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DRAWN AND FILED BY:



[GARIMA PRASHAD]

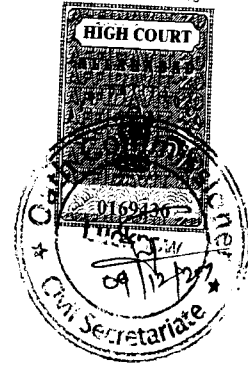
ADVOCATE FOR RESPONDENT NO. 2&3
Standing Counsel-State of U.P.

Date: 09.12.2020
Place: New Delhi

THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) No. 307 of 2020

IN THE MATTER OF:

Kerala Union of Working Journalists ...Petitioners
Versus
Union of India & Ors. ...Respondents



AFFIDAVIT ON BEHALF OF THE STATE OF UTTAR PRADESH
IN RESPONSE TO THE REJOINDER

I, Satya Prakash Upadhyay

posted as Special Secretary, Department of Home Affairs, Lucknow, Uttar Pradesh, do hereby solemnly affirm and declare on oath as under:-

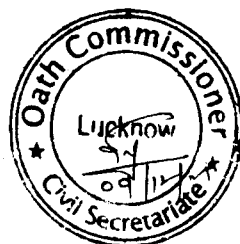
1. That the deponent is presently posted and working as Special Secretary, Department of Home Affairs, Government of Uttar Pradesh and has been duly authorized to file the present Affidavit in the above Petition on behalf of the State. The deponent is well conversant with the facts, deposed to below.
2. I have gone through contents of the Rejoinder and the documents annexed thereto. That except for the matters which form part of the records, the contents of the same are not true and correct and hence denied. All the contents of the same which are inconsistent with the tenor of this affidavit are denied herein.
3. At the outset, it is submitted that the petitioner itself lacks bonafide and does not deserve any relief from this Hon'ble Court. The Delhi Unit of the Petitioner organization "Kerala Union of Working Journalists" of which accused Sidhique Kappan is a Secretary, is itself facing Vigilance Inquiry No. VIG - E4/340/2019-VIG in the State of



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Kerala for embezzlement and misappropriation of Government funds upon directions of the Hon'ble High Court of Kerala in a Public Interest Litigation pending against the Petitioner Delhi Unit in WP (C) 6695/2018. Further, the Thrissur District Unit of Petitioner (KUWJ) is facing the charges of grabbing the Devaswom land of the famous Vadakkumnatha Temple of Thrissur and a case in this regard is also pending before the Hon'ble High Court of Kerala in WP (C) 20499/2020. True copy of the letter of Vigilance Deptt, State of Kerala dated 24.11.2020 is annexed herewith as **ANNEXURE A-1** (pp¹⁷ to 20).

4. There is no violation of any right of Petitioners by the answering respondents much less violation of any Fundamental Right in order to enable Petitioners to invoke extraordinary jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India. It is submitted that the person in judicial custody [who is in custody in pursuance to a judicial order passed by the competent authority] is admittedly in touch with his legal advisors and others. It is not the case of the petitioner union that the aggrieved person whose fundamental rights are allegedly violated is unable to approach the Court. In absence of any violation of any fundamental right of the petitioner association, the present petition is not maintainable under Article 32 of the Constitution. It is submitted that even if the petitioners were to implead family member of the person in custody, such a petition would still not be maintainable as the factual allegation and



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assertions will have to be made by a person who has the personal knowledge about the allegation.

5. It is respectfully submitted that the petitioner was arrested with three other individuals travelling in the same car. All four of them were travelling as a group. The remaining three have already moved regular bail applications before the competent court with battery of lawyers representing them and the matter being argued almost for a week before the competent court which rejected the bail after perusing the case diary and evidence collected. It is submitted that considering the role of the person in judicial custody on whose behalf this proxy petition is filed, it clearly appears that he does not wish to face examination of his role by the competent court and, therefore, attempting to get virtually regular bail on broad propositions of violation of fundamental rights. It is submitted that apart from the credentials of the petitioner union, it deserves to be pointed out that it does not represent all journalists. There is a separate association of journalist which is the mainstream association. The present petition is, therefore, not maintainable and is a proxy litigation at the behest of organizations on whose behalf the person in judicial custody is found to be working as mentioned in the previous affidavit and this affidavit.

