

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2020

In the matter of Article 226 of the  
Constitution of India;

And

In the matter of Articles 14, 19  
and 21 of the Constitution of  
India;

And

In the matter of the arbitrary,  
unconstitutional and  
unreasonable, decision order  
under section 144 of the Code of  
Criminal Procedure, 1973 dated  
23.05.2020 issued by the  
Commissioner of Police, Greater  
Mumbai.

1. Mr. Mangal Prabhat Lodha

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...PETITIONER

VERSUS

1. State of Maharashtra  
(Through Home Department,  
Mantralaya)

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)  
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2. Director General of Police,  
Maharashtra Police Headquarters  
Old Council Hall,  
Shaheed Bhagat Singh Marg,  
Mumbai -400001

)  
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)

3. Pranaya Ashok,  
Dy. Commissioner of Police (Operations)  
Office of Commissioner of Police,  
Crawford Market, Mumbai - 400001

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)  
)  
)

...Respondents

TO,  
THE HON'BLE CHIEF JUSTICE AND  
OTHER HON'BLE JUSINE JUDGES OF  
THE HIGH COURT OF BOMBAY

*Handwritten mark*

**THIS HUMBLE PETITION OF THE**  
**ABOVENAMED PETITIONERS.**

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner is Mr. Mangal Prabhat Lodha, Member of Legislative Assembly, Maharashtra and the President of Mumbai BJP, having his residential address at Lodha Costiera, Nepean Sea Road, Mumbai - 36 is personally aggrieved and is filing the present Writ Petition for enforcement of fundamental rights as guaranteed under Part III of the Constitution. The Petitioner is constrained to move the instant Writ Petition under Article 226 of the Constitution seeking urgent reliefs against the arbitrary and unreasonable actions of the Hon'ble Commissioner of Police, Greater Mumbai who has in hot haste and in without due consideration issued order dated 23<sup>rd</sup> May 2020 being CP/XI(6)/144/(Prohibitory Order)/2020 ("**Impugned Order**") under Section 144 of the Code of Criminal Procedure , 1973 ("**Cr.Pc**"). The Impugned Order of the Hon'ble Commissioner is violative of Article 19, Article 14 and Article 21 of the Constitution of India, 1950. ("**Indian Constitution/Constitution**"). It is ex facie arbitrary, unreasonable, colorable exercise of the power to curb the fundamental rights of citizens already reeling under the adverse effects of the Pandemic caused by COVID-19. True copy of the Impugned Order dated 23<sup>rd</sup> May 2020 is annexed hereto and marked as **Exhibit**

**A.**

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2. The Respondent No. 1 is the State of Maharashtra through its home department having its office at the address mentioned in the cause title hereinabove.
3. The Respondent No. 2 is the Director General of Police for the state of Maharashtra having its office at the address mentioned in the cause title hereinabove. The Respondent No. 2 is the head of police force for the state of Maharashtra under whose control and supervision are all the police stations of the state. The Respondent No. 3 is Dy. Commissioner of Police (Operations) who has issued the Impugned Order.
4. Brief facts relating to the filing of the present Writ Petition are as follows:
  - a. On 11<sup>th</sup> March 2020, the World Health Organization declared COVID-19 as a global 'Pandemic'. The State of Maharashtra was placed under lockdown from 21<sup>st</sup> March 2020. At that stage the number of positive cases in the state was under 100.
  - b. From 24<sup>th</sup> March 2020, the whole nation has been under lockdown subject to guidelines issued by the Central and State government. However, the city of Mumbai despite going under lockdown earlier than the rest of the country has the greatest number of cases which as of date is 33,500 approx. in number.
  - c. The Hon'ble Commissioner of Police, Greater Mumbai On 10<sup>th</sup> April 2020, being CP/XI/(6)/144/Prohibitory



Order to curb the spread of dissemination of information through s WhatsApp, Facebook, Twitter, TikTok, Instagram etc. (**social media platforms**). Further the April Order stated that such 'misinformation' is likely to cause panic, confusion and mistrust against government functionaries and their actions to control the spread of the pandemic in the state. In view of the same the April Order prohibited all persons from spreading any information through the social media platforms which is found to be incorrect and a distortion of facts; derogatory and discriminatory of any particular community; causing confusion and panic amongst the general public; inciting mistrust towards government functionaries and their actions taken to curb the spread of COVID-19 and thereby causing danger to human health or safety or disturbing public tranquility. In this regard, the April Order held admins of groups personally liable. The said April Order was in effect from 10<sup>th</sup> April 2020 to 24<sup>th</sup> April 2020. True copy of the Order dated 10<sup>th</sup> April 2020 is annexed hereto and marked as **Exhibit B**.

