

IN THE HIGH COURT OF DELHI AT DELHI**WRIT PETITION (CRL.) NO. OF 2020****IN THE MATTER OF:**

GHANSHYAM UPADHYAY

...PETITIONER

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

**PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA
FOR TRANSFER OF INVESTIGATION TO NATIONAL
INVESTIGATING AGENCY IN FIR NO. 63 OF 2020 REGISTERED
BY CRIME BRANCH, DELHI POLICE ON 31.03.2020****MOST RESPECTFULLY SHEWETH:**

1. The petitioner is a citizen of India and domiciled in the State of Maharashtra. The petitioner enjoys all the rights and privileges as enshrined and embodied under the Constitution of India. The petitioner is a practicing advocate of the Hon`ble High Court of Bombay and so also of the Hon`ble Supreme Court of India and has been duly enrolled with the Bar Council of Maharashtra and Goa. While the Respondent No.1 is the Union of India, the Respondent No.2 is the Government of Delhi, the Respondent No.3 is the Commissioner of Police, New Delhi and whereas the Respondent No.4 is the National Investigating Agency. All the Respondents being 'State' within the meaning of Article 12 of Constitution of India, are amenable to the writ jurisdiction of this Hon`ble Court.

2. In view of the law laid down by the Hon'ble Apex Court in the matter of Manoharlal V/s. Vinesh Anand, the petitioner has locus-standi to institute and maintain the instant petition in this Hon'ble court. At this stage, it is apposite to reproduce the observations of the Hon'ble Apex Court in the matter of Manoharlal (supra) on the issue of locus-standi, which reads as under;

“Before advertng to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence: To pursue an offender in the event of commission of an offence, is to subserve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence. This observation of ours however obtains support from the decision of this Court in **AR Antulay v. Ramdas Srinivas Nayak & Anr.** : 1984 (2) SCC 500.”

3. The Petitioner by filing the present petition seeks to invoke the extraordinary powers vested with this Hon'ble Court under Article 226 of the Constitution of India and inter alia prays for issuance of writ of Mandamus and/or any other appropriate writ, order and/or direction in the nature of Mandamus, thereby directing the Respondent Nos. 1, 2 and 3 to forthwith handover the investigation of the case of Maulana Saad to the Respondent No. 4 and they be directed to investigate the same in time bound programme and the investigation be monitored by this Hon'ble Court.

4. It is not necessary to burden the present petition with several other details leading to filing the same, suffice it to say that from the media reports, it is discernible that while the nationwide lockdown was declared in the country due to Covid-19, Maulana Saad arranged/organized a huge gathering of his followers /Muslims who were thousands in numbers and who were claimed to be from an Islamic organisation caalled 'Tabligi Jammatt'. Media reports have further revealed that Maulana Saad had not only organized the said gathering, however, the said gathering was organized in furtherance of a well orchestrated and articulate criminal conspiracy in a systematic manner to wage a war against the nation by ingenious method of spreading Corona virus - all over the country and thereby causing death of thousands and lakhs of people in the country and thereby destabilise and derail efforts undertaken by the government of India. Media reports have further revealed that Maulana Saad and his team/organisation have received huge funding from terrorist organizations to implement their plan to wage war against India and Maulana Saad and his team are alleged to have connections with Zakir Naik, who is one of the most wanted fugitives and facing multiple charges, including the charge of waging war against India and who seems to have taken shelter in an Islamic country viz. Malaysia, NIA has attached all his properties in another case being investigated against Zakir Naik. Arranging a gathering of thousand of people, some of whom are infected with Corona Virus and spreading the virus first amongst themselves and then these infected Tabligi Jamat members

then spreading the virus was like hundreds and thousands of suicide bombers being let loose to infect the virus to thousands and lakhs of people all over the country appears to be the sinister design.

5. In a nutshell, from media reports and evidence so far collected by Delhi Crime Branch, it is now axiomatic that Maulana Saad and his henchmen conspired to spread and transmit Corona Virus in different parts of the country, with oblique and ulterior motive of causing massive deaths all over the country and thereby to derail the Government of India in preventing the deadly disease. It is a matter of common knowledge and is now in public domain that at the instance and behest of Maulana Saad and on his exhortation, his followers/associates knowingly and willingly travelled and stayed in different parts of the country in a pre-planned manner to cause wide spread of the virus and thereby cause maximum casualties/deaths of people in the country in flagrant violation of countrywide lockdown declared by the government of India and eventually succeed in doing so. With the result, several people in different parts of the country, which includes even the state of Maharashtra died and not only that, but also despite all possible efforts made by the central and state governments to control and prevent the widespread of the disease, more than 40,084 Corona patients have been found in the country till the evening of 3rd May, 2020 and whereas 1326 people have died. The number of infected with the deadly virus is rapidly increasing day-by-day and so also the number of deaths in the country. The

deaths are extremely painful and horrifying. So much so that even after the deaths family members are deprived of performing their religious rights.