The guidelines issued by this Hon'ble Court in the case of *D. K. Basu vs. State of West Bengal (1997 1SCC 416)* have been followed by the answering Respondents in letter and spirit as has been stated in detail in the Counter Affidavit.



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6. The allegation that there is any discrepancy as to the time of arrest of the accused is wrong and is vehemently denied. The accused was arrested at 16:40 pm on 05.10.2020 only after interrogation, search of vehicle and only upon the police being "reasonably suspicious" as to the conduct and intention of the accused, when was the arrest made under Section 151/107/116 of Cr.P.C. The entire GD Entry, procedural statutory compliances involved after arrest, which includes information to family of the accused, medical examination, production before the magistrate within 24 hours etc., in any manner do not infer even an iota of doubt as to any such discrepancy as alleged by the petitioner baselessly.
7. That it is wrong on the part of the Petitioner to allege that no information was provided to the family members of the accused upon being arrested by the Police. It is stated that as soon as accused Sidhique Kappan provided the contact details of his relatives to police officials of P.S Manth, the concerned police official timely and diligently informed Mr. Azma - brother of Mr. Sidhique Kappan, on Mobile No. 9048358546 and the same is very well reflecting in the CDR of the police official above named. The registration details of the said mobile phone also disclose the address of accused Sidhique Kappan at Kerala. In fact, one Mr. Hamid called back the above said police official from his Mobile No. 7818965912 claiming to be a relative, and later found to be the maternal uncle of co-accused



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Atikur Rehman. True copy of the CDR and phone details are annexed as **ANNEXURE A-2 (pp ²¹ to ²⁶)**

In fact, the accused Sidhique Kappan has himself given in writing the same Mobile No. 9048358546 as his mother's contact number in his application to the Jail authorities. A true copy of application to jail authorities is annexed herewith as **ANNEXURE A-3 (pp ²⁷ to -)**

8. That it is wrong to allege on the part of the Petitioner that the Email sent on 06.10.2020 discloses the information of FIR bearing No. 0199/2020 which was registered on 07.10.2020. It is to be noted that there exist two separate emails sent by SHO PS Manth, Mathura to SSP Malappuram, Kerala, dated 06.10.2020 & 07.10.2020 as follows:

- a) An email dated 06.10.2020 was sent to the respective District Police Heads of the native places of all the four accused arrested, requesting the concerned District Police Heads to ensure to pass such information of arrest to the family members of respective accused being arrested under preventive detention laws i.e. Section 151/107/116 CrPC.
- b) An email dated 07.10.2020 was sent to the respective District Police Heads of the native places of all the four accused being sent to 14 days judicial custody in furtherance of the registration of FIR No. 0199/2020 u/s 153-A, 295-A, 124-A of the Indian Penal Code, 1860 (hereinafter referred to as IPC)



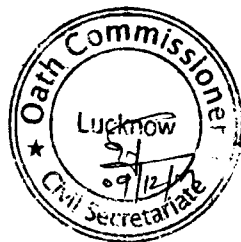
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and Section 17, 18 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA") and Section 65,72, and 75 of Information Technology (Amendment) Act 2008, followed by judicial remand, requesting the concerned District Police Heads to ensure to pass such information of accused being sent to Judicial Custody with the family members of respective accused. Proof of email sent on 07.10.2020 is annexed as **ANNEXURE A-4 (pp²⁸ to -)**

9. That that District Police Chief, Malappuram through email has also confirmed receipt of email on 06.10.2020 from Police Station Manth, Mathura, and that the information of arrest of accused Sidhique Kappan was duly conveyed to Abdul Majeed, S/o Marakkar, Kappan House, Poochalamad (Cousin of Sidhique Kappan). True copy of the response email received from District Police Chief Malappuram, kerala is annexed as **ANNEXURE A-5 (pp^{29, 30} to -)**

Further, the Petitioner admits that they had hired a lawyer who was present on 06.10.2020 in the court premises at the time the accused Sidhique Kappan was produced before the Ld. Magistrate, which clearly reflects that the Petitioner as well as the family members of the accused Sidhique Kappan were fully aware of the factum of arrest.

10. That the petitioners have further falsely alleged that custodial injury was caused on 05.10.2020. It is stated that the accused



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Sidhique Kappan along with other three co-accused were kept at Police Station Math, Mathura on 05.10.2020 and all four were taken to the CHC (Government Hospital Math, Mathura) in the morning of 06.10.2020, for their medical examination. The accused Sidhique Kappan was medically examined by the doctor on duty on 06.10.2020 at 09:17 am wherein no fresh injury has been found, details of the same were duly entered in the General Diary details bearing G.D. No. 021 dated 06.10.2020 Police station-Manth, District-Mathura, Uttar Pradesh. Thus, the allegation of the Petitioner as to the custodial injury on the night of 05.10.2020 is totally false and frivolous. True copy of Medical examination dated 06.10.2020 is annexed and marked herewith as ANNEXURE A-6 (pp 31 to 34).

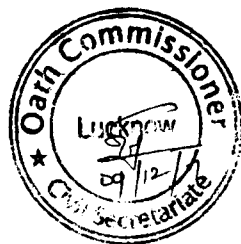
11. That the averments of the Petitioner in para G of its Rejoinder affidavit are misconceived and devoid of truth. It is reiterated that no lawyer has ever approached the Jail authorities with any vakalatnama to be signed by the accused Sidhique Kappan. That even on 21.11.2020 the lawyer Mr. Will Mathews who came to meet the accused did not present any vakalatnama to the jail authorities for verification. The aforesaid lawyer had concealed in his earlier affidavit about his phone call with the Deputy Jailer on 16.10.2020. It is only after the answering Respondent has placed the said facts before this Hon'ble Court, that the aforesaid lawyer has admitted the same.



12. That further, in view of the serious allegations by the lawyer Mr. Will Mathews in his earlier affidavit regarding handcuffs, ropes, shouts of hunger, cries of pain etc. happening in the Court premises as well as in the Temporary jail premises, upon the request of the government to the Ld. District Judge, Mathura, a detailed joint inspection has been made at both the premises by the representatives of the Court, District administration as well as Jail authorities. The joint inspection report has disclosed that there is no truth in the baseless and wild allegations made by the Petitioner. True copy of the Joint Inspection Report is annexed as **ANNEXURE A- 7 (pp 35 to 44)**.

13. That the Standard Operating Procedure to control spread of COVID-19 is being strictly followed in the Jails across the Respondent State and as such inmates are first quarantined for two weeks in temporary jails before being transferred to main Jail premises and their meetings and calls to family members have been restricted for all inmates as per the SOP across the state. In the present case, the accused Sidhique Kappan and three other co-accused were transferred to the main Mathura Jail on 24.10.2020 after completion of their quarantine period.

14. The allegation that the Senior Jail Superintendent Mathura Jail was not competent to file the counter affidavit is wrong and vehemently denied. The said official was fully competent to file the affidavit having full knowledge of the entire case from the records



and was duly authorized by the State to file the same before this Hon'ble Court.

Accused Sidhique Kappan and all other co accused are directly and closely associated with PFI members who have been executive members of "banned Terrorist Organization SIMI"

15. That on 05.10.2020, upon being questioned by the police, the accused Sidhique Kappan had presented a fake Identity Card claiming himself to be a reporter of a Malayam newspaper "Thejas". Investigation has revealed that this newspaper closed operations in December 2018 and has not been in existence since then. True copy of the Fake ID seized from the accused at the time of arrest is annexed as **ANNEXURE A - 8 (pp ⁴⁵ to ⁴⁸)**

16. That the petitioner organization has been trying to cover up/hide the true identity of the accused Sidhique Kappan under the garb of he allegedly being a Journalist. It is submitted that all the documents annexed to the Rejoinder claim the accused Sidhique Kappan merely as a "contributor" who produces content for outlets occasionally. Contributors are not full time employees of such outlets and hence referring such contributors to be a Journalist is nothing but an attempt to mislead this Hon'ble Court.

17. That since the newspaper "Thejas" stopped publishing in December 2018, it is wrong to suggest that he is a working journalist and was approaching Hathras in order to report the incident. It is



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relevant to state that during the above stated tenure of Kappan's association with Thejas, most of the editors of Thejas were the executive members of PFI. Investigation has also revealed that accused Sidhique Kappan is not only involved in hatching a design to commit cognizable offence to disrupt public order and peace but is also a master mind having links with various unfortunate riots, disturbing public tranquility nationwide.

18. That the newspaper "Thejas" is an acclaimed mouthpiece of PFI and owned by Intermedia Publishing Limited, a public limited company based in Calicut having its founder director as Parapurathu Koya (P. Koya), ex-office bearer of SIMI and present executive member of PFI. It is relevant to state that "Thejas" with which the accused Sidhique Kappan has been associated is so extreme in its views that it has been creating religious discord in the State of Kerala insulting religious sentiments. The views of the paper were so extreme that it called the terrorist Osama bin Laden a "martyr" in its front page cover story dated 31.10.2011, and this was the time when the accused Sidhique Kappan was an active contributor to "Thejas Gulf". A Copy of front page cover story dated 31.10.2011 published by Thejas is marked and annexed as **ANNEXURE A-9 (pp ⁴⁹ to 55)**

19. As per the detailed investigation till date, in the instant case, most of the members of PFI who are ex-office bearers of "banned organization SIMI" have been in close intimacy with the accused



Sidhique Kappan. Several incriminating evidence have been found from the house of the accused Sidhique Kappan during search conducted on 11.11.2020, after obtaining due remand orders from the Ld. CJM Court, Mathura. These documents disclosed crucial information/journey of the very formation of PFI as a reincarnation of SIMI after it being banned, also that the motive and ideology of both the organizations i.e. PFI and SIMI are corroborative in nature.

20. That the accused Sidhique Kappan is closely associated and has been in frequent connection through social media portals and telephonic conversations with PFI Members holding various portfolios across the country, namely P. Koya, Abdul Mukeet, Saleem, Mohd Ilyas, Md. Faizal and Gulfam Hasan, most of whom have also been executive members of the banned "Terrorist organization SIMI".

21. The accused Sidhique Kappan has been found associated with Popular Front of India (PFI) which has been responsible for disrupting the public peace of the State by provoking the class and caste conflicts within the State with an intention to destroy the public order and to tarnish the image of the Government by inciting hatred, contempt and dishonor to the Government established by law in the State. PFI has been involved in anti-national activities and keeping links with terror outfits like ISIS. Several cases are registered against members and activists of PFI who have also been charge sheeted in Kerala, Delhi, Uttarakhand, Uttar Pradesh and across the country,



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the details of few are mentioned below for the perusal of this Hon'ble Court:

- Murder of Ramalingam by PFI activist in Tamilnadu Ref. Case No. RC-06/2019/NIA/DLI
- Prof. T. J. Joseph- Hand Chopping Case by PFI activists Ref. Case NO. RC-01/2011/NIA/DLI – wherein 24 PFI activists have been convicted.
- Training camp of terrorist activities run by PFI activists in Kannur, North Kerala, Ref. Case No. 276/13 PS Kannur Maile, Kerala
- Association between PFI and ISIS Ref. Case No.1010/2017 PS Valapattanam, Kannur, Kerala
- Various cases are registered against PFI members/ activists in Delhi riots of February 2020.
- Various cases are registered against PFI members/ activists in the State of U.P. for violence in the year of 2019 and 2020 involving at Lucknow, Meerut, Muzaffarnagar, Shamli, Bahraich and others.

22. That not only the accused Sidhique Kappan but all the other three co-accused traveling with him on 05.10.2020 are directly associated with PFI, and most importantly involved in various questionable financial transactions, such as co accused Masood is being funded from PFI and its members bank Accounts, the other co accused Atiqur Rehman is being funded by Rauf Sherief, General Secretary of CFI (the student wing of PFI) who have received crores of funds from various national and international suspicious sources. That the accused Sidhique Kappan's State Bank of India Bank Account also reflects various suspicious cash deposits on numerous occasions and the same is under investigation.

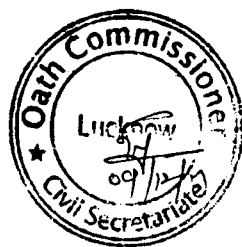


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Accused Sidhique Kappan and all other co accused were heading towards Hathras in pre-planned manner to execute unlawful activities and to disrupt the public peace of the state by provoking the class and caste conflicts within the state

23. Investigation has revealed that the accused Sidhique Kappan and his co-accused were mobilized towards Hathras upon instructions of Md. Danish, who is himself chargesheeted accused in the Delhi Riots case Crime no. 59/20 PS Special Cell Crime Branch Delhi. Further, Rauf Sherief, General Secretary of CFI was facilitating the movement. Investigation has also revealed that the co-accused *Atiqur Rehman* was also "wanted criminal" in Case Crime No. 1161/19 of PS Kotwali Muzzaffarnagar U.P. It is most pertinent to mention that the Delhi Riots accused Md. Danish and Rauf Sherief were continuously in touch with accused Sidhique Kappan and all other co-accused through the cell phones which were recovered by police from the vehicle being used by the accused on way to Hathras on 05.10.2020.

24. That the website server "carrd.co" has informed during investigation that both the website and the account "Justiceforhathrasvictim.carrd.co" were removed after Abuse was reported for spreading fake rape rumours and similar abuse related to Hathras case. The pamphlets having pages of the website were seized from the accused from the time of the arrest and the entire issue is still under investigation. The incriminating facts and documents disclosing the entire chain of events and associated links of the accused Sidhique Kappan, PFI & its office bearers, banned



organization SIMI and Thejas are not being disclosed being integral part of the pending investigation of the instant case.

Accused Sidhique Kappan not assisting in Investigation:

25. That the accused Sidhique Kappan during his remand ordered by Ld. CJM Mathura on 04.11.2020 misled the Investigation team by intentionally informing the wrong address of his Delhi based residence, misled as to whereabouts of his passport, non cooperation during search of house, thus, he has not been assisting the investigation even during judicial custody. Accused Sidhique Kappan even denied contact with his room partner who has been residing with him at his Delhi based residence, with the malafide intention to conceal the incriminating documents later recovered from his house. Further, the accused has also not assisted in disclosing his social media accounts, passwords and details associated with the same in order to conceal his misdeeds.

Bail Application of other three co accused rejected on merits by Trial court.

26. That the other three co-accused had filed their three separate bail applications before the Ld. Additional Session Judge-11, Mathura and the same was heard on more than nine dates and finally rejected by the Ld. ASJ-11 on merits on 13.11.2020. It is pertinent to state that the same team of lawyers who opposed the PCR application filed by STF before Ld. CJM Mathura, including three lawyers from Delhi argued on all nine days of hearing on bail applications on



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22.10.2020, 29.10.2020, 04.11.2020, 05.11.2020, 09.11.2020, 10.11.2020, 11.11.2020, 12.11.2020 and 13.11.2020 before the Ld. ASJ-11 Mathura, which was consequently heard and finally rejected on merits on 13.11.2020 by a detailed speaking order.

27. That the investigation was handed over to the Special Task Force (STF) on 23.10.2020 and STF has been conducting detailed investigation of the entire case on day to day basis. The investigation by STF in the matter is ongoing.

28. It is therefore submitted that the bail application filed by the Petitioner herein in respect of accused Sidhique Kappan being devoid of merits deserves to be rejected for the reason that the investigation of the case has been handed over to the STF and the custody of the accused is required for thorough and effective investigation. Further various evidences are yet to be collected/recorded and it is to be noted that the nature of evidence that has been collected so far support the accusations leveled against the Accused. Thus if the bail application of the Accused is allowed at this stage then there is a strong likelihood that the Accused will interfere with the course of investigation, indulge in similar activities which would hamper smooth investigation ,and will make himself scarce by going underground or becoming unavailable to the investigating agency.



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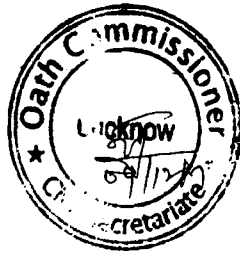
29. That in view of the facts narrated in above paragraphs, this Writ
Petition instituted by the petitioners is devoid of merits and deserves
to be rejected.


DEPONENT

VERIFICATION:

Verified on this 09 day of December, 2020 that the contents of the
foregoing affidavit are true and correct to my knowledge. No part of it is
false and nothing material has been concealed therefrom.


DEPONENT



7 I-IDENTIFY THE DEPONENT
WHO HAS SIGNED BEFORE ME