- d. The inability of the state government to correctly control the situation in Maharashtra has been highlighted in the past few weeks. Citizens of Maharashtra who have been confined to their homes from March 2020 and incurred several financial and other losses are unable to understand the failure of the government in adequately controlling the spread of the

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pandemic in the state. In the past few weeks, there has been an outpour of criticism against the government's mishandling and inability to curb the spread of COVID-19 in the State. Citizens have aired their views on various social media platforms have now, in the exercise of their right to freedom of speech guaranteed under Article 19(2) of the Constitution.

e. In light of the above and without a single 'law and order' situation in the city of Mumbai, on 23<sup>th</sup> May 2020, acting on the instructions of the State Government the Hon'ble Police Commissioner vide the Impugned Order sought to curb the freedom of speech enshrined under Article 19 of the Indian Constitution.

f. The Impugned Order is said to have been passed to curb the spread of 'misinformation' 'incorrect information', 'fake news' and 'other objectionable content' through messages, videos (created or edited), audio clips, internet memes and other media through platforms such as Whatsapp, Facebook, Twitter, TikTok, Instagram etc (**'social media platforms'**). Further the Impugned Order states that such 'misinformation' is likely to cause panic, confusion and mistrust against government functionaries and their actions to control the spread of the pandemic in the state. In view of the same the Order prohibits all persons from spreading any information through the social media platforms which is found to be incorrect



and a distortion of facts; derogatory and discriminatory of any particular community; causing confusion and panic amongst the general public; inciting mistrust towards government functionaries and their actions taken to curb the spread of COVID-19 and thereby causing danger to human health or safety or disturbing public tranquility. In this regard, the Order holds admins of groups personally liable and states that the Order would be in effect from 25<sup>th</sup> May 2020 until 8<sup>th</sup> June 2020.

g. The Impugned Order is vague and broadly worded. It is trite law that orders passed by the Executive Magistrate in exercise of powers under section 144 of the C.R.P.C ought to be against specific persons and not the general public. However, the text of the Impugned Order makes no such distinction. Further, any restriction imposed on the rights enshrined under Article 19(2) ought to be 'reasonable' under the mandate of Article 19(6) of the Constitution and cannot be in the nature of a blanket restriction. Further, these restrictions need to be tested on the anvil of the test of proportionality.

h. The State Government has failed to show that the Impugned Order is in anyway based on objective material. It is evident that that the same has been passed on mere conjecture and in colorable exercise of power in light of the heightened criticism of the State

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government's inability to curb the health emergency.

- i. The Impugned Order is mala fide and passed with the sole intention to ban criticism of government inaction in the current situation. The people have a right to speak their view, whether the same is in criticism of governmental action and it is the duty of the State to prove that it was necessary to restrict the same.
  - j. The blanket restrictions in the Impugned Order fail the test of proportionality which was upheld by this Hon'ble Court in the case of K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1 ("**K. S. Puttaswamy Judgment**"). The Impugned Order has failed to appreciate that the proportionality of a measure must be determined while looking at the restrictions being imposed by the State on the fundamental rights of citizens. It is pertinent that not just the legal and physical restrictions that must be looked at, but also the fear that these sorts of restrictions engender in the minds of the populace, while looking at the proportionality of measures.
  - k. The Impugned Order uses broad and vague terminology and is made to deal with a 'law and order' situation, but the Impugned Order does not indicate any existing law and order issue and is issued on the probability of such situation arising.
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1. Whilst the State may impose restrictions, a balance must be drawn to balance individual rights. The State ought to have considered the "least restrictive measure" that can be passed. The State must ensure that measures are in place that allows people to continue with their life, such as public transportation for work and schools, to facilitate business, etc. However, the Impugned Order has failed to appreciate this balance and is passed against any and all communication without any basis.
  
