

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

DIST. PALGHAR

In the Matter of:

Alakh Alok Srivastava ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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SYNOPSIS

CHALLENGE IN BRIEF:

That the instant Public Interest Litigation (PIL) by way of Writ Petition under Article 226 of the Constitution of India, has been preferred by the humble Petitioner herein, seeking kind indulgence of this Hon'ble Court towards the heart wrenching and brutal lynching of two Hindu Sadhus (spiritual leaders) and their driver by a large mob near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, on 16.04.2020.

Sr. No.	Dates	Events
1	16.04.2020	Two Hindu Sadhus (spiritual leaders) and their driver were brutally lynched by a large mob near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, on 16.04.2020.
2		As per the media reports and videos surfaced on social/electronic media, The aforesaid brutal lynching took place in

		the presence of a number of local police personnel, however, the said police personnel did nothing to prevent the said brutal lynching, rather their acts and omissions led to the aforesaid sad incident.
3		State of Maharashtra handed over the investigation of the aforesaid brutal lynching incident to the CID-Crime and claimed to have arrested over 100 accused persons.
4		The aforesaid brutal lynching incident anguished a large number of people across India, including the Petitioner herein, who is now, inter-alia, praying for a free, fair and time bound investigation of the matter by SIT or CBI. The Petitioner is further praying for timebound and expeditious Trial through Fast Track Court and also praying for compensation to the poor driver, who was lynched in the above incident.
5		Hence present PIL

POINTS TO BE URGED:

1. That the instant Petition seeks kind indulgence of this Hon'ble Court towards the heart wrenching and brutal lynching of two Hindu Sadhus (spiritual leaders) and their driver by a large mob near village Gadchinchle,

Police Station – Kasa, District – Palghar, Maharashtra,
on 16.04.2020.

2. That as there are serious allegations against the local police itself, hence, the Petitioner is inter-alia, praying for a court-monitored SIT/ CBI enquiry and Fast Track Court Trial in the matter.

ACTS AND RULES TO BE REFERRED TO:

1. Constitution of India
2. Delhi Special Police Establishment Act

AUTHORITIES TO BE CITED:

State of W.B Vs. Committee for Protection of Democratic
Rights 2010 3 SCC 571

Dated this 21st day April, 2020

Petitioner party in person

Resident of –)... Petitioner

-Versus-

1. State of Maharashtra,]

Through its Home Secretary]

Mantralaya, Mumbai]

Maharashtra – 400032]

Telephone No.022 – 22048930]

Email Id: acs.home@maharashtra.gov.in]

2. Maharashtra Police]

Through its Director General of Police)

Chhatrapati Shivaji Maharaj Marg)

Colaba, Mumbai)

Maharashtra – 400001]

Telephone No. 022-22822631]

Email: dgpms.mumbai@mahapolice.gov.in]

3. Central Bureau of Investigation,)

Through Director,)

13th Floor, Plot No. C-35A, 'G' Block,)

Bandra Kurla Complex, Near MTNL)

Exchange, Bandra East, Mumbai,)

Maharashtra 400098.)

Telephone No. 022-26529943]

Email Id: hozmum1@cbi.gov.in] ...Respondents

TO,

**THE HON'BLE CHIEF JUSTICE
AND THE OTHER PUISNE
JUDGES OF THIS HON'BLE
COURT:**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED:-**

MOST RESPECTFULLY SHEWETH

1. That the instant Public Interest Litigation (PIL) by way of Writ Petition under Article 226 of the Constitution of India, has been preferred by the humble Petitioner herein, seeking kind indulgence of this Hon'ble Court towards the heart wrenching and brutal lynching of two Hindu Sadhus (spiritual leaders) and their driver by a large mob near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, on 16.04.2020.
2. Particulars of the Petitioner(s):-That the Petitioner herein is a law abiding and peace loving citizen of India and an Advocate by profession, who is primarily practising before Hon'ble Supreme Court of India. The Petitioner is an Advocate-on-Record of Hon'ble Supreme Court of India and also a permanent Resident member of the Supreme Court Bar Association (SCBA).

The Petitioner takes up various socio-legal causes before Hon'ble Supreme Court of India through Public Interest Litigation (PIL). For example, the Petitioner had previously taken up the plight of an 8-month old Rape Victim of Delhi before Hon'ble Supreme Court by way of filing a PIL bearing WP (C) No. 76 of 2018. The said PIL of the Petitioner was finally disposed of by a Larger Bench of the Hon'ble Supreme Court of India, vide Landmark Judgment dated 01.05.2018 pronounced in **Alakh Alok Srivastava Vs. Union of India and Others, reported as 2018 (7) SCALE 88**, in which Hon'ble Supreme Court issued a plethora of crucial directions for speedy disposal of cases involving sexual offences against children.

