

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. _____/2020

IN THE MATTER OF

Article 226 of the Constitution of India
AND

IN THE MATTER OF

Article 14, 19 & 21 of the Constitution of India
AND

IN THE MATTER OF

Section 482 of Criminal Procedure Code
AND

IN THE MATTER OF

Crime No. 345/2020 dated 12/08/2020 registered under Section
295B, 500, 504 & 505(2) of Indian Penal Code, 1860 r/w Section 67
the Information Technology Act, 2000

PETITIONER: Shri. Sameet

// VERSUS //

RESPONDENTS: 1) The State of Maharashtra,
Through the Principal Secretary,
Home Department,
Mantralaya, Madam Cama Road,
Nariman Point, Mumbai - 400032.

- 2) The Commissioner of Police,
Civil Lines, Nagpur – 440001.
Email: cp.nagpur@mahapolice.gov.in
Whatsapp No.: 098233 00100.
- 3) The Police Station Officer,
Sitabuldi Police Station,
Sitabuldi, Nagpur.
- 4) Shri. Nitin S/o. Shamnarayan Tiwari,
Occ. – Politician (Shiv Sena),
165, Kirti Nagar, Navnath I.T.I. Road,
Dighori, Umred Road, Nagpur.

**CRIMINAL WRIT PETITION UNDER ARTICLE 226 OF
CONSTITUTION OF INDIA R/W SECTION 482 OF
CRIMINAL PROCEDURE CODE.**

MAY IT PLEASE MY LORD,

The petitioner named above most respectfully and humbly submits as under –

[1] **THAT**, the petitioner is a peace loving, law abiding and permanent resident of Nagpur, with absolutely clean past. He is in the business of transportation and supply of building/construction material. He operates a Twitter handle since very long. The petitioner is also a socially spirited person and had also filed a Public Interest Litigation in respect of the untimely death of the actor Late

Sushant Singh Rajput in Hon'ble Bombay High Court which came to be disposed off in view of the Hon'ble Supreme Court's order.

- [2] **THAT**, an offence came to be registered against the petitioner with the respondent no. 3, on 12/08/2020, vide Crime No. 345/2020, for the offences punishable under Sections 295B, 500, 504 & 505(2) of Indian Penal Code read with Section 67 of Information Technology Act, at the behest of complaint lodged by the respondent no. 4 who is worker of Shiv Sena Party. The copy of the said F.I.R., is annexed herewith as **ANNEXURE – P1**. The said complaint was filed by the respondent no. 4, in writing. It is submitted that the present F.I.R. is nothing but an attempt to muzzle the right of a citizen to speak and express truth. The Police Officer are coming to the home of the petitioner every now and then, thereby harassing the family members of the petitioner.
- [3] **THAT**, at the outset, it is pertinent to aver that the present F.I.R. is a part of multifarious F.I.R.'s and complaints lodged by the Shiv Sena Party members and supporters in different jurisdictions, relating to some tweets tweeted by the petitioner completely based on facts regarding the functioning of the Maharashtra Government and its leaders. It is submitted that the present F.I.R. is a part of a well planned, vindictive and malicious campaign launched by the Shiv Sena Party and its members just to muzzle and harass the petitioner for speaking truth about the functioning of the government in Maharashtra and its leaders, particularly the Chief Minister of Maharashtra and his son, for their response and silence on vital issues. It is

further submitted that the campaign for arrest of the petitioner was launched in the social media. The copy of the said posts in this regards is annexed herewith as **ANNEXURE – P2**. In one of the interview, which is also roving over the social media, a senior leader of Shiv Sena have openly threatened for law and order situation while speaking to a reporter.

