be taken against the Petitioner by the Respondent Police in pursuance of the FIR dated 08.01.2018 in CR.No.4 of 2018.

e. That this Hon'ble Court be pleased to grant interim protection/relief pending hearing and final disposal of the present petition, on such terms and conditions as this Hon'ble Court may deem fit and proper.

- f. For ad-interim reliefs in terms of prayer clause (c) to (e)
- g. Any other just and proper order may be pleased be given in favor of the Petitioner in the interest of justice.

(Advocate for Petitioner)

Petitioner

**VERIFICATION**

I, Stan Swamy, age- 81 years, residing at Bagaicha ATC Campus, Nankum, Ranchi -835210., do hereby solemnly declare that what is stated in para no. \_\_\_\_ to \_\_\_\_ of the Application is true to my knowledge and belief, and what is stated in the remaining paras is based on information and belief and I believe the same to be true.

Solemnly affirmed at Mumbai )

On this      day of October 2018 )

Identified by me

Before me

(Advocate for Petitioner)

Petitioner