5. Such action of the State Government is manifestly arbitrary, colorable and unreasonable and is a clear violation of Article 19 of the Constitution.
  
6. In these circumstances the Petitioners are moving this Hon'ble Court under Article 226 of the Constitution beseeching it to intervene and declare the Impugned Order void.
  
7. That the Writ Petition has been filed without any delay or laches and there is no legal bar in entertaining the same. That the Petitioner has no other efficacious alternative remedy except to file the present Writ Petition before this Hon'ble Court by invoking Article 226 of the Constitution.
  
8. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioner *inter alia* on the following amongst other grounds without prejudice to each other.

*d*

**GROUND**

- a. THAT, the Impugned Order infringes the fundamental right to freedom of speech and expression. The restrictions imposed in the Impugned Order such as 'panic and confusion amongst general public', 'inciting mistrust towards government functionaries and their actions' amongst others are outside the purview of Art. 19(2). And therefore, the Impugned Order is *ex-facie* arbitrary, unconstitutional and violative of Article 14 of Constitution of India.
- b. THAT, the wording of the Impugned Order suffers from the vice of vagueness as none of the restrictions imposed by the Impugned Order are even attempted to be defined and cannot be defined. The result being that innocent persons can be held liable as the ambit and scope of the restrictions is vague and unsound. It is apprehended that this vagueness can be exploited by the authorities giving them a free hand to act in a whimsical and arbitrary manner in booking any person under the Impugned Order.
- c. THAT, the enforcement of the Impugned Order would really be an insidious form of censorship which impairs a core values contained in Art. 19(1)(a).
- d. THAT, the Impugned Order has a chilling effect on the freedom of speech. It is the law of the Land as elaborated by this Court in the K.T. Puttaswamy judgment that in a democracy, liberty of thought and

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expression is a cardinal value of paramount significant in the Indian Constitution Scheme. Further, to justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. It is submitted that criticism of a government's inaction (as stated in the Impugned Order) does not meet the test of 'serious evil' and therefore does warrant that such severe restrictions on speech.

- e. THAT, the Impugned Order is violative of Art. 14 and 21 of the Constitution of India as there is no intelligible differentia between those individuals who use Whatsapp, FaceBook, Twitter, Instagram, Tik Tok etc. and those who by words spoken or written use other mediums of communication than those stated in the Impugned Order . Moreover to punish somebody who has a contrary view or even if the Government/Authorities are being criticized on the ground that such contrary view amounts to inciting mistrust towards government functionaries and their actions taken or incorrect is clearly arbitrary and in stark violation of Art. 19(1)(a) read with Art. 14 and 21 of the Constitution of India. It is pertinent to note that the apprehension of danger to justify restrictions on freedom of speech must be 'imminent'. It is submitted that the restrictions imposed vide the Impugned Order does not have a proximate connection or nexus with public order. The nexus, if any, attempted be drawn is



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far-fetched, hypothetical or problematical and too remote in the chain of its relation with the public order.

- f. THAT the freedom of speech and expression of opinion is of paramount importance under the Constitution of India and further freedom of speech and expression is the ark of the covenant of democracy because public criticism is essential to the working of government institutions. Furthermore, for a meaningful governance the culture of open dialogue is the most essential arm of democracy and therefore the restrictions as laid out in the Impugned Order are violative of Art. 19(1)(a) and Art. 14 of the Constitution of India.
- g. THAT there are three concepts which are fundamental in understanding the freedom of speech and expression, namely discussion, advocacy and incitement. The Impugned Order effectively penalizes mere discussion or even advocacy of a particular cause, thus the Impugned Order is violative of Art. 19 of the Constitution of India.
- h. THAT it is submitted that the restrictions imposed by the Impugned Order has no proximate relation with any of the eight subject matters contained in Art. 19(2) of the Constitution of India.
- i. THAT it is submitted that the language used in the Impugned Order is so vague that neither would an accused person be put on a notice as to what exactly is the offence which has been committed nor would the
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authorities administering the Impugned Order will be clear as to on which side of the clearly drawn line will a particular communication fall. It is submitted that the impugned circular permits the administering authorities to set a net large enough to catch all possible offenders in the times of CoVid-19 and leave it to the Court to step in and say who can or cannot be rightfully detained and who should be set at liberty. Moreover the said circular is so vague and arbitrary that there are no guidelines for the administering authorities and in lieu thereof many persons/ citizens of innocent conduct would also be brought within the reach of the Impugned Order , thereby creating panic and restriction on the freedom of speech and expression.