- [4] **THAT**, another offence came to be registered against the petitioner with the V.P. Road Police Station, Mumbai, on 02/07/2020, vide Crime No. 182/2020, for the offences punishable under Sections 292 & 500 of Indian Penal Code read with Section 67 of Information Technology Act, by one Advocate Shri. Dharmendra Mishra, who is Legal Cell Head of Shiv Sena Party. The copy of the said F.I.R., is annexed herewith as **ANNEXURE – P3**.
- [5] **THAT**, it is further worthwhile to mention that a similar complaint in writing was also filed on 01/07/2020, on the letterhead of Shiv Sena party, at Hudkeswar Police Station, in Nagpur, by the respondent no. 4. The Xerox copy of the said matter is also annexed herewith as **ANNEXURE – P4**.
- [6] **THAT**, from the allegations, facts and circumstances of the complaints mentioned hereinbefore it becomes crystal clear that it all arose out of political vendetta for speaking the truth about the functioning of the Maharashtra Government which are widely reported by the media. Further, the complaints filed against the petitioner by the persons who profess allegiance to the Shiv Sena Party, are nothing but reproduction of the same language and content.

[7] **THAT**, it further worthwhile to mention that the FIR No.182/2020 registered with V.P. Road Police Station, Mumbai has already been sought to be quashed and set aside before the bench at Bombay High Court vide Criminal Writ Petition ASDB LD-VC-NO. 241 OF 2020. In the said Writ Petition, the Hon'ble Bombay High Court was pleased to issue notices and kept the matter on 10/09/2020 vide Order dated 13/08/2020. The copy of the said order dated 13/08/2020 is annexed herewith as **ANNEXURE – P5.**

[8] **THAT**, it is submitted that even if the entire contents of the F.I.R. are taken to be true at its face value though not admitting, no offence as alleged could be made out against the petitioner by any stretch of imagination nor does the complainant have any sort of locus for the same. The entire bundle of facts from the report lodged by the complainant does not constitute the offence much less the alleged one, in the wake of decisions by the Hon'ble Supreme Court of India and the High Courts as well.

[9] **THAT**, it is submitted that the allegation made by the complainant in the present F.I.R. does not disclose commission of any cognizable offence thereby warranting investigation by the Police Machinery. It is further submitted that the three tweets on the basis of which the present F.I.R. came to be lodged does not consist any obscene material, language or content, but alas, section 67 of the Information Technology Act was wrongly invoked against the petitioner. In the facts of the present matter, it is further pertinent to mention that in the

light of judicial precedents of Hon'ble Apex Court, in the case of criminal defamation, neither an F.I.R. can be lodged or direction can be issued under section 156(3) of Criminal Procedure Code, but alas, section 500 is wrongly invoked against the petitioner by the respondent no. 2, despite the fact that a case of criminal defamation can only be taken cognizance of by a Magistrate on a complaint, that too, by a person aggrieved, and it is submitted that the complainant is not the one in present matter.

- [10] THAT,** as enunciated above that the present F.I.R. is a part of a well planned, vindictive and malicious campaign launched by the Shiv Sena Party and its members just to muzzle and harass the petitioner for speaking truth about the functioning of the government in Maharashtra and its leaders. It is submitted that the petitioner have not made any statement, whatsoever, against any community but only questioned the functioning of the present Government of Maharashtra and further questioned the ideology of the Chief Minister of Maharashtra and its leaders. It is further submitted that the petitioner has not made any deliberate statement with malicious intent to outrage, insult or hurt the religious feeling of any community. Hence, mere mention of a festival of a particular community, by no stretch of mind, can lead to enmity amongst religious communities thereby causing law and order situation. As it is enunciated above, it is also worthwhile to note here that what has been tweeted by the petitioner was reported by the media also. The copy of the said media report is annexed herewith as **ANNEXURE – P6.**

