

The full text of the petition filed by Mr Tejpal's lawyers Geeta Luthra and Pramod Dubey before the Delhi High Court as follows :

1. That, the Applicant is the erstwhile Editor-in-chief of the Tehelka, weekly magazine. The applicant is a journalist, Author and Publisher of immense global repute. Throughout his career, the Applicant has strived for transparency and accountability in public life and is foremost critic of right-wing majoritarian politics in the country. Throughout his career, the Applicant has strived for transparency and accountability in public life and has been an active campaigner against any attempts to tarnish secular fabric of the country.

2. That the Applicant lives with his family and works for gains in New Delhi. He has been the managing editor of the Tehelka group which has its principal office in Greater Kailash, Part 2, New Delhi. The magazine is also published from New Delhi. The enquiry in terms of Vishakha Guidelines is also been conducted at New Delhi.

3. The Applicant and his wife Geetan travelled from Delhi to Goa via Jaipur to attend an annual event by the name of THINK 2013 hosted by Tehelka magazine, of which the Applicant was then the Editor.

4. That on 07/11/2013, while the said event was still on, the Applicant had a meeting with one of his female colleagues. It is pertinent to note here that the said encounter was only light-hearted bantering which lead to a moment of privacy between the two individuals. The nature of the said meeting can well be established by bare perusal of the CCTV footage of Hotel Hyatt, Goa, which is within the knowledge and reach of Goa Police but the same has been blatantly ignored by the Investigating Agency for which the Applicant is asking for a copy. That on 08/11/2013 a further meeting took place between the two individuals but the same lasted for few seconds and no intimate moment was shared between the two individuals.

5. That subsequent to the aforementioned meeting, the Applicant did not have any further interaction with the above mentioned female colleague/. The alleged colleague referred above, continued to party and was completely normal and friendly all throughout her stay in Goa. She went to the Remo Fernandez function which began around 7:30/8:00 pm and which lasted into the late evening.

6. There was not a single whisper from any corner including above mentioned lady that any alleged untoward occurrence during the "THINK" fest.

7. To the shock of the Applicant, on 18th November 2013 the applicant was informed by the Managing Editor of Tehelka Magazine that she has received a complaint alleging sexual harassment against a female colleague. The Applicant was shocked to learn that a false complaint was sought to be projected as an incident of alleged harassment. The Applicant categorically refuted the same.

8. After a long delay of over 10 days, the Applicant was informed that the complaint has been received against him. The alleged complaint is clearly motivated, false and an afterthought with oblique motive. The language of the complaint itself shows that it is false with inherent contradictions.

9. The lady continued to attend, participate in the conference / festival with élan. She took part in the evening festivals of which there will be CCTV coverage, photographs and other documents to substantiate that all was normal and an occurrence as alleged took place.

10. Applicant was shocked. The Applicant categorically and immediately refuted each and every allegation. Applicant denied the said allegation. The Managing Editor refused to even listen to the Applicant's version and overrode him and the Managing Editor told the applicant that she was making the decision in Tehelka's interest.

11. That the Applicant was told the committee was being set up in terms of "Vishakha guidelines" as has been laid down by the supreme court of India by the managing editor and accordingly advised to step down for 6 months so that an unbiased enquiry is conducted. Accordingly the applicant stepped down for 6 months . The Applicant was further told that in terms of the "Vishakha Guidelines" to have an impartial inquiry the guidelines and law mandate the transfer of the purported delinquent, the Applicant immediately.

12. Further to the shock of the Applicant, the alleged writing was published by the media to victimize the Applicant and as part of the pre-planned conspiracy to falsely implicate the Applicant. The same was being blown out of proportion by various groups with vested interests, including topmost executives of Goa and even national political leaders of one party. A copy of the statement made by the CM of Goa on 21.11.2013 has been attached hereto and marked as Annexure A.

