

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2020
DISTRICT: PUNE

In the matter of Articles 12, 14, 20, 21 and 226 of the
Constitution of India;

AND

In the matter of Sections 167, 173, 185, 156, 157, 482 of
Criminal Procedure Code;

AND

In the matter of the National Investigation Agency Act,
2008;

AND

In the matter of order dated 24.01.2020 directing the
National Investigation Agency to take up investigation of

a case being FIR No. 04/2018 registered with Vishrambaug Police Station, Pune on 08.01.2018 passed by the Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi;

AND

In the matter of FIR No. RC-01/2020/NIA/Mum dated 24.01.2020 registered by the Officer-In-charge, Police Station, National Investigation Agency, Mumbai;

AND

In the matter of the order dated 12.02.2020 according sanction to transfer of FIR No. 04/2018 dated 08.01.2018 registered with Vishrambaug PS to National Investigation Agency issued by the Desk Officer to the Government, Home Department, Mantralaya, Mumbai;

AND

In the matter of the consequential order dated 14.02.2020 on Exhibit 1 in Special Case (ATS) No. 1 of 2018 and Criminal Misc. Application No. 39 of 2020 passed by the Additional Sessions Judge, Pune transferring the records and proceedings to the NIA Special Court, Mumbai;

- 1 **Surendra s/o Pundalik Gadling,**)
)
)
)
)
)

- 2 **Sudhir s/o Prahlad Dhawale,**)
)
)
)

) ...PETITIONERS

VERSUS

- 1 **The Union of India,**)
 Department of Home Affairs,)
 Through its Secretary,)
 New Delhi.)
- 2 **National Investigation Agency,**)
(Through its Director General))
 CGO Complex, Lodhi Road,)
 New Delhi.)
- 3 **Chief Investigation Officer,**
NIA Police Station, Mumbai.
- 4 **The State of Maharashtra,**)
 Through its Additional Chief Secretary,)
 Home Department,)
 MS, Mantralaya, Mumbai-32.)
- 5 **The Director General of Police,**)
 Lion Gate, Fort, Mumbai.)
- 6 **Senior Police Inspector,**)
 Vishrambaug Police Station, Pune City,)
 Pune.)
- 7 **The Assistant Commissioner of Police,**)
 Swargate Division, Pune.)
)
)
- 8 **Devendra Gangadharrao Fadnavis,**)
 "Sagar" Bungalow, Narayan Dabholkar)
 Marg, Malabar Hill, Mumbai.)
)
- 9 **Milind Ramakant Ekbote,**)
 Aged 63 yrs,)
 Samasta Hindu Aghadi)
 R/o- 1170/33 Sushil Kuti, Revenue Colony)

Shivaji Nagar, Pune- 5.)
10 **Manohar Vinayak Kulkarni @ Sambhaji**)
Bhide @ Guruji,)
Aged 87 yrs, Shri Shiv Pratisthan)
Hindustan)
Gao Baug, Near City High School,)
Sangli-416416.) **..RESPONDENTS**

**TO,
THE HON'BLE THE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES OF THE
HIGH COURT OF JUDICATURE AT
BOMBAY.**

**THE HUMBLE PETITION OF THE
ABOVE NAMED PETITIONERS**

MOST RESPECTFULLY SHEWETH:

1. The petitioners are the citizens of India and belong to the Scheduled Caste.
2. The petitioner No. 1 is an eminent criminal lawyer practicing in the District and Sessions Court, Nagpur as well as the High Court of Bombay, bench at Nagpur. The petitioner No. 1 has an exclusive practice in special Acts such as MCOCA, TADA and UAPA. Given his exemplary performance in conducting the trials, the petitioner No. 1 was appointed as a Special Public Prosecutor by the State in a case of gender violence. He is an active member of the Bar and has been known for taking up pro bono litigations against the caste atrocities and atrocities/excesses by the State.

3. The petitioner No. 2 is a freelance writer, poet and publisher. He is an organic intellectual, rationalist and caste annihilation activist. He is a native of Nagpur whereas has been a residing at Mumbai since the last 25 years. The petitioner No. 2 is presently the editor of the bi-monthly anti-caste Marathi magazine "VIDROHI" and has been its editor since its inception in 2002. The said magazine has published over 70 issues till date.
4. The petitioner No. 1 has been the counsel of the petitioner No. 2 and several other accused who are arraigned in the crime which is the subject matter of the present petition.

I. IMPUGNED ORDERS:

5. This petition is directed against the following:
 - (1) The order dated 24.01.2020 directing the National Investigation Agency to take up investigation of a case being FIR No. 04/2018 registered with Vishrambaug Police Station, Pune City on 08.01.2018, issued by the Under-Secretary to the Government of India, Department of Home Affairs, New Delhi;
 - (2) FIR No. RC-01/2020/NIA/Mum dated 24.01.2020 registered by the Officer-In-charge, Police Station, National Investigation Agency, Mumbai;
 - (3) The order dated 12.02.2020 according sanction to transfer of FIR No. 04/2018 dated 08.01.2018 registered with Vishrambaug PS to National Investigation Agency (hereinafter "NIA" for brevity) issued

by the Desk Officer to the Government, Home Department, Mantralaya, Mumbai; and

(4) The consequential order dated 14.02.2020 on Exhibit 1 in Special Case (ATS) No. 1 of 2018 and Criminal Misc. Application No. 39 of 2020 passed by the Additional Sessions Judge, Pune transferring the records and proceedings to the NIA Special Court, Mumbai, copies of which are annexed herewith and marked at Exhibits "A", "B", "C" and "D" respectively.

II. BHIMA KOREGAON VIJAY STAMBH & VADU-BUDRUK SAMADHI: THE HISTORICAL PERSPECTIVE

6. The 1818 battle between the british troops comprising largely dalit soldiers on one side and the army of Peshwas led by Bajirao-II on the other, that took place at village Koregaon on the banks of Bhima river near Pune, is considered to be a matter of pride by the dalits.
7. The battle has assumed a legendary status primarily because of the victory of dalits. Honouring the then martyrs, the colonial Government raised a victory pillar, the Vijay Stambh at Bhima Koregaon. Dr. B. R. Ambedkar visited the site on 1 January 1927 to commemorate the victory of the Mahar regiment. Since then, thousands of his followers visit the site every year. The annual event represents the aspirations of those who have been subjected to discrimination in the caste-woven structure of the Hindu society.