Recently, the Petitioner took up the heart wrenching plight of the migrant labourers, who were walking on foot amid Corona virus Lockdown, before the Hon'ble Supreme Court of India by way of filing a PIL bearing WP (C) No.468/2020, in which the Hon'ble Supreme Court passed a Landmark Order dated 31.03.2020 to ensure welfare and well-being of several migrant labourers.

3. That there is no Civil, criminal or revenue litigation, involving the Petitioner, which has or could have a legal

nexus with the issues involved in this PIL nor any other pending litigation.

4. That there is no private interest in filling this PIL and it is bonafide and in large public interest. If the instant PIL is not filled, then it may lead to repeat of similar brutal lynching incidents in other parts of country.
5. That the entire litigation costs, including the advocate's fee and other charges are being borne by the petitioner out of his own fund. The PAN card No. of the Petitioner is _____. The instant petition is a bonafide matter and in the large interest of Public and if the Hon'ble Court imposes any cost, same will be borne by the petitioner. That the petitioner has understood that in the course of hearing of this petition the Court may require any security to be furnished towards costs or any other charges and the petitioner will comply with the same, if any ordered by this Hon'ble Court during the hearing.
6. That the Petitioner further declare that all the information stated in the petition are true and correct and collected through various modes of communication available today i.e News channel, social media and personal information and knowledge

and declare that the facts pleaded in the petition are verified personally.

7. The Respondent no. 1 is the Government of Maharashtra, represented through its Home Secretary, which is the appropriate ministry dealing with safeguarding the fundamental rights of the citizens and ensuring Law and Order within the State of Maharashtra. That the Respondent no. 2 is the Maharashtra Police, represented through its Director General Police, State of Maharashtra, which is the appropriate authority concerned with enforcing law and order in the State of Maharashtra. That the Respondent no. 3 is CBI, represented by its Director, which is working under the control and authority of the Government of India and is expected to conduct a free and fair investigation into the matter.
8. The Petitioner espouses the cause of safeguarding the fundamental rights of various citizens of India who are deeply disturbed and anguished over the aforesaid brutal lynching of two Hindu Spiritual Leaders and their driver.

FACTS OF THE CASE:-

9. As per the news reports, on 16.04.2020, one Hindu spiritual guru Ramgiri Maharaj passed away in Surat

(Gujarat). To attend his last rites, two more Sadhus, namely, Shri Sushil Giri Maharaj (35) and Maharaj Kalpavrikshgiri (70) along with their driver Nilesh Telgane (35) started travelling from Kandivali (Mumbai) to Surat (Gujarat) on 16.04.2020 itself.

10. The abovenamed three persons were reportedly stopped from taking the National Highway due to the ongoing Corona virus lockdown and hence they took a detour. While their vehicle reached near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, they were reportedly taken into custody by the Palghar Police and kept in the police van.
11. However, at that time, a large mob reportedly stopped their vehicle and dragged the saffron-clad sadhus out. Thereafter, the unruly mob, armed with sticks and rods, unleashing its demonic side, attacked the abovenamed Sadhus and their driver by sticks and rods and brutally killed all three of them in an extremely barbaric manner.
12. Various video clips of the said incident later on surfaced in social as well as electronic media showing that the police didn't even try to help the abovenamed deceased persons. When sticks and rods were rained on the elderly sadhu Maharaj Kalpavrikshgiri, he clung

to a uniformed cop for help. But the officer shrugged him allowing the mob to do what it was doing. In one video, Maharaj Kalpavrikshgiri begged the mob to spare him but his cries didn't move them.

13. It is pertinent to mention here that the Respondent No.1 claimed that subsequently they have arrested 101 people and detained nine minors so far in connection with the aforesaid lynching. It has been further stated that the investigation of the aforesaid matter has been handed over to CID-Crime of the State.
14. However, in the humble submission of the Petitioner, in the present case, there are serious allegations against the police personnel themselves as to why did they allow such a large gathering despite the ongoing lockdown and why they did not try to protect the aforesaid deceased persons from unruly mob. There are allegations that one of the police personnel pushed the elderly Sadhu to the violent mob, instead of saving him, which led to his brutal lynching. In various videos of the incident, surfacing on social media and electronic media, presence of a number of police personnel can be seen at the said place at the time of incident, however, no police personnel is seen taking any step in protecting the said deceased persons.

