



July 12, 2021

To,

Shri Uddhav Thackeray
The Hon'ble Chief Minister, Maharashtra
CM Office, Mantralaya,
154, Madame Cama Road,
Churchgate, Mumbai,
Maharashtra - 400020

2. Shri Dilip Walse Patil
Hon'ble Home Minister

Copies of this Petition being sent to:

3. Shri Sanjay Kumar
Chief Secretary, Government of Maharashtra

4. Shri.S.V. Achame
Superintendent, Taloja Central Prison
Navi Mumbai

5. Shri CA Indurkar
Superintendent, Byculla District Prison
Mumbai

Subject: *Plea for release of the 14 Bhima Koregaon (BK) detainees amidst the Covid-19 pandemic*

Dear Shri Uddhav Thackeray,

We, at Citizens for Justice and Peace (CJP), a Human Rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians, are writing to you to express our profound grief over the death of an 84-year-old Adivasi rights activist Father Stan Swamy on July 5, 2021. We learnt that after he was admitted to Holy Family Hospital in Mumbai on May 28, he had tested positive for Covid-19 and his health worsened, thereafter. Arguably, his condition severely worsened after May 15, 2021 when the Court was first apprised of his deteriorating condition and his having contracted the dreaded Covid-19 Virus. Yet from then until the Court pro-actively intervened the Jail Authorities (and NIA officers) kept obfuscating on the clear state of his health. It is more than likely that if good care had reached him in time, he would not have lost his life this way.

Thereafter, Father Stan Swamy was put on oxygen support and was shifted to the Intensive Care Unit. On July 4, he was put on ventilator support and suffered a cardiac arrest early morning on July 5, after which he never gained consciousness. In our previous communication with your Honourable self, through our letter petition dated May 17, 2021, we had mentioned how his health had been deteriorating in Taloja Central Prison. In the month of May, Father Stan Swamy had been



complaining of cough, fever, upset stomach with no respite except for antibiotics provided by the ayurvedic doctors. The Parkinson's afflicted priest's health steadily deteriorated in jail and he even told the Bombay High Court that in the past 8 months of his incarceration, he could not undertake the daily tasks of eating, bathing, walking and writing. Something, that he could do before being jailed! His death has exposed the inadequate facilities in Taloja prison, where on about two accounts (one on May 24 due to excessive tremors), the 84-year-old was taken to JJ Hospital from Taloja which is approximately 84 kilometres up and down. His passing has also turned the spotlight on the utter accountability in the state's Jail Authorities.

Father Stan's death has left a void in all our hearts, and we are deeply pained that the remaining activists, academicians, lawyers, intellectuals implicated in the Bhima Koregaon case have been in jail since as early as 2018, awaiting trial. At this point, we would like to reiterate the health conditions of the undertrials in Taloja Central Jail and Byculla Jail and further implications on their health due to Covid-19. There is national and international outrage at what transpired with Father Stan Swamy.

We are now seriously concerned about all other under trials and prisoners, especially those in Taloja jail but in other ones also. The Maharashtra government, we would like to humbly submit, needs to respond to this tragic and untimely death and ensure that prison and jail conditions drastically improve and are monitored minutely.

Sudha Bharadwaj, who has been lodged in Byculla Jail since August 28, 2018, also in the same infamous Bhima-Koregaon case, has pulmonary tuberculosis, diabetes, hypertension and rheumatoid arthritis. Her teeth are in such a state she can barely manage to eat, she has lost hair, weight and last year a report showed she is eczemic. **Prof Shoma Sen** has also serious health issues given her age. **Anand Teltumbde** is a mathematician. **Gautam Navlakha**, senior writer is also ill with co-morbidities as is **Surendra Gadling**, senior advocate. Be it **Arun Ferreira**, writer, lawyer and activist or **Vernon Fernandes**, their health is presently at great risk.

Professor Hany Babu, the other co-accused had tested for Covid-19 in May and suffered from an acute eye infection, for which he is still admitted to Breach Candy Hospital, Mumbai. The infection led to inflammation of the eye muscles, blood clotting in the superior ophthalmic vein as well as the creation of an abnormality in the carotid artery which significantly endangers the brain. Perusing his medical reports, the Bombay High Court had directed the State to admit him to a private hospital on May 20, 2021 and till date he continues to stay in the hospital. (*Jenny Rowena vs State of Maharashtra and Ors Crl. W.P No. 1983 of 2021*)

In early June, 2021, three more accused **Mahesh Raut**, **Sagar Gorkhe** and **Ramesh Gaichor** tested positive in Taloja Central Prison after an RT-PCR test drive was conducted for the inmates. According to some reports, none of them have been immunised against the Coronavirus, and according to a press conference held on May 15, 2021, CJP learnt that Mr. Mahesh Raut had been suffering from cold, fever, cough, and weakness for more than a week. There is also serious concern about activist **Rona Wilson** and others.