8. Village Vadu Budruk in the same vicinity assumed historical significance when the Mughal Emperor, Aurangzeb beheaded Chatrapati Sambhaji Maharaj spreading his mutilated body-parts in the village. As per historical record, one Govind Gaikwad, who was a mahar, risked his life to collect the body parts and bury it with honor after performing last rites as per Hindu customs and rituals. The samadhi of Gopal Gaikwad is constructed in front of the samadhi of Chatrapati Sambhaji Maharaj; these samadhis are revered by members of both communities.

III. ELGAR PARISHAD- A TRIBUTE TO DALIT MARTYRS:

9. Several social organisations and activists all over India had decided to hold Elgar Parishad at Shaniwarwada, Pune on the eve of the 200th anniversary of Bhima Koregaon Battle.
10. About 260 social organisations or progressive groups of Ambedkarites organised Elgaar Parishad- an event comprising cultural activities such as songs, street plays and speeches of eminent forward looking, liberal, socialist personalities calling for inclusive development and voicing concerns against the chaturvarna.
11. The organization of Elgar Parishad was led by several intellectuals including retired Justice P.B. Sawant- a former judge of the Supreme Court of India, who is known as a man of high rectitude, objectivity and intelligence of high order.

12. At the Elgar Parishad, several influential orators from different walks of life including human right activists made scathing attacks on subversion of constitutional values and attempt of the Government to bring back the social order based on *chaturvarna*.
13. Kabir Kala Manch performed songs and plays depicting exploitation of dalits and downtrodden by the BJP-led Governments at the Centre as well the States.
14. Elgar Parishad was one of the largest events of its kind in recent years, and received an unprecedented response.

IV. GOVERNMENT SPONSORED VIOLENCE AT BHIMA-KOREGAON

15. Hindutva agenda in the country has seen a new force since the unified Government in the country and the BJP led government in the State had come into power around 2014.
16. Sambhaji Bhide and Milind Ekbote, both of whom were hardcore hindutva ideology believers and connected with the RSS and BJP, heading various fundamentalist agenda organizations, became the architects of the violence at Bhima Koregaon in an attempt to create discord and communal clashes between the dalits and marathas. They had been involved in several offences, yet received State shelter and support in their fundamentalist activities.

17. These persons with the blessings of the then Chief Minister, Devendra Fadnavis and few other BJP leaders and RSS workers in Maharashtra hatched a conspiracy to rope in left wing social and human rights' activists who were agitating against the Hindutva agenda and criticising activities of the ruling party.
18. Sambhaji Bhide and Milind Ekbote who themselves caused riots and violence at Bhima Koregaon saw to it that offences were registered against the petitioners and others who were completely unconnected with the Elgar Parishad, through their henchmen namely, Akshay Bikkad and Tushar Damgude. The same people also facilitated the illegal raids to be carried out at the residences and offices of the human rights' activists who were not even named in the FIR in order to collect fake, forged and fabricated evidence against them using their political connections.
19. Sambhaji Bhide and Milind Ekbote played key roles and acted in tandem with the then State Government led by Shri. Devendra Fadnavis in drawing up the nefarious plan of incarcerating all the dalit rights' activists in one go by falsely implicating them in the cases under UAPA, painting them as 'urban naxals'.
20. In order to keep this false implication and wrongful incarceration of the innocent persons unconnected with the incidents at Bhima Koregaon under covers, the investigation of offences has been transferred by Central Government to NIA, much after filing of

charge-sheet and issuance of process, and curiously immediately after the BJP lost power in Maharashtra.

V. CONSPIRACY AND REAL CULPRITS BEHIND COMMUNAL VIOLENCE AT BHIMA KOREGAON:

21. The Hindu fundamentalists wrote the script, designed the plot and brewed the situation in order to malign and defame Elgaar Parishad and condemn it as an anti-national event.
22. The leaders of Shiv Pratishthan and Hindu Jan Jagaran Samiti held a joint press conference at Sonai Hotel on 27.12.2017 protesting against celebration of Bhima Koregaon Shaurya Din (Valour Day) being an act of sedition.
23. Milind Ekbote approached the Commissioner of Police, Pune on 28.12.2017 and requested to cancel the permission to hold Elgar Parishad at Shaniwarwada, Pune. A copy of the letter dated 28.12.2017 is annexed herewith and marked at **Exhibit "E"**.
24. On the night of 29.12.2017, Ekbote and Bhide, caused vandalism and desecration of the Samadhi i.e. Memorial of Govind Gopal Gaikwad alias Mahar at Vadu (Budruk) so as to instigate the members of the Scheduled Castes community against the marathas. Resultantly, an offence under the SC and ST Prevention of Atrocities Act was registered against both of them

being FIR No. 688 of 2017, a copy of which is annexed herewith and marked at **Exhibit "F"**.

25. Meanwhile, the members of Dalit community from Vadu Budruk got another board installed inscribing the historical event on 30th December, 2017. A meeting of the peace committee of the village Vadu Budruk too was held on 30th December, 2017 in which it was decided that the peace and harmony in the village shall be maintained as usual.
26. Yet again, destruction and incitement was caused by Milind Ekbote, his followers and followers of Sambhaji Bhide in the afternoon of 31st December, 2017. Further, conferences were organised in Koregaon so as not to allow the 200th celebration of Bhima Koregaon Shaurya Din to take place on 01.01.2018. Again an offence being FIR No. 4 of 2018 came to be registered at Shikrapur Police Station on 01.01.2018 on the basis of the complaint lodged by Anjana Gaikwad outlining their role.
27. One more complaint came to be lodged at Police Station, Pimpri in the early hours of 01.01.2018 by Smt. Anita Ravindra Sawale which was registered as FIR No. 0/2018 and transferred to Shikrapur Police Station for further investigation.
28. In order to teach the dalits a lesson, on 01.01.2018, a large scale rally with 1000-1200 fanatics was led by Bhide and Ekbote and large scale violence was caused, as the police machinery stood in silence

and allowed the violence to continue, causing the death of a young child.

29. One Smt. Anita Sawale relating the incident of 01.01.2018 submitted a complaint alleging the acts being engineered by Sambhaji Bhide, Chief of Shiv Pratishthan and Milind Ekbote, Chief of Hindu Jan Jagran Samiti, their supporters and workers. A copy of the FIR No. 0/2018 registered at Pimpri Police Station, Pune re-registered as FIR No. 18/2018 at Police Station Shikrapur is annexed herewith and marked at **Exhibit "G"**.