The details of the said unfortunate and sad incident has been covered in the news report dated 20.04.2020 published in the India Today portal under heading “Maharashtra govt cracks whip over Palghar mob lynching: All that's happened”.

A true copy of the news report dated 20.04.2020 published in the India Today portal under heading “Maharashtra govt cracks whip over Palghar mob lynching: All that's happened”, is enclosed herewith and marked as **Exhibit – “A”**.

The details of the said unfortunate and sad incident has been further covered in the news report dated 20.04.2020 published in the Mumbai Mirror portal under heading “Everything you need to know about Palghar attack where Sadhus were lynched by a mob”.

A true copy of the news report dated 20.04.2020 published in the Mumbai Mirror portal under heading “Everything you need to know about Palghar attack where Sadhus were lynched by a mob”, is enclosed herewith and marked as **Exhibit – “B”**.

15. Hence, the Petitioner herein, being a practising Hindu by religion and a concerned citizen of India, is personally aggrieved and deeply anguished by the

aforesaid heart wrenching and brutal lynching incident and thus the humble Petitioner is praying for the kind indulgence of this Hon'ble Court in the instant case, in the interest of justice.

QUESTION OF LAW:-

1. Whether the Hon'ble Court has power to transfer the pending investigation to the CBI or SIT or any other central Investigation agency or not?
2. Whether transferring the investigation to the CBI, SIT or any other Special Commission for Investigation & inquiry of the instant lynching incident by an independent agency, is most effective method to ensure free and fair investigation in the instant case?

GROUND:-

1. That the instant petition, inter-alia, seeks transfer of investigation of the aforesaid brutal lynching incident from the state agencies to the central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, for which this Hon'ble Court has competent jurisdiction, as per the Judgment passed by the Constitution Bench of the Hon'ble Supreme Court of India in **State of W.B Vs. Committee for Protection of**

Democratic Rights 2010 3 SCC 571, wherein the Hon'ble Supreme Court held that –

Para 53. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression "in the nature of" employed in Clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress (per P.N. Bhagwati, J.

in *Bandhua Mukti Morcha v. Union of India*
MANU/SC/0051/1983 : (1984) 3 SCC 161).

The Court summed up the conclusions in the following words:

68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty

to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court Under Article 32 and on the High Courts Under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether

such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy Under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power Under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by

the Parliament under an enactment, do not amount to restriction on the power of the Judiciary Under Article 32 or 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct

the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court Under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

2. That the aforesaid incident of brutal lynching of the abovenamed Sadhus has shocked the conscience of a large number of people of India and it is in the interest of justice that a free and fair investigation is conducted in the instant case under the monitoring of this Hon'ble Court.
3. That there are serious allegations of commission and omission on the part of the local police personnel themselves in the aforesaid brutal

crime and thus it is in the interest of justice to get the investigation of the instant case done by any independent agency, other than any agency subservient to the State of Maharashtra.

4. That the aforesaid brutal lynching of old aged Spiritual leader, has sent a wrong message to the society at large and thus it is in the interest of justice to direct for speedy and expeditious trial of the instant case.
5. That it is further in the interest of justice to direct the Respondent State of Maharashtra to pay compensation to the deceased Shri Sushil Giri Maharaj (35) and Maharaj Kalpavrikshgiri (70) and their driver Nilesh Telgane (35). However, considering that the abovenamed Sushil Giri Maharaj (35) and Maharaj Kalpavrikshgiri (70) had renounced their worldly desires, the humble Petitioner is seeking a direction to the Respondent State of Maharashtra to at least pay compensation to the abovenamed driver Nilesh Telgane in the interest of justice.
6. That free and fair investigation and expeditious completion of Trial in the instant case will ensure that no such brutal lynching takes place in any

part of the Country, which will ultimately uphold the right to life of a number of citizens of India, as enshrined under Article 21 of the Constitution of India.

7. Hence the present petition in public interest is being filed under Article 226 of the Constitution of India, 1950.

16. **DECLARATION AND UNDERTAKING OF THE PETITIONER:**

- a. That the present petition is being filed by way of PUBLIC INTEREST LITIGATION and the petitioner has no personal interest in the matter. The present petition is being filed in the interest of public at large as the said incident happened where two Hindu Sadhus (spiritual leaders) and their driver were brutally killed by a large mob near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, on 16.04.2020.
- b. That the entire litigation costs including the court fees and other charges are being borne by the petitioner himself.
- c. The Petitioner states that he has not been involved in any other civil, revenue and criminal litigation in

any capacity before any Court or Tribunal against the Respondent.