13. The bias which the investigation in the instant matter is propelled can best be illustrated from the news report which appeared in Times of India dated 24.11.2013.A copy of the said news article dated 24.11.2013 is annexed here to and marked as Annexure-B.

14. That on 22.11.2013, the Applicant, through media reports learnt of the registration of an FIR against him by Goa Police under Sections 354A, 376, 376(2)(k) of the Indian Penal Code, 1860[hereinafter referred to as 'the IPC'], which clearly is founded solely on the basis of media reports of alleged harassment by the Applicant.

15. It is pertinent that no complaint has been made to Respondent no. 2 either by the lady who is the alleged victim or any person of her family. Further no medical statement has been made to the state Police, i.e. Respondent no.2. It is unprecedented that the state should make a complaint or register an FIR without the knowledge, statement or consent of any aggrieved complainant without any person with a grievance or with locus for a preliminary inquiry in an alleged occurrence of this nature. This is particularly significant as reference to the alleged occurrence by the lady is after more than 10 days of the alleged incident which took place on 7th-8th of November 2013 and is belated and on after thought more than 2000 invitees and guests attended the festival and its social event.

16. That the Applicant has well found reasons to believe that the officers of Respondent No.2 in their endeavour to appease their political masters is turning a blind eye to crucial pieces of evidence establishing the innocence of the present Applicant in abrogation of its primary duty, i.e. to conduct a fair investigation and reveal the truth. Moreover, the mannerism and the scale in which a particular political party has unleashed the wrath of its vengeance upon the Applicant in garb of the present FIR is synonymous to the previous attempts of the BJP to malign and target the Applicant

and the same is apparent by the statements issued by various party leaders. The wrath of leaders of BJP against the Present Applicant, whom the Goa Police cannot antagonize, is best manifested from the statements made by them demanding that the Applicant should "atone in jail." Some have even alluded to Tehelka's first sting operation which resulted in the resignation of the then BJP President, Bangaru Laxman, suggesting it was now payback time.

17. That in light of the aforementioned facts and circumstances the Applicant has no trust in the Goa police and believes that Respondent no.2 because of the political interference and the mala fides of the state government is turning blind eye to the crucial pieces of evidence establishing the innocence of the present Applicant. He therefore seek intervention of this Hon'ble court under section 438 of CRPC against any unreasonable deprivation of liberty of the Applicant by the Investigating authorities on the following grounds amongst others.

GROUNDS:

BECAUSE, as per Capt. Satish Kumar Sharma vs Delhi Administration, ILR 1990 DELHI 203, this Hon'ble court has held : "..... viewed from different angle, under Art. 226 of the Constitution the High Court has been given still wider powers. Under Art. 226(2) it has been provided that the power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such persons is not within those territories.....In other words, the Applicant is sought to be deprived of his personal liberty and threatened to be arrested in Delhi within the jurisdiction of High Court of Delhi and through the police officers of Delhi to whom the warrant has been endorsed, although the offence is alleged to have been committed in the State of Uttar Pradesh. Therefore, it cannot be disputed that since there is a threat of deprivation of liberty of the Applicant in the State of Delhi in connection with an offence alleged to have been committed in the State of Uttar Pradesh, the cause of action in part certainly arises in Delhi. Therefore, this Court has Jurisdiction in the matter irrespective of the seat of the Government or the High Court within whose jurisdiction the offence is alleged to have been committed. Therefore, in the light of the discussion above, we have no doubt in mind that since the Applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence in Delhi, this Court has certainly the jurisdiction to enlarge the Applicant on anticipatory bail under S. 438 of the Criminal P.C. as well as under Art. 226 of the Constitution."