6. From media reports, it has also been found that Maulana Saad and/or organisation viz. Tabligi Jamaat have their connection with terrorist organization like Al-Qaeda which had caused terrorist attack at World Trade Centre, New-York City, U.S.A. As a matter of fact, people associated with Tabligi Jamaat are still being found in their attempt of spreading the deadly virus. There are enough materials available on social media with regard to the people from Tabligi Jamaat/ Maulana Saad being involved in spreading deadly virus in furtherance of a sinister design, including spitting on fruits, vegetables, food items and even applying saliva of Corona infected on currency notes as well as other edible items such as bread and other bakery products which business have been virtually monopolized by the Muslim community. These facts clearly demonstrate a deep rooted criminal conspiracy, a sinister plot hatched by Maulana Saad and people of Tabligi Jamaat to derail/destabilize the country/government of India and create terror in the minds of people of the country. The entire 'plan' of Maulana Saad and his henchmen/followers who seem to be very large in numbers, appear to use corona virus as a weapon to ensure that entire government machineries are made to fail and complete chaos is created in the entire country, thereby throwing the entire administration out of gear and thus to derail/destabilize the nation. In

the facts and circumstances of the, one can not rule out the possibility of ensuring utter failure of the government in power at the center – the Modi government in handling the pandemic.

7. In nutshell, the acts of omission and commission of Maulana Saad and his henchmen/ the Tabligi Jamaat constitute ‘terrorist acts/activities as defined under UAPA. It is matter of record that local police i.e. Delhi Crime Branch is found to have miserably failed in tracing out/apprehending/arresting Maulana Sadd, despite lapse of considerable time and his photograph being published in electronic media. It is virtually impossible for Maulana Saad to hide himself for such a long time and that too in the capital of the country. Performance of Delhi Police has been pathetic from the very inception and outset. Failure of the Delhi Delhi police is explicit from the fact that despite there being lockdown and curfew like situation, Maulana Saad was able to arrange gathering of thousands of people belonging to Tabiligi Jamaat in the capital of India and such gathering took place under the very nose of Delhi Police and more so, when such huge gathering was organized by Maulana Saad with sole purpose to spread the deadly virus nationwide and thereby to destabilize the government/ nation and creating terror in the minds of people of India and more particularly Hindus by causing deaths of thousands and lakhs of people and shockingly the Delhi Police could not get a wind thereof.

8. From the performance of Delhi Police, which includes, Crime Branch, the only inferences which can be drawn is that either Delhi Police is thoroughly incompetent/inefficient or corrupt and in all such situations, they are not entitled to investigate the case and that being the case, it is not only desirable, but also necessary in the interest of the nation and its people to disassociate Delhi Police from the investigation by withdrawing the same from them and handing it over to N.I.A., as the acts of omissions and commission of Maulana Saad constitute the offences amongst others within the preview of UAPA which is one the schedule offences as contemplated and envisaged under section 15 of N.I.A. Act. 20008.

9. It is now well known and scientifically established fact that Covid-19 is a deadly and incurable disease and which spreads swiftly and rapidly just by physical touch or close contact/proximity by person to person. It is also well established by now that only remedy available to control/avoid the this deadly disease, is only and only social distancing. From the media reports, it is found that State of Maharashtra is having highest numbers of patients/victims of the deadly disease in comparison to other states of the country. Media reports have further revealed that the deadly virus is still continuously increasing/rising leaps and bounds in its breeze and blowout day- by-day and the governments have not been able to control its rapid rise and thus we are heading from bad to worse. There are 56,351 confirmed cases of Covid 19 infected with 1,889 deaths reported by the early morning of 8'th May, 2020 and thus the situation is

extremely alarming. Maulana Saad/his henchmen / Tabligi Jamaat alone is responsible for more than 40% cases in the country and the country can not afford to let loose such a criminal. He has to be arrested, thoroughly interrogated and has to be consigned to jail for spreading the virus and so also deaths of hundreds and thousands of people in the country.