In April 2021, **Jyoti Jagpat**, another co-accused in the case had tested positive for Covid-19 in Byculla Jail. The deadly virus, be it mild or a moderate bout impacts people for a long period of time and warrants proper diet, nutrition and health lifestyle, which is not available in prisons.

Dear Sir, Dr. Varavara Rao, an undertrial and an accused in the same alleged Bhima Koregaon conspiracy case was granted bail by the Bombay High Court on February 22, 2021 on grounds of deteriorating health. While granting him bail in *PV Varavara Rao vs NIA and Ors* (Crl. Appeal No. 52 of 2021), the court noted:



50. *“Taking any other view in the matter would amount to diluting rights available to prisoners to claim relief on health grounds under Article 21 of the Constitution, particularly when material available on record indicates that continued incarceration of such persons would amount to endangering their life. The prisoners of advanced age like the undertrial, who is about 82 years old, and such other prisoners suffering from various health ailments induced by old age when put beyond bars, certainly face the danger of their health conditions worsening and accelerating their journey towards the end of their life. This is an aspect, which cannot be ignored while considering the prayer for grant of an order of release from custody, despite rejection of bail application on merits. The onset of old age and concomitant debilitating effect on the mental and physical conditions is an aspect which assumes great significance in the context of keeping such old aged persons behind bars.*

Even if such old aged prisoners with various health conditions are accused of serious offences, the question is as to whether they can be forced to live a subhuman existence behind bars, only because they stand accused of serious offences? In the facts of the present case, the charges are not yet framed by the NIA Court and the prosecution wishes to examine around 200 witnesses. Hence, today, nobody is in a position to tell us within how much time, the trial would be completed. When such situations are brought before the Constitutional Courts and the fundamental rights guaranteed under Article 21 of the Constitution of India are asserted, the answer to the said question has to be in the negative.”

The United Nations has also condemned the passing away of Father Stan, who died of Covid complications awaiting medical bail. On July 6, 2021, the Office of the High Commissioner of Human Rights, United Nations issued a press release where they expressed how “deeply saddened and disturbed” they were. The statement reads, “High Commissioner Michelle Bachelet and the UN's independent experts have repeatedly raised the cases of Father Stan and 15 other human rights defenders associated with the same events with the Government of India over the past three years and urged their release from pre-trial detention.”

In light of the continued, severe impact of the Covid-19 pandemic, the United Nations has appealed to all States, including India, to release every person detained without a sufficient legal basis, including those detained simply for expressing critical or dissenting views.

Dear Hon'ble Chief Minister, the pandemic has ravaged many families who have lost their loved ones and in such devastating times, there has also been a disruption of usual communication channels between the jailed undertrials and their families. On July 3, 2021, the Bombay High Court issued a notice to the Maharashtra Government, the National Investigation Agency (NIA), and the jail superintendent on a petition filed by Rama Anand Teltumbde (wife of accused Anand Teltumbde) and Susan Abraham Gonsalves (wife of accused Vernon Gonsalves) seeking a direction from the court to the Superintendent of Talaja Prison to allow letter communication between the petitioners and their respective jailed husbands. **(Rama Anand Teltumbde and Ors vs State of Maharashtra and Ors CrI. W.P No. 2327 of 2021).**

Right to Health is fundamental to Right to Life under Article 21 of the Constitution of India and it is the obligation of the State to protect this right of all citizens. For the sake of brevity, we would humbly like to reiterate all our submissions in the letter petition made to you on May 17.

CJP humbly urges and requests the Hon'ble Chief Minister to recommend the release of all these 14 accused persons to the High-Power Committee, as their lives are at risk. We humbly urge you to intervene in the matter before another undertrial's health deteriorates. They are all law-abiding citizens of this country and would not do anything to hamper the investigation of the case. As Dr. Varavara Rao was released from jail on medical grounds and also that 200 witnesses are required to be examined, it is unfair on these undertrials to languish in jail for such a long period of time. Talaja Prison as of now houses around 3,500 prisoners as opposed to its capacity of 2,124 inmates, with a



133 percent occupancy rate. It is also important to note that some prisoners test negative for Covid, but end up testing positive when tested outside of prisoners.

They have anxious and concerned family members, desperately waiting for their release. Esteemed Sir, on May 15 we had sent a previous Memorandum in this regard. In that, harking back to the progressive traditions in our beloved state of Maharashtra, we had urged that the state's jail authorities display a sense of decency and accountability as they are bound to do according to the country and state's laws and prison manuals. Three years have gone by and these prominent activists, intellectuals, social workers have deteriorating health staring in their faces.