- j. THAT the Impugned Order is without any application of mind, unjustified, harsh, inequitable and is without any basis and/ or ration and liable to be set aside.
- k. THAT the Impugned Order is patently capricious, ultra vires and in breach of the principles of natural justice.
- l. THAT the Impugned Order is contrary to law, arbitrary and based on irrelevant considerations.
- m. THAT the Impugned Order is an abuse of the process of law and discloses non application of mind and is therefore bound and liable to be set aside.
- n. THAT the Impugned Order smacks of malafides and bias and the same must be construed to be suffering

from the vice of manifest arbitrariness and is liable to be interfered with to protect democracy and individual liberty

- o. THAT the Impugned Order is brazenly opposed to the spirit of the Constitution as is reflected in Constitutional convention and practice having the force of law.
9. The Petitioner states that the cause of action has arisen in the local limits of this Court. This Court has jurisdiction to entertain the Petition and grant reliefs as prayed by the Petitioner and/or any other necessary relief in public interest
10. The Petitioner has no other alternative and efficacious remedy to redress the grievance raised by the Petitioner in the present Petition
11. The Petitioner has not filed any other Petition in this Hon'ble Court or in the Hon'ble Supreme Court of India as regards the subject matter of this Petition
12. The Petitioner has paid the court fees of Rs. \_\_\_\_\_/- on the present Writ Petition
13. The Petitioner states that the Petitioner has been compelled to approach this Hon'ble Court in haste in the circumstances more particularly set out herein above.
14. The Petitioner states that the present Writ Petition has been filed without any delay or laches and there is no legal bar in entertaining the same. That the Petitioner has

no other efficacious alternative remedy except to file the present Writ Petition before this Hon'ble Court by invoking Article 226 of the

- 15. The Petitioner further craves leave of this Hon'ble Court to amend, alter, modify, this Petition as and when required and to produce additional documents which may come into possession of the Petitioner.

**PRAYERS**

- 16. In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. That this Court be pleased to issue a Writ of Mandamus or any appropriate writ/order/direction to set aside and declare the Impugned Order passed by Respondent No. 3 under Sec. 144 of Cr.PC. as unconstitutional, arbitrary, illegal, void-ab-initio and is violative of Art. 14, 19 and 21 of the Constitution of India.
- b. That this Court be pleased to issue a Writ of Certiorari or any appropriate writ/order/direction and further consider the legality, validity and propriety of the Impugned Order passed by Respondent No. 3 under Sec. 144 of Cr.P.C quash and set aside the same.
- c. pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to stay the effect, execution, operation and implementation of the impugned Order dated 23<sup>rd</sup> May 2020.

- d. Interim and ad-interim reliefs in terms of prayer clause (c).
- e. Costs of the above Writ Petition be provided for; and
- f. Pass such other order or direction as it deems fit in the facts of the present case and in the interest of justice.

Dated this 26<sup>th</sup> day of May, 2020

**Parinam Law Associates**

**Mr. Mangal Prabhat Lodha**

Advocate for the Petitioner

(Petitioner)

**VERIFICATION**

I, Mangal Prabhat Lodha, the Petitioner abovenamed, do hereby solemnly declare that whatever is stated in paragraph Nos. 1 to \_\_\_ of the Writ Petition is true to my own knowledge and belief and I believe the same to be true and correct.

Solemnly declared at Mumbai )

This 26<sup>th</sup> day of May 2020 )

Before me,

**Parinam Law Associates**

**Advocate for the Petitioner**