BECAUSE, it is well established that as per the cardinal principles of criminal jurisprudence each and every person accused of a crime is entitled to a free and fair investigation and any interference in the investigation would eventually deprive a person of his right to a fair trial. The Hon'ble Supreme Court has laid down time and time again that investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. The bias of BJP against the Petitioner is a well known fact and has earlier been nastily manifested in a manner in which Tehelka was targeted post its expose on corrupt defence deals in 2001 and was forced to shut down operations for over 3 years as well as many of its employees being implicated in false criminal cases. The mannerism and the scale in which BJP has unleashed the wrath of its vengeance upon the Petitioner in garb of the present FIR is synonymous to the previous attempts of BJP to malign and

target the Petitioner and the same is apparent by the statements issued by various party leaders including the present Chief Minister of Goa.

BECAUSE, the Law Commission of India, in its 41st Report dated September 24, 1969 pointed out the necessity of introducing a provision in the Code of Criminal Procedure enabling the High Court and the Court of Sessions to grant "anticipatory bail". It observed in para 39.9 of its report (Volume I) and the same is set out as under.

"The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

BECAUSE, Statement of Objects and Reasons for introducing section 438 in the Code of Criminal Procedure, 1973, itself clarifies that Section 438 was introduced as it was felt imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases.

BECAUSE, Applicant apprehends the instant investigation being carried out by the Goa Police is patently tainted, unfair and is being used as an opportunity to satisfy the long standing grudge of the political executive against the works and ideological stand of the present petitioner, the same is apparent by the actions of political executives of Goa and those of his party who have unleashed their wrath of vengeance against the Petitioner in garb of the aforementioned FIR. It is pertinent to note here that, the present FIR pertains to false and concocted version of an intimate encounter between two individuals which has been played out as allegations of sexual assault against the Petitioner and it is clear that the same are being propelled as part of some malafide scheme. The examination of the CCTV footage of Hotel Hyatt, Goa for the days of 7th and 8th of November, 2013 will not only unveil the concoction but will also establish the innocence of the Petitioner/accused. The factum contained in the aforementioned CCTV footage is well within the knowledge of the present Investigating Agency, however, the Investigating Agency, in its endeavor to please its political masters is turning a blind eye to it in abrogation of its primary duty, i.e. to conduct a fair investigation and reveal the truth.

BECAUSE, the mandates contained in Article 21 of the constitution places human rights and dignity for human life at the highest pedestal and the principle of an accused being presumed innocent till proven guilty, forms the basis of Indian criminal jurisprudence and therefore it is obligatory that the investigation should be judicious, fair, transparent and free from incumbencies of any political interference to ensure compliance with the basic rule of law.

That, apprehending arrest and deprivation of personal liberty in connection with the aforesaid FIR, the Applicant is constrained to move the present application under section 438 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'the Code'] safeguard his liberty in terms of the stipulations contained therein.

BECAUSE, the mandates contained in Article 21 of the constitution places human rights and dignity for human life at the highest pedestal and the principle of an accused being presumed innocent till proven guilty, forms the basis of Indian criminal jurisprudence and therefore it is obligatory that the investigation should be judicious, fair, transparent and free from incumbencies of any political interference to ensure compliance with the basic rule of law.

18. That, the Applicant is a person of formidable credentials and is a law-abiding citizen with immense respect for due process of law. The Applicant undertakes to join the investigation as and when required or called upon and shall extend his fullest cooperation to the authorities in the conduct of their ongoing investigation.

19. That, the Applicant is ready and willing to face the investigation in order to prove himself innocent and is merely seeking a fair chance to defend himself effectively.

20. That, the Application has deep roots in society and poses no flight risk and there can be no apprehension of him absconding from justice or tampering with evidence.

21. That, the Applicant is ready to comply with any condition imposed by this Hon'ble Court while granting him anticipatory bail and shall further comply with all the notices/ summons served on him and undertakes to fully cooperate with the ongoing investigation. Under no circumstance has the Applicant interfered with the investigation, nor will he refrain himself at any point of time from providing any information/ documents as required by the investigating agencies.

22. That, the present matter is not a case, where custodial interrogation as nothing is recovered from or at the instance of the Applicant.

23. That, no similar application has been filed by the Applicant before this or any other Court and the same is bonafide and in the interest of justice.