10. The petitioner most respectfully states and submits that not only the our country alone, but entire world is reeling under the deadly Covid-19 and it is accepted world over that the only cure so far is prevention by way of social distancing amongst the people/human beings and even slightest lapse in this regard has been proved to have resulted in causing immense sufferings and deaths of a large number of people. From the incident of Tablighi Jammata at Delhi, it is discernible that due to the acts of omissions and commissions of Tabligi Jamaat and Maulana Saad which are now in public domain, deadly virus increased many fold thereby necessitating extension of the lockdown thrice in India. But for the nationwide lockdown and its implementation the situation would have gone beyond control and with the result, country would have witnessed lakhs of deaths. There would have been heaps of dead bodies all over the country and this is solely due to the acts of omissions and commission of Maulana Saad and his associates. As a matter of fact the acts of Maulana Saad is more serious than Ajmal Kasab who with a few terrorists attacked Mumbai, inviting nothing less than death penalty.

11. The petitioner most respectfully states and submits that the political party in power in the state of Delhi is having a soft approach in handling Covid 19 because of the 'vote bank' politics. The political party in power in the state has been found to be playing the appeasement card and in process, it has found to be compromising on national issues to gain political advantage and thus, the possibility Maulana Saad getting active support from the such political party and/or its sympathisers/supporters to evade arrest of Maulana Saad can not be ruled out. The acts of Maulana Saad and his followers constitute terrorist acts, punishable under UAPA, it is imperative that the investigation of the case is entrusted to N.I.A. and consequently, the Respondent Nos. 2 & 3 need to be directed to submit a report to the Respondent No.4 as contemplated and envisaged under Section 6 of N.I.A. Act, 2008.
12. The petitioner most respectfully states and submits that it is matter of record and experience that disgruntled people belonging to Tabligi Jammah who are followers of Maulana Saad, have been leaving no stone unturned to knowingly and willingly spread the deadly virus by all possible means in the entire country by adopting different ingenious methods and which they consider to be their 'Dharma' and which are now in public domain and in fact, they have succeeded in their such nefarious and sinister design to certain extent and it is because of their such acts of omission and commission, the whole country and its people have been facing hardships and sufferings by way of third round of national lockdown which alone is the remedy to

- prevent and cure the deadly virus. Thus, there is every possibility of Maulana Saad monitoring and supervising the anti-national activities of supporters in spreading deadly virus by taking advantage of he being still at large and thereby ensuring the deadly virus is transmitted amongst a large number of people in the country and thereby to ruin and finish the country in their attempt of making India as an Islamic country. People like Maulana Saad considers a situation like Covid-19 as an opportunity of using them like 'jihad'.
13. It is matter of record that the manner in which the people of Tablighi Jamaat have been spreading the deadly virus all over the country, not only by defying the national lockdown, but also by assaulting Corona warriors who have been treating not only other Corona patients/victims, but these very members of Tablighi Jamaat and with the result, the Central Government was required/compelled to enact penal law by way of issuing an Ordinance during national lockdown for protection of Corona warriors. The anti-national activities of the Tablighi Jamaat, with which Maulana Saad is associated and which are terrorist acts, have been described in the recent publication of India Today. Copy of the relevant pages of the said magazine is hereto annexed and marked as **Annexure P-1**.
14. The petitioner most respectfully states and submits that since associates/ followers of Maulana Saad/Tablighi Jamaat have been spreading the deadly virus all over the country and he is reportedly hiding in Delhi, congregation of thousands of people has taken place

in Delhi at his instance, consequences of anti-national and terrorist acts of omission and commission of Maulana Saad have ensued within the territorial jurisdiction of this Hon'ble Court and hence, this Hon'ble Court has territorial jurisdiction to entertain, try and dispose of the present petition.

15. The petitioner states and submits that he has not filed any other petition either in this Hon'ble Court or in any other court/s of India, touching the subject matter of the present petition.
16. The petitioner most respectfully states and submits that under these peculiar facts and circumstances of the case, he has no alternative and/or efficacious remedy available to him, than to approach this Hon'ble Court to file the present petition.
17. The petitioner states that on account of there being urgency in the matter, he has filed the present petition hurriedly and thus, it is quite possible that certain important aspects might have been missed out and hence, the petitioner, craves leave of this Hon'ble Court to add, alter, amend, delete and/or rescind any of the averments and/or submissions mentioned hereinabove, as and when such need arises.

PRAYER

Under the circumstances, petitioner therefore, most humbly prays:-

- a) that this Hon'ble Court may be pleased to issue a writ of Mandamus and/or any other appropriate writ, order and/or

direction in the nature of Mandamus, thereby directing the Respondent Nos. 1, 2 and 3 to forthwith transfer the case concerning Maulana Saad to the Respondent No.4;

- b) that the investigation of the case by Respondent No.4 be monitored by this Hon'ble Court and the same be directed to be carried out within some time stipulated time and the Respondent No.4 be further directed to submit their periodical reports to this Hon'ble Court;
- c) any other and further order and/or directions be given as in the nature and circumstances of the case may require.

DELHI:

This 09th day of May, 2020

PETITIONER

THROUGH

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