Yours sincerely,

Citizens for Justice and Peace

Nandan Maluste, CJP President

Teesta Setalvad, CJP Secretary



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Annexed from our Previous Memorandum dated May 15:

Laws related to medical aid to prisoners

Sir(s), it is the duty of the State to safeguard the health and wellbeing of all citizens of the country and to also ensure that this health is not extinguished by the inefficiency of the State. The Maharashtra Classification of Prisons Rules, 2015, that has been framed under the Prison Act, 1894, lays down provisions mandated for prisoners and undertrials in need of immediate medical attention.

Rule 3(2)(5) lays down that The Chief Medical Officer shall:

“pay special attention to the quality and quantity of the water supply to the prison. If contamination is suspected, he shall send water samples to the local testing laboratories and take corrective measures where needed.”

(6) Inspect at least once a month the sources, surroundings and distribution of water supply. When there is a reason to suspect that pollution or contamination is likely, to occur, he shall take suitable steps to ensure the purity' of water by chlorination or otherwise.

(14) The medical officer may treat the sick prisoner with the help of tele-medicines and send the sick prisoner to the Government hospital only if tele-medicine and treatment within the prison hospital are inadequate to treat the inmate.”

Other Supreme Court Rulings

Undertrials and Prisoners too, have a right to health under the Right to Life guaranteed by the Article 21 of the Constitution of India. In **Sunil Batra (ii) vs Delhi Administration** (1980) 3 SCC 488, the Supreme Court has held that basic human rights cannot be denied to a person even though he remains confined in jail as per procedure established by law. Recently, when the jailed Kerala based journalist Siddique Kappan took a fall in Mathura Jail and tested positive for Covid-19, the supreme court held that he should be transferred to a hospital for better care and medical attention. In **Kerala Union of Working Journalists Versus Union Of India & Ors.** (Writ Petition Criminal No. 307 of 2020), the Supreme Court held, “We state that the most precious fundamental ‘right to life’ unconditionally embraces even an undertrial.”

Amid a rise in Covid-19 cases and since the trial in the Bhima Koregaon violence case is no where to close to start, it is only practical to release all arrested persons for better care and treatment to the ones who desperately need it.

Dr. Varvara Rao, who has been charged under similar provisions in the same case was granted bail by the Bombay High Court, keeping in mind his deteriorating health conditions in February, 2021. The Bench had noted that Dr. Rao's continued incarceration as an undertrial would violate his Right to Life under Article 21 of the Constitution considering his precarious health condition.



In **Dr. PV Rao vs NIA and others** (Cri. Appeal No. 52 of 2021), the court held, “Even otherwise, in the present case also, the respondents have conceded that at least 200 witnesses will be examined by the prosecution. The chargesheet itself runs into 1000 pages... We are of the opinion that this court, as a constitutional court cannot be a mute spectator to the undertrial being sent to the prison and then to government hospitals where his health deteriorates further, to be ultimately shifted to the private special speciality hospitals, upon intervention of courts and such movements of the undertrial continue back and forth only because his bail application is turned down...”

The conditions of jails and no knowledge about their health in such a critical time, warrants a humanitarian approach. The Bombay High Court had also taken cognisance of the inadequate facilities in jail, hoping for the State to ramp up amenities for all inmates. In the suo motu public interest litigation it registered, by the name, **High Court on its own motion vs State of Maharashtra and Ors** (Suo Motu PIL No. 1 of 2021), the Division Bench of Chief Justice Dipankar Datta and Justice GS Kulkarni noted the submission made by one of the intervening applicants “that the correctional homes do not have adequate number of doctors, nurses and other paramedical staff. Reference has been made to Taloja correctional home where only 3 (three) doctors are available who practice Ayurveda.”

“If indeed that be so, it is a poor reflection of the State’s health and medi-care facilities for the inmates of the correctional homes, betraying apathy and indifference to attend to their needs”, the Bench itself had noted through its order dated April 29, 2021.

Sir(s), Right to Health is fundamental to Right to Life under Article 21 of the Constitution of India and it is the obligation of the State to protect this right of all citizens. In **State of Punjab and Ors vs Mohinder Singh Chawla** (Civil Appeal Number 16980-81 of 1996), the Supreme Court held that, “It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities.” In **Kirloskar Brothers Ltd. vs. Employees State Insurance corporation** 1996 (2) SCC 682, the Supreme Court highlighted the same obligation and the duty of the State to protect its citizens.