



