

PEOPLE'S UNION FOR CIVIL LIBERTIES

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PUCL Statement

Stop Persecution, by False Prosecution, of Teesta Setalvad and Javed Anand!

The PUCL welcomes the Supreme Court granting an immediate stay on the Gujarat High Court order permitting the custodial interrogation of journalists and Human Rights Defenders, Teesta Setalvad and Javed Anand, while refusing to grant them anticipatory bail. The Gujarat High Court passed its order on the 12th of February in the FIR of alleged misappropriation of funds collected for building a memorial for the 2002 and other riot victims of the Gulbarg Society in Ahmedabad. In the same matter it also granted bail to three other accused of the same charge.

This is not the first time that Teesta Setalvad is being targetted through false FIRs. Earlier too in the Best Bakery case of Vadodara and the Exhumation case of Panchmahals, there were efforts to malign the name and credibility of journalists Teesta and Javed Anand; however, both were stayed by the Supreme Court. It also cannot be ignored that it was through the efforts of Teesta, Javed and other activists of Gujarat and outside, that 117 people have been given life imprisonment for perpetrating the 2002 Gujarat mass killings, including Bajrang Dal leader Babu Bajrangi and former Gujarat minister Maya Kodnani. Incidentally Gujarat state is the only one where so many victims of communal violence have got justice, thanks to the untiring efforts of human rights defenders like Teesta Setalvad, Javed Anand, CJP and others.

PUCL had brought to the attention of the NHRC the type of persecution and prosecution by Gujarat police of Teesta Setalvad and Javed Anand and the CJP for persistently seeking justice for the victims of the communal holocaust in Gujarat in 2002 following the Godhra incidents. We had pointed out that the, "allegations of financial impropriety are easy to make; but the damage such allegations cause to individual reputation and self respect is irreparable. Very often though nothing much comes out of such allegations finally, the allegations would well have achieved their purpose of putting the individuals and organisations concerned on the defensive and force them to necessarily participate in an endless spiral of litigation trying to prove

their innocence. Apart from diverting defenders from the main task of protecting, promoting and preserving human rights work, immense amounts of time, physical and emotional energy, and finances are lost in fighting malicious prosecutions and litigations”.

Seen in this backdrop the dogged and repeated demand of the Gujarat police seeking the arrest and “custodial interrogation” of Teesta and Javed is a matter of grave concern.

Firstly, we would like to highlight that legally the direction of the Gujarat High Court seeking custodial interrogation is in violation of the fundamental right under Art. 20(3) of the Constitution that *“No person accused of any offence shall be compelled to be a witness against himself”*.

Secondly, we would like to point out that factually during the pendency of the anticipatory bail before the Gujarat High Court, Teesta and Javed in obedience to the directions of the court had presented themselves regularly before the investigation officers. They were subjected to hours of questioning each time during which they fully cooperated. Reportedly all documents including audited accounts, bank statements of the individuals and the Trust, resolutions of trustees and so on were submitted. Voluminous documents were filed before the Gujarat High Court as well. Hence the insistence of the Gujarat police for ‘custodial interrogation’ appears to be more a veiled threat of third degree methods and torture than any genuine necessity for investigation.

PUCL would like to point out that the SC has clearly spelt out the law relating to arrest and custodial interrogation in the landmark case of *‘Joginder Kumar vs State of UP’* (1994). The SC has pointed out that arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person and therefore no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. Pointing out that it would be “prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and **even so as to the need to effect arrest**”. Stressing that denying a person of her / his liberty is a serious matter the SC said, “A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of

the officer effecting the arrest that such arrest is necessary and justified. ***Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.***” ((1994) 4 SCC 260 at page 267, emphasis ours).

Very importantly, the apex court also pointed out that “No arrest can be made because it is lawful for the police officer to do so. ***The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.*** The police officer must be able to justify the arrest apart from his power to do so”. The court thereafter pointed out that arrest and custodial interrogation that follows should be only in the following circumstances: (i) if the accused persons will flee justice or (ii) tamper with evidence or (iii) intimidate witnesses. The ruling of the Supreme Court is now a statutory safeguard incorporated in section 41 of the Criminal Procedure Code as amended in 2010.

None of these three situations exists in the case of Teesta and Javed, who have been regularly appearing before the authorities. They have always produced required documents even when it was clear that the police were on a fishing expedition desperately trying to find some evidence to pin against them. It is necessary also to point out that the accusation against Teesta and Javed are not of having committed heinous offences but financial ones, all of which can be established or disproved mainly on documentary evidences.

PUCL is disturbed by the other sweeping and unwarranted comments made by the Gujarat High Court about the role of individuals and NGOs. We are however confident that the Hon’ble Supreme Court will ensure that justice is eventually done as the judiciary is the only bulwark against abuse of power by the executive against human rights defenders.

We also hope that the SC will consider ordering an impartial enquiry into the matter by an independent agency under the direct supervision of the Supreme Court as was ordered in other cases related to Gujarat communal violence. This will help establish the truth.

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