- [11] **THAT**, it is submitted that looking to the past of the Shiv Sena party and the apprehensive atmosphere created by them, the petitioner apprehends that they may go to any extent in causing harm to him or his family members or damaging their properties. Therefore, it is requested for the protection of their life and properties.
- [12] **THAT**, it is further pertinent to mention that the petitioner and his family members are continuously threatened by the workers of the Shiv Sena Party. On 08/08/2020, around 25 to 30 workers of Shiv Sena Party had assembled in front of the house of the petitioner and started abusing and threatening the family members of the petitioner. Fearing threats of attack to life and property, the mother of the petitioner had made a call to the Police Control room at 100 thereby seeking help. Again, on 21/08/2020, the elder brother of the petitioner was also threatened by some workers of the Shiv Sena Party. The elder brother of the petitioner had also reported the said fact to the respondents thereby seeking security for him and family members. The copy of the said report is annexed herewith as **ANNEXURE – P7**. As enunciated above, a senior leader of Shiv Sena have openly threatened for law and order situation while speaking to a reporter and the said interview is also roving over the social media.
- [13] **THAT**, the petitioner has no alternative efficacious remedy but to invoke the extraordinary writ jurisdiction of this Hon'ble court.

[14] **THAT**, the petitioner crave leave to produce other relevant documents, statements, letters, and/or papers, to support their case, as and when required, and with the prior permission of this Court.

[15] **THAT**, the petitioner also craves leave to add, alter, amend, delete and modify the contents of this Petition, if so be needed, with the prior permission of this Court.

[16] **THAT**, the petitioner is also filing applications for exemption from notarization of the present petition and further exemption from filing typed & legible copies of documents at this stage, in view of predicament of COVID-19.

[17] **THAT**, this petition is being verified by the petitioner.

HENCE THIS WRIT PETITION.

PRAYERS: It is, therefore, prayed most respectfully that this Hon'ble Court be pleased –

(A) To quash and set aside the F.I.R. No. 345/2020 (**ANNEXURE – P1**), dated 12/08/2020, registered with Sitabuldi Police Station, Sitabuldi, i.e., respondent no. 2;

(B) To stay the effect and operation of the F.I.R. No. 345/2020 (**ANNEXURE – P1**), dated 12/08/2020, registered with Sitabuldi Police Station, Sitabuldi,

i.e., respondent no.2, during the pendency of the present petition;

- (C) To direct the respondents not to take any coercive action/steps against the petitioner in connection with the F.I.R. No. 345/2020 (**ANNEXURE – P1**), dated 12/08/2020, registered with Sitabuldi Police Station, Sitabuldi, i.e., respondent no.2;
- (D) To issue appropriate writ, order or direction to the respondent No.1 and all authorities working under respondent No.1 restraining them from registering any First Information Report (F.I.R.) against the petitioner in relation to the same tweets or cause of action, which is already covered by F.I.R. No. 345/2020 registered with the respondent no. 3;
- (E) To further direct the respondent No.1 and all authorities working under respondent No.1 not to take any coercive action/steps against the petitioner, in case any other FIR, arising out of the same tweets or cause of action is registered elsewhere;
- (F) To provide security in view of antecedents of the Shiv Sena party and the threats being doled out to the petitioner and his family members;
- (G) Any other relief that this honorable court deems fit and proper in the facts and circumstances of the present case, in the interest of Justice.

For this act of kindness, the petitioner is forever duty bound to pray.

NAGPUR.

DATE: 27/08/2020

Petitioner.

(R.S.RENU, ADVOCATE)
COUNSEL FOR PETITIONER

SOLEMN AFFIRMATION

I, Shri. Sameet S/o. Rakesh Thakkar, aged about 32 Years, Occ. – Business, R/o. Plot No. 174, Pragiti Niwas, Queta Colony, Bagadganj, Lakadganj Nagpur – 440008, do hereby take oath and state on solemn affirmation that the contents of petition from para 1 - 17 has been drafted as per my instructions and believed to be true and correct as per my personal knowledge and belief. The contents of petition in paras 1 to 17 are explained to me in vernacular.

Hence verified and signed at Nagpur, on 27th day of August, 2020.

I KNOW THE DEPONENT

DEPONENT

(R.S.RENU, ADVOCATE)