30. Outbreak of communal tension and violence at Bhima Koregaon being pre-planned by hindutva organisations and watched in silence by the Governments, had nothing to do with the alleged inflammatory speeches and provocative statements made at Elgar Parishad held at Pune on 31.12.2017. All the three FIRs registered at Shikrapur Police Station, specifically named Sambhaji Bhide- head of Shiv Pratishthan and Milind Ekbote- Chief of Hindu Jan Jagaran Samiti as perpetrators and conspirators.

31. **The followers of Sambhaji Bhide and Milind Ekbote killed one member of other backward classes and spread communal tensions, and the police remained a silent spectator as the area burnt with hatred and manipulations.** The incident of so-called violence was nothing short of state sponsored terrorism by the followers of Sambhaji Bhide and Milind Ekbote. However, neither

were serious offences under Unlawful Activities (Prevention) Act, 1961 registered against them nor immediate investigation and custodial interrogation sought.

32. The belatedly registered offences registered by Akshay Bikkad and Tushar Damgude were part of a larger conspiracy to falsely implicate the petitioners and other human rights' activists, as a counterblast.

VI. DIFFERENT VERSIONS ABOUT COMMUNAL VIOLENCE

33. The petitioners submit that there are three versions about the same event i.e. Elgar Parishad, one reported by the police and another by Akshay Bikkad and third by Tushar Damgude. Each one an improvisation on the earlier. Copies of the report by police dated 01.01.2018, FIR No. 02/2018 registered by Akshay Bikkad on 03.01.2018 and FIR No. 04/2018 registered by Tushar Damgude on 08.01.2018 are annexed herewith and marked at **Exhibit "H, "I" and "J" respectively.**

34. The contents of the FIRs filed by Akshay Bikkad and Tushar Damgude are neither consistent nor do they conform with the police report.

VII. FIRs BY VISHRAMBAUG PS: *CORAM NON-JUDICE*

35. The petitioners submit that the FIR No. 02/2018 and 04/2018 registered at Vishrambaug PS were not confined to the inflammatory

speeches and provocative statements made at Elgar Parishad and dealt with the outbreak of violence at Bhima Koregaon on 01.01.2018.

36. As a matter of fact, the Vishrambaug Police Station could not have registered FIRs in respect of certain acts alleged to have been committed by the petitioners and other accused within the jurisdiction of Shikrapur PS, particularly when two complaints were already registered at Shikrapur police station in respect of the same incident, on 01.01.2018 and 02.01.2018.

37. Since two offences were already registered being FIR No. 4/2018 and FIR No. 18/2018 at Shikrapur Police Station in respect of the same incident alleging communal violence, loss of life and destruction of property at Bhima Koregaon on 01.01.2018, there was no occasion to register any offence by Vishrambaug Police Station in respect of the same incident.

38. The Vishrambaug Police Station did not have territorial jurisdiction to register and investigate the offences committed outside its jurisdiction, particularly when in respect of which two other offences were already registered by the police station having jurisdiction. The police at Vishrambaug Police Station not only committed impropriety but grave illegality in registering FIR Nos. 02/2018 and FIR No. 04/2018 and/or failing to transfer the same to Shikrapur Police Station.

39. It was only in order to cover up the criminal activities of Sambhaji Bhide and Milind Ekbote and to counterblast the offences registered against them at Shikrapur PS, the police at Vishrambaug PS were persuaded to register two more offences in respect of the same incident i.e. communal violence, loss of life and destruction of properties at Bhima Koregaon on 01.01.2018 against the human rights' activists including the petitioner No. 2 by the then Chief Minister, Shri. Devendra Fadnavis, at the behest of Bhide and Ekbote.

VIII. FALSE IMPLICATION OF PETITIONERS

40. The basis of arrest of the petitioners on 06.06.2018 was that the petitioners were active members of CPI (Maoist) and had conspired to spread violence on Valour Day campaign at Bhima Koregaon on 01.01.2018. However, there was no specific allegation that the petitioners were members of CPI (Maoist) or had relations with or were working for the banned organisation in either FIR No. 02 of 2018 or FIR No.04 of 2018 registered at Vishrambaug PS.
41. The allegation that the Elgar Parishad was organised by petitioners and others is baseless. The Police ought not to have registered the offence without verifying the allegations as to whether the Elgar Parishad was organised either by the petitioners or Kabir Kala Manch.

42. As a matter of fact, the petitioners were not even the members of Kabir Kala Manch whereas the allegations that Sudhir Dhawale (petitioner No. 2) of Kabir Kala Manch and other members of the Manch were making provocative statements and inflammatory speeches, performing inflammatory street plays and songs, distorting the history as per the agenda of CPI (Maoist) organisation were so vague and cryptic that it was not possible to infer from such allegations that the petitioners or the organisers of Elgar Parishad either had links or were members of CPI (Maoist).
43. The complainant, Tushar Damgude who claimed to have attended Elgar Parishad at Pune on 31.12.2017, woke up only after 8 days of the alleged communal violence at Bhima Koregaon and decided to lodge a complaint, not at Shikrapur Police Station but at Vishrambaug Police Station for the reasons best known to him. The complaint was lodged with premeditation and schematic design.
44. As a matter of fact, the petitioners were not members and had nothing to do with Kabir Kala Manch. The Elgar Parishad was organised by eminent personalities including Shri. P.B. Sawant, former Judge of the Supreme Court and Shri. B.G. Kolse Patil, former Judge of this Hon'ble Court. The petitioners were invited to attend the Elgar Parishad, Pune. The petitioner No. 2 attended the Elgar Parishad, however, the petitioner No. 1 was unable to attend the same due to professional commitment.

45. The complainant in FIR No. 04/2018 registered at Vishrambaug PS although disclosed that Sudhir Dhawale and few others were already prosecuted for having relations with naxals or CPI (Maoist), such vague and baseless allegations could not have been entertained without making at least a preliminary enquiry before registering the FIR by Vishrambaug Police Station, particularly when those allegations were dismissed by the Sessions Judge while recording acquittal of Sudhir Dhawale and others.
46. It is, thus, clear from the narration of above facts that the petitioners are falsely implicated with an ulterior motive and for political reasons.