- d. That, a thorough research has been conducted in the matter raised in the petition.
- e. That, to the best of petitioner's knowledge and the research, the issue raised has not been dealt with or decided, and similar or identical petition was not filed earlier by the petitioner.
- f. That, the petitioner has understood that in the course of hearing of this petition the court may require any security to be furnished towards costs or any other charges and the petitioner shall comply with such requirements.

17. SOURCE OF INFORMATION: -

The petitioner states that the Information of the facts pleaded in the petition is based on news information and personal study of the legal provisions of law on the subject.

18. ANY REPRESENTATION ETC, MADE:-

The petitioner says that the petitioner didn't make any representation to the Respondents. Since the issue involved in the present petition is a constitutional issue as to investigation of lynching of three persons by CBI or

SIT, which could be only examined by either Hon'ble Apex Court or the Hon'ble High Courts including this Court, making a representation to Respondents would not serve the purpose.

19. **DELAY IF ANY IN FILING THE PETITION AND EXPLANATION THEREOF: -**

The petitioner submits that the instant petition is in reasonable time and there is no delay or latches.

CONCLUDING PARAGRAPHS

20. The Petitioner states that there is no efficacious alternate remedy available to the Petitioner save and except the filing of instant petition and the reliefs herein, if granted, would redress the grievances of the Petitioner.
21. The Petitioner will rely upon the documents a list whereof is annexed hereto.
22. The Petitioner also craves leave of this Hon'ble court to rely on any document pertaining to the subject matter of this petition as and when necessary
23. The Petitioners has paid the fixed Court Fee of Rs./- per Petitioners on the present petition.

24. The Respondents have their respective office address at Mumbai (Maharashtra). The cause of action has arisen in Palghar (Maharashtra). Therefore, this Hon'ble Court has jurisdiction to try and entertain the present PIL Writ Petition.
25. The Petitioner states that there is no efficacious alternate remedy available to the Petitioner save and except the filing of instant petition and the reliefs herein, if granted, would redress the grievances of the Petitioner.
26. The Petitioner says that the PIL is filed in the Public Interest and the Petitioner has no personal interest in the above matter.
27. The Petitioner states that he has not been involved in any other civil, revenue and criminal litigation against the Respondent in any capacity before any Court or Tribunal.
28. The Petitioner states that the entire litigation costs and other charges are being borne by the Petitioner.
29. **THE PETITIONERS THEREFORE, PRAY:-**

In the facts and circumstances, it is most respectfully prayed that your Lordships may graciously be pleased to:

- (a) Issue a Writ, order or Direction in the nature of Mandamus to transfer the investigation of the brutal lynching/killing of two Hindu Sadhus (Spiritual Leaders) namely, Shri Sushil Giri Maharaj (35) and Maharaj Kalpavrikshgiri (70) along with their driver Nilesh Telgane (35), which took place on 16.04.2020 near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, from CID-Crime to the Central Bureau of Investigation (“CBI”) or to any other independent agency, to conduct free and fair investigation of the matter in a time bound manner, under monitoring of this Hon’ble Court;

Or in Alternative,

Issue a Writ, order or Direction in the nature of Mandamus to constitute a Special Investigation Team (SIT), duly monitored by this Hon’ble Court, in order to thoroughly investigate the aforesaid brutal lynching of abovenamed three people, near village Gadchinchle, Police Station – Kasa, District – Palghar, Maharashtra, on 16.04.2020,

in an expeditious and time bound manner;
and/or

- (b) Issue a Writ, order or Direction in the nature of Mandamus to conduct the Trial of the aforesaid case, upon completion of the investigation, in a Fast Track Court, in an expeditious and time bound manner; and/or
- (c) Issue a Writ, order or Direction in the nature of Mandamus to the State of Maharashtra to initiate stringent disciplinary action as well as penal action under Indian Penal Code (IPC) by way of registration of FIR, against the concerned policemen, whose acts and omissions led to the aforesaid brutal lynching incident; and/or
- (d) Issue a Writ, order or Direction in the nature of Mandamus to the State of Maharashtra to immediately disburse a compensation of Rs.1 Crore to the bereaved family of the abovenamed driver Nilesh Telgane (35), who was brutally lynched on 16.04.2020 by the unruly mob; and/or
- (e) Pass such other orders as may be deemed fit in the facts and circumstances of this case.

WWW.LIVELAW.IN

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN
DUTY BOUND SHALL EVER PRAY.

Dated this 21st day of April, 2020

Petitioner Party in person