IX. EARLIER FAILED ATTEMPTS OF BJP GOVERNMENT TO FALSELY TARGET THE PETITIONERS

47. The petitioner no. 2 and few others were consistently on the hit-list of the BJP government which time and again tried to falsely rope them into fake offences. Although all of them were given clear acquittal on all serious offences under UAPA or sedition etc, these people being on the hit-list were once again targeted in this incident. To give few examples:

- i. The petitioner No. 2 was charged for offences punishable under Sections 121A, 124A, 153A, 120B and Sections 38, 39 and 40 of UAPA Act. However, he came to be acquitted vide

judgment and order dated 15.05.2014 in Sessions Trial No. 14 of 2012.

- ii.** Vernon Gonsalves was charged with 19 offences. However, he was either acquitted or discharged in all the cases except one against which appeal is preferred and the same is pending before the High Court of Bombay, bench at Nagpur. A copy of the details of criminal cases filed against Gonsalves and the present status is annexed herewith and marked at **Exhibit "K"**.
 - iii.** Arun Ferriera was charged for 11 different offences. However, Arun Ferriera is acquitted in 10 cases and discharged in the remaining criminal case which is evident from the list of cases and the present status, copy of which is annexed herewith and marked at **Exhibit "L"**.
 - iv.** Another accused, Varavara Rao was falsely implicated in 25 offences during the period between 1973 and 2013. However, he is either acquitted or discharged or charges were withdrawn in all the criminal cases. A copy of the list of criminal cases clamped against Varavara Rao along the present status thereof, is annexed herewith and marked at **Exhibit "M"**.
- 48.** It is quite clear from the above narrations that the Government in power has time and again attempted to implicate the accused persons in false and frivolous criminal cases. Since the prosecution did not

succeed in its mission in the past, they have again been targeted with much more force and planning.

49. The petitioner No. 1 appeared as an advocate in all the criminal cases against Arun Feirera, Vernon Gonsalves and the petitioner No. 2. The petitioner No. 1 was able to earn acquittal in all the criminal cases clamped against Arun Ferriera, Vernon Gonsalves and the petitioner No. 2 except one against Vernon Gonsalves against which the appeal is pending before this Hon'ble Court, bench at Nagpur.
50. Similarly, the petitioner No. 1 had represented Prof. G. N. Saibaba, the wheel-chair bound professor of English literature at Delhi University who was arrested in 2013 under various sections of the UAPA in an offence registered at Aheri PS, Gadchiroli district. The petitioner No. 1 had defended Prof. Saibaba despite tremendous pressure on him from the then Investigating Officer, Mr. Suhas Bawache, the SDPO Aheri to withdraw from the case. The petitioner no. 1 was thus targeted so that there would be no one to defend the human rights' activists with so much conviction and vigour.
51. The entire gamut of events is nothing but a political plot.

X. SEARCHES AND SEIZURES: ILLEGAL AND UNWARRANTED

52. The petitioners submit that thereafter the investigation of FIR No. 4/2018 came to be transferred to Assistant Commissioner of

Police, Swargate Division, Pune. And soon thereafter the Assistant Commissioner of Police, Swargate Division, Pune moved an application before the 4th JMFC, Pune for issuance of a search warrant against the petitioner No. 1 and Rona Wilson. Since no case was made out by the police for issuance of search warrant against the petitioner No.1, the 4th JMFC Pune rejected the application by observing that the investigating agency had ample powers to carry out search if circumstances exist vide order dated 09.03.2018. Similar application was again rejected vide order dated 21.03.2018 holding that no case was made out. Copies of the orders dated 09.03.2018 and 21.03.2018 are annexed herewith and marked at **Exhibits "N" and "O" respectively.**

53. The Investigating Officer after having failed to obtain order of search and seizure from the Court, proceeded to conduct a suo-motu search of the residential premises of the petitioner No. 1 and seized several electronic/digital storage devices without following due procedure.
54. The search conducted at the residence and office of the petitioner No. 1 is vitiated by malafides and arbitrariness inasmuch as the IO had conducted the search and seizure with the aid of Shri. Suhas Bawache, the then SDPO, who had earlier threatened petitioner No. 1 with implication in a false criminal case so as to make him withdraw from the trial of one Mr. Prof. G. Saibaba. Similar search

was conducted at the residence of one Rona Wilson at Delhi on 17.04.2018.

55. It is interesting to note that there was no material nor reasons were recorded by the Investigating Officer to conduct these searches and seizures. It was not possible to conduct either searches or seizures without there being anything to indict them as naxals or members of CPI (Maoist).
56. The reason as to why the IO did not record hash value of the personal computer, laptop, pendrive, etc. collected during the search and seizure, is that he wanted to tamper and has in fact tampered the storage devices like hard-disc, pen-drive, micro SD cards, CDs etc. It is on the basis of fabricated material recovered during the course of such searches and seizures, the petitioner No. 1 and other human rights' activists were accused and painted as members of CPI (Maoist).
57. Although there was no foundation in the FIR to conduct raids at the residential and official premises of the petitioner No. 1, and the same was rejected by Courts on two occasions, the police dared to do so on the blessings of the then Chief Minister of Maharashtra, Shri. Devendra Fadnavis, who also held the portfolio of Home Ministry.

XI. ARRESTS OF HUMAN RIGHTS' ACTIVISTS: SELECTIVE AND INDISCRIMINATE

58. The Police arrested the following persons in connection with FIR

No. 04/2018 registered at Vishrambaug PS:

Sr. No.	Name of the accused	Whether named in the FIR	Date of Arrest
1	Sudhir Prahlad Dhawale	Yes	06.06.2018
2	Rona Jacob Wilson	No	06.06.2018
3	Surendra Pundalik Gadling	No	06.06.2018
4	Shoma Kanti Sen	No	06.06.2018
5	Mahesh Sitaram Raut	No	06.06.2018
6	Sudha Bhardwaj	No	26.08.2018
7	Vernon S. Gonsalves	No	26.08.2018
8	Varavara Rao	No	26.08.2018
9	Arun Thomas Feirera	No	26.08.2018
10	Anand Teltumbde	No	14.04.2020
11	Gautam Navlakha	No	14.04.2020

59. The petitioner No. 2 and other accused who were not even named in the FIR originally are subjected to indiscriminate arrest.

The fact that the IO handpicked the petitioners and other arrested persons is evident from the fact that the names of persons who were originally arraigned as accused in the FIR, did not find place in the chargesheet filed on 15.11.2018 or in the supplementary chargesheet filed on 21.02.2019. Similarly, the actual organisers of Elgar Parishad were neither arrested nor made accused persons.

60. The conduct of investigation and filing of chargesheet was certainly not on the basis of the FIR No. 04/2018 registered at

Vishrambaug PS, Pune but on the basis of material collected during the course of search and seizure carried out on 17.04.2018.

61. The case of the prosecution is that Elgar Parishad was a precursor to incite people and thereby create communal violence. If there was any truth in the prosecution case, it was necessary to arrest all such persons including Justice P.B. Sawant, Justice B.G. Kolsepatil, Shri. Balasaheb Ambedkar, Adv. Mihir Desai who were responsible for organising Elgar Parishad. The prosecution since very well knew that the allegations in the FIR were false, frivolous and baseless, did not move against the organisers of Elgar Parishad.
62. The IO instead of arresting the accused named in the FIR, or those responsible for organising the Elgar Parishad, has actually arrested human rights' activists who were nowhere connected with the Parishad but were on the radar of the Government from quite some time and been acquitted in its earlier attempts to trap them.

XII. ARRAIGNMENT OF MORE ACCUSED AND ADDITION OF CHARGES: A THOUGHTFUL STRATAGEM

63. Although there was no allegation that the petitioners were active members of banned organisation i.e. Communist Party of India (Maoist), the Investigating Officer came with a revelation after the tampered electronic record from search and seizure without hash status. The source of such revelation was shown to be secret but

reliable, however, is not made known even in the chargesheet. The only material available for their arrest was the alleged correspondence amongst each other, which was invented (*sic* manufactured by tampering the electronic devices by the police) during the course of search and seizure, as none of the electronic record was seized by following due procedure of creating hash tags.

64. The petitioners submit that it is in this view of the matter, the Assistant Commissioner of Police, Swargate Division added additional charges under Sections 13, 16, 17, 18, 18(b), 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, 1976 and arraigned the petitioner no. 1 along with others.
65. The scope of the FIR came to be widened much beyond its contours inasmuch as the investigating agency came up with a theory that the Elgar Parishad was organised at the instance of CPI (Maoist) and it involved a national level conspiracy, although not a whisper of this nature was made in the FIR registered on 08.01.2018. A copy of the report dated 17.05.2018 submitted by the Assistant Commissioner of Police in the Court of Judicial Magistrate First Class-4, Shivaji Nagar, Pune is annexed herewith and marked at **Exhibit "P"**.
66. The Investigating Officer filed a chargesheet against the petitioners and few others on 15.11.2018, however with a liberty to file supplementary chargesheet in respect of other accused who were

either arrested or absconding under Section 173(8) Cr.P.C. Section 121, 121(A), 124(A) IPC were added. The petitioners crave leave to rely on the chargesheet during the course of hearing.

67. Meanwhile, supplementary chargesheet came to be filed on 21.02.2019 against four others, however, again with a liberty to file supplementary chargesheet against remaining accused, in case evidence was found against them.

68. The strategy adopted by the BJP top brass including Shri. Devendra Fadnavis, the former Chief Minister of Maharashtra and the Hindutvawadi activists needs to be unfolded.

- I. The police manufactured forged and fabricated evidence and the same is filed along with the chargesheet to justify registration of the offences and the arrest of petitioners.
- II. The Investigating Officer added charges including that of sedition and waging war against the state as well as charges for offences punishable under UAPA without there being credible material.
- III. The police instead of registering the offences against Sambhaji Bhide and Milind Ekbote and their followers under UAPA and IPC for sedition, registered false and frivolous cases against the petitioners and other human rights' activists as a **part of the larger criminal conspiracy.**

- IV. The leakages made to the media during the regular briefing by the Investigating Officer, selective and indiscriminate arrests, illegal and unjustified searches and seizures for manufacturing evidence by tampering the electronic devices was done on the directions of Shri. Devendra Fadnavis, the former Chief Minister of Maharashtra.
69. It was no wonder that human rights' activists who had nothing to do either with the Elgar Parishad or the banned organization CPI (Maoist) are falsely implicated, persecuted and subjected to torture by the top-brass BJP politicians.
70. The petitioners submit that Ld. Special Judge, Pune issued process under Sections 121, 121(A), 124(A), 153(A), 505 (1)(b), 117, 120B r/w 34 IPC and Sections 13, 16, 17, 18, 18(b), 20, 38, 39, 40 of the UAPA Act, against accused Nos. 1 to 5 vide order passed below Exhibit 1 in Spl. ATS No. 1/2018, a copy of which is annexed herewith and marked at Exhibit "Q".

XIII. TRANSFER OF BHIMA KOREGAON CASE TO NIA: FRAUD ON LEGISLATION

71. The petitioners submit that the transfer of investigation is not only malafide but is a classic example of sheer abuse of the process of law and is nothing less than a fraud on the legislature.

72. The National Investigation Agency Act, 2008 (hereinafter referred to as “**the Act**”) was passed to constitute an investigating agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of the state, friendly relations with the foreign states and offences under the Acts enacted to implement international treaties, agreements, conventions and resolutions of United Nations, its agencies and other international organizations for matters connected therewith and incidental thereto.
73. Section 2 defines the expressions such as agency, court, high court, prescribed, public prosecutor, schedule, scheduled offence and special court. Section 2(1)(i) of the Act provides that the words and expressions used but not defined in the Act shall have the meaning assigned to them in the Code of Criminal Procedure, 1973.
74. Section 3 provides that the Central Government may constitute a special agency to be called as the NIA for investigation and prosecution of the offences under the Acts specified in the schedule.
75. The word “**may**” used in Section 3 makes it clear that the power of the Central Government to constitute special Agency viz. NIA is an enabling provision as the power to investigate scheduled offence can also be exercised by the State Government either itself or in association with the Central Government or with assistance and

cooperation of the State Government as provided under Sections 6 to 9 of the Act.

76. The petitioners submit that NIA Act is a complete Code in itself inasmuch as the entire procedure for exercising the powers by the Central Government to transfer the investigation to the National Investigation Agency is engraved in it. Sections 6, 10, 13 and 22 are the most relevant provisions for the purpose of deciding the issues involved in the petition.
77. Section 6 broadly stipulates two contingencies so as to exercise powers by the Central Government to direct investigation by the NIA.
- I. Section 6 (2) contemplates a situation where the State Government reports about registration of scheduled offence to the Central Government. The Central Government decides to handover investigation to NIA on the basis of the report of the State Government under Section 6(2) of the Act; whereas
 - II. Section 6 (5) contemplates a situation where the Central Government can direct investigation by NIA *suo-motu* i.e. without there being a report by the State Government.
78. Clause (1) of Section 6 casts an obligation upon the police officer registering the FIR to forthwith send a report to the State Government regarding commission of scheduled offence; whereas

clause (2) mandates that the State Government shall forward the said report to the Central Government.

79. Section 6(3) is of vital importance as it casts a duty on the Central Government to determine within 15 days from the receipt of the report from the State Government whether having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.
80. The petitioners submit that the Central Government once receives a report from the State Government either **on the basis of the information supplied by the State Government or from any other sources**, need to form an opinion as to whether the offence is a scheduled offence or not and whether having regard to the gravity of the offences and other relevant factors, it is fit case for investigation by the NIA **within a period of 15 days**.
81. Section 6(4) empowers the Central Government to direct the NIA to investigate the offence after forming an opinion that it is a fit case to be investigated by the Agency.
82. The petitioners submit that sub-Section (5) of Section 6 is enacted with a view to avoid a situation where the State Government fails to act as per the provisions of sub-Section (1) to (3) or where the State machinery has failed to report a scheduled offence to the Central Government.

83. Although, sub-Section (5) begins with a non-obstante clause, the scope of sub-Section (5) cannot be extended or construed in such a manner that the exercise of powers under sub-Sections (1) to (4) of Section 6 are rendered ineffective and obsolete.
84. It is necessary to mark the difference between Section 6(3) and Section 6(5). The power of the Central Government has to be necessarily exercised on the basis of the report from the State Government and the considerations such as the gravity of the offence and other relevant factors under Section 6(3). Section 6(5) is in the nature of a non-obstante clause where the Central Government can direct the Agency to investigate the offence suo-motu on being satisfied that the scheduled offence has been committed. However, Section 6(5) cannot be read either as a parallel provision or as a substitute to Section 6(3) of the Act and at the same time the same cannot be read in isolation.
85. **The Central Government despite having specific knowledge that the scheduled offences had been committed, way back in 2018, did not direct investigation by NIA for more than a period of one and half years. On the contrary, it allowed the State Police to continue with the investigation, and showed complete faith in it and defended the investigation by State police machinery before the Supreme Court in a petition filed by Romila Thapar detailed infra.**

86. It is, thus, clear that the Central Government was satisfied that the State police had been investigating the offence efficiently and promptly and there was no need to transfer the same to NIA.
87. The petitioners submit that no doubt the scheme of the Act does not expressly stipulate the stage at which the investigation needs to be transferred to the NIA, however, the same cannot be read to grant to the Central Government an unbridled and unguided power to direct investigation of scheduled offences by NIA long after the charge sheet was filed in the Court by the Investigation Agency of the State Government, purely for political concerns.
- 88. The petitioners submit that once the Central Government refused to exercise the powers available to it under Section 6(3) and (4) of the Act within statutory period of 15 days, it could not have subsequently exercised the same, particularly when there was no change in circumstance in the real sense.**
89. The only change that in fact prompted the Central Government to direct NIA to investigate FIR No. 4 of 2018 was that the BJP led Government was routed out of power in the State and that the newly formed Government (Maha Vikas Aghadi comprising of Shiv-Sena, NCP and Congress) was intending to constitute SIT to enquire into the circumstances that led to violence at Bhima Koregaon.
90. However, mere loud thinking of the Government of Maharashtra to constitute SIT, by itself is not a justifiable ground to transfer the

investigation of FIR No. 04/2018 registered at Vishrambaug PS to NIA.

91. The petitioners submit that not a single statement was recorded nor any other evidence was collected by the Investigating Officer after the supplementary charge sheet was filed on 21.02.2019. Thus there was no new material that could have prompted the much delayed and curiously timed decision of the Central Government to transfer the investigation only after BJP lost power in the State.
92. As a matter of fact, chargesheet was filed in the Court on 15.11.2018 whereas supplementary chargesheet was filed on 21.02.2019. The chargesheet as well as the supplementary chargesheet were filed when the BJP Government was in power in the State. Neither the State Government nor the Central Government made a move to hand over investigation to NIA till BJP Government was in power in the State Government.
93. The decision to transfer investigation to NIA was required to be taken within 15 days of receipt of the report from the State Government. The Central Government had received a report from the State Government sometimes in July, 2018. The fact that no such decision was taken within 15 days, the Central Government ceased to have power to direct NIA to investigate the offence. The Central Government did not find it necessary and expedient to transfer investigation of FIR No. 04/2018 to NIA. It was, therefore, no

longer open for the Central Government to transfer investigation to NIA that too in exercise of suo motu power unless it was for political reasons.

94. The petitioners submit that political expediency could not be a ground to invoke the powers under Section 6 of the NIA Act. The question, therefore arises is if the Central Government did not find it necessary to transfer investigation to NIA almost for 1½ years after the receipt of the report from the State Government, whether it was proper and warranted to exercise suo-motu powers, merely because there was a change of Government in the State.

95. Section 6 (5) cannot be read to obliterate the scope and ambit of Section 6(3) of the Act, although it is a non-obstante clause.

96. In this view of the matter, it was not permissible to direct the NIA to investigate the offence pertaining to FIR No. 04/2018 registered at Vishrambaug Police Station. **The impugned order is nothing short of fraud on the legislation i.e. NIA Act.**

XIV. DELAY IN TRIAL: CONTRAVENTION OF STATUTE

97. The Central Government has directed the NIA to investigate Bhima Koregaon offence to ensure that the trial does not proceed and the accused persons languish in jail under the pretext that the investigation is going on.

98. Section 43D(2) of the Unlawful Activities (Prevention) Act, 1967, mandates that in no case, the period to conclude investigation can be extended beyond a total period of 180 days from the police custody or judicial custody. Similarly, Section 19 of the NIA Act further mandates that the trial of any offence under the Act by the Special Court shall be held on day to day basis and on all working days and have precedence over the trial of any other case.
99. The proceedings before the Special Court and thereafter before the NIA Court are adjourned for more than 60 occasions just to frame charge. If a fresh or de-novo investigation is to be conducted by the NIA, it would take another 2-3 years to complete the investigation whereas the trial might take another 2-3 years. The petitioners and other accused would remain in jail till they are finally acquitted by the Special Court after 6-7 years. The scheme of the Act of 2008 does not permit to have such a luxury either to the prosecution or to the Special Court.
100. Five of the accused were arrested on 06.06.2018, four on 26.10.2018 and two on 14.04.2020. More than 700 days are expired as against the maximum of 180 days provided under Section 43D(2) of the UAP Act since the arrest of 5 accused whereas more than 650 days have expired since the arrest of 4 other accused.
101. Even on the day the impugned order was issued (i.e. 24.01.2020), more than 600 days had expired since the arrest of the accused. The

investigation cannot be continued indefinitely on the ground that the same is required to be investigated once again by the NIA.

102. Section 167 of Cr.P.C. read with Section 43D(2) of UAPA would lose its efficacy and rendered nugatory if the investigation is allowed to be continued for years together. The impugned order is issued in colourable exercise of power and is vitiated as such.

XV. TRANSFER OF INVESTIGATION TO NIA: POLITICALLY MOTIVATED:

Transfer to NIA only after BJP dislodged from State Government

103. The petitioners are given to understand that since the offences under the UAPA Act are scheduled offences under the NIA Act, 2008, the Investigating Officer forwarded a report to the State Government almost within a fortnight of addition of scheduled offences under UA(P)A on 17.05.2018, to be forwarded to the central Government to determine (i) whether the offences are scheduled offences and (ii) whether having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency, as per the mandate of Section 6(1) of the NIA Act, 2008. The State Government further forwarded the said report to the Central Government immediately thereafter.

- 104.** The Central Government after looking at the gravity of the offence so also other relevant factors did not deem it a fit case to be investigated by NIA. On the contrary, the Central Government allowed the investigation agency of the State Government to conduct and continue with the investigation.
- 105.** Meanwhile, the NIA sent a proposal to the Central Government seeking permission to investigate into the FIR No. 04/2018 sometime in April, 2018. The said proposal was forwarded by the Central Government to the State Government which in turn directed the Pune police to brief the NIA with regard to the offences alleged in FIR No. 04/2018. The Joint Commissioner, Pune City submitted a report along with a detailed presentation regarding the nature of offences alleged in the FIR, the role of each of the activists, maoists, the evidence collected and the specifications of the chargesheet filed.
- 106.** After going through the entire material placed on record by the Pune Police, the Central Government deemed it appropriate to allow the State machinery to continue with the investigation.
- 107.** The petitioners submit that the Central Government although was well aware of the fact that the scheduled offences were registered way back on 17.05.2018, never felt it necessary to transfer the investigation to NIA till there was a change of Government in the State.

- 108.** The petitioners submit that meanwhile elections were held in the State of Maharashtra in October, 2019 whereas BJP was unable to form the Government for want of majority. A coalition Government of NCP-ShivSena-Congress alliance (Maharashtra Vikas Aghadi) came to be installed in the State of Maharashtra on 29.11.2019.
- 109.** The newly formed Government in the State of Maharashtra on the basis of public demands so also requests received from political leaders including NCP Supremo decided to constitute a Special Investigation Team so as to probe into the illegal arrests and detention of the activists in the Elgar Parishad case. The State of Maharashtra called for reports from the Pune City Police and started taking positive steps towards the constitution of the SIT for investigation into the said matter.
- 110.** The proposal to constitute SIT by the State of Maharashtra was gaining ground. Such a move disturbed the BJP leaders who not only had a fear of being exposed for false implication and arrest of the petitioners by the BJP led Government but would cause a great deal of embarrassment. This fear stirred up and prompted the BJP led Government at the Centre to transfer the investigation to NIA, rather belatedly, and curiously after the BJP failed to form Government at State level in Maharashtra.
- 111.** The Under Secretary to the Government of India, Ministry of Home Affairs in exercise of the powers conferred under sub-section

(5) of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 passed an order directing the NIA to take up the investigation of the aforesaid case on 24.01.2020. The order recites that the Central Government had received information regarding registration of FIR No. 04/2018 dated 08.01.2018 at PS Vishrambaug, Pune, Maharashtra under Sections 153A, 505 1(B), 117 and 34 IPC relating to 11 arrested accused for inciting people and giving provocative presentations and speeches on 31.12.2017 during Elgar Parishad organised by activists of Kabir Kala Manch at Shaniwarwada, Pune which promoted enmity between the caste groups and led to violence resulting in loss of life and state-wide agitation. The order further recites that it was revealed during the investigation that the senior leaders of CPI (Maoist), a banned organisation under Unlawful Activities (Prevention) Act, 1967 were in contact with the organisers of Elgar Parishad to spread the ideology of Maoism/Naxalism and encourage unlawful activities and, thereby leading to commission of more offences under UAPA later on. Thus, the Central Government constructed an imaginary story to transfer investigation of FIR No. 4 of 2018 registered at Vishrambaug PS.

112. It is further stated in the order that the Central Government was of the opinion that (1) since scheduled offence under National Investigation Agency Act, 2008 was committed, (2) having regard to

the gravity of offence, (3) involvement of a banned organisation CPI (Maoist), and (4) to unearth the larger pan-India conspiracy involved, it was required that the investigation is carried out by the NIA in accordance with the National Investigation Agency Act, 2008.

113. The petitioners submit that immediately on issuance of the order dated 24.01.2020, the National Investigation Agency registered FIR No. RC-01/2020/NIA/Mum at Police Station NIA, Mumbai on the very day.

Knowledge and support by UoI to state investigation of UAPA offences

114. The petitioners submit that one **Romila Thapar and others** had filed a writ petition in August 2018 seeking following directions:

- I.** Setting up of a Special Investigation Team (SIT) comprising of senior police officers with impeccable career records of professionalism, integrity and independence, reporting directly to the Hon'ble Supreme Court, for conducting a fair and independent investigation and an enquiry conducted in the offences stated in the zero FIR lodged at Pimpri PS on 02.01.2018 (now criminal case No. 2/2018) and FIR No. 04/2018 lodged at Vishrambaug PS and all other related matters and allegations.

- II. Investigation into the said offences to be monitored directly by the Hon'ble Supreme Court through regular filing of status reports of the investigation by the SIT.
 - III. Examination of all electronic devices, records and materials allegedly seized from the detenues and even otherwise if relied upon/being relied upon for denial of liberty to the detenues, by forensic science laboratory outside the State of Maharashtra to ensure fair play and in the interest of justice.
- 115.** The petitioners submit that in the writ petition filed by Romila Thapar and others, the Union of India through its Secretary, Ministry of Home Affairs, New Delhi was made a party respondent whereas the entire information including the commission of offences under the Unlawful Activities (Prevention) Act, 1967 were disclosed in the petition.
- 116.** The Union of India contested the said writ petition through Tushar Mehta and Maninder Singh, the Additional Solicitor Generals. It is pertinent to note that the Union of India had every knowledge that an offence under the Unlawful Activities (Prevention) Act, 1967 was registered on 20.08.2018. However, the Central Government did not find it necessary to transfer the investigation to the NIA till BJP led Government was dislodged in the State of Maharashtra.

117. The State of Maharashtra and the intervenor (original complainant) too contested the writ petition filed by Romila Thapar and others nail and tooth. The intervenor (original complainant) was represented by none other than Shri. Harish Salve, the senior counsel in the Supreme Court.
118. Mr. Mehta, the Ld. Additional Solicitor General appearing for the Union of India vehemently argued before the Supreme Court that **the integrity of the Investigating Officer cannot be doubted as there was enough material against each of the accused. According to him, the request to set up the SIT was completely against the cardinal criminal jurisprudence.**
119. The Union of India, the State of Maharashtra and the intervenor opposed investigation through SIT or Court-monitored investigation stating that **the investigation was being conducted responsibly and impartially by an officer of the rank of an Assistant Commissioner of Police and the same was carried out under the supervision of a Deputy Commissioner of Police and was being monitored by the Joint Commissioner of Police who was of the rank of an Additional Director General.**
120. Meanwhile, two other petitions one being a public interest litigation and another being a writ petition seeking direction to transfer the investigation to the NIA were filed before the High Court of Bombay on 04.09.2018 and 31.08.2018 respectively. The

Hon'ble High Court of Bombay was pleased to issue notice to the NIA. The Central Government was very much aware of the FIR regarding Elgar Parishad and the allegations made therein. **However, there was no move to transfer investigation of FIR No. 04/2018 to NIA, till anytime before the political upheaval in Maharashtra dislodging the earlier BJP government in the State.** The petitioner craves leave to rely on the memorandum of the petitions and the orders passed therein, as and when need be.

121. The petitioners submit that the impugned order dated 24.01.2020 does not spell out the reasons for transferring the investigation to NIA, much after the completion of the investigation, particularly when on the earlier occasion it had not transferred rather shown complete faith in the investigation being carried out by the State police machinery before the Supreme Court in petition filed by Romila Thappar.

XVI. VIOLATION OF MANDATE OF FAIR AND IMPARTIAL INVESTIGATION:

122. The petitioners submit that an investigation free from any political interference is a *sine qua non* to fair and impartial investigation.

123. The petitioners submit that the present case is a classic example as to how the entire investigation followed by the impugned order transferring the investigation to the National Investigation Agency is unfair, partial and vitiated due to political interference.
124. The petitioners submit that at the time of the registration of FIR and the stage of investigation, the Government of the State of Maharashtra was led by Bharatiya Janata Party. The Central Government despite having knowledge of commission of the scheduled offence did not exercise its powers under sub-section (4) or (5) of Section 6 of the NIA Act to transfer the investigation to NIA. It is only when the BJP lost power in the State, the BJP led Central Government apprehended that the State of Maharashtra led by the new political front may set up SIT to enquire into circumstances leading to Bhima Koregaon violence. The Central Government also had an apprehension of being exposed that the earlier investigation was manipulated by the State police due to interference by Devendra Fadnavis, the then Chief Minister of Maharashtra, and thus issued the impugned order without giving any material particulars explaining the reason for such order, much the less explaining the delay and curious timing of the order after BJP being dislodged from State Government.
125. **The petitioners submit that selection of the Investigating Agency cannot and shall not depend on as to who is in power.**

- 126.** The Central Government under BJP leadership was well aware that the allegations against the applicants and others in FIR No. 4 of 2018 were baseless and would not stand in the criminal trial, decided to transfer FIR No. 4/2018 to NIA so as to manufacture and collect more concocted, forged and fabricated evidence so that the trial of the case is prolonged indefinitely and at the same time it can avoid any humiliation of being subjected to public ridicule and outrage in case the fabrication of offence is brought to fore. They were well aware that more the delay in investigation and trial, less the possibility of radicalist RSS and communal BJP leadership being exposed before 2024 general elections.
- 127.** The petitioners submit that it is evident from the above narrative that the Central Government was very much aware of commission of scheduled offence in respect of FIR No. 4/2018. Apart from the fact that the Central Government was a party respondent to several proceedings before the High Court and the Supreme Court disclosing commission of scheduled offence, the State Government had submitted a report regarding commission of scheduled offences by the petitioners and other accused and supported and shown faith in the investigation being carried out by the State police authorities. No inclination was shown by the Central Government to transfer the investigation to NIA since the Central Government knew that the investigation was properly done under the supervision of the

then Chief Minister of Maharashtra, Shri. Devendra Fadnavis and, as such, there was no need to transfer the same to NIA.

128. The NIA registered the crime as FIR No. RC-01/2020/NIA/Mum for offences punishable under Sections 153A, 505(1)(B), 117 and 34 of IPC and Sections 13, 16, 18, 18(b), 20 and 30 of the Unlawful Activities (Prevention) Act, 1967.

129. The re-registration of FIR by NIA was done in such a hasty manner that some of the offences in earlier FIR were initially dropped and subsequently re-added by filing an application before the NIA Special Court.

130. In view of the above circumstances, the entire exercise of transfer of investigation to NIA stood vitiated due to political considerations.

XVII. TRANSFER OF INVESTIGATION AFTER ISSUANCE OF PROCESS: VITIATED

Transfer Of Investigation amounts to re-investigation: per se illegal

131. Investigation can be ordered in varied forms and at different stages. The Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. The investigation can be: (i) initial investigation, (ii) further investigation, and (iii) fresh or de-novo investigation.

132. The investigating officer shall conduct initial investigation in furtherance of registration of an FIR and file a final report. Further

investigation is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). It is the continuation of the previous investigation.

- 133.** The impugned order directing NIA to take up investigation of FIR No. 04/2018 at Vishrambaug Police Station, Pune issued by the Central Government long after conclusion of investigation, filing of chargesheet and supplementary chargesheet and issuance of process to the accused is nothing but a direction to re-investigate the said crime.
- 134.** Neither the Investigating Agency nor the Magistrate has any power to order or conduct "fresh investigation". It is well settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de-novo" and even "reinvestigation" provided the initial investigation conducted was ex-facie unfair, tainted, malafide and smacks of foul play. The higher courts may set aside an initial investigation and direct fresh and denovo investigation and, if necessary even by another independent investigation agency in such cases.
- 135.** The petitioners submit that neither the Central Government nor NIA has made out a case that the initial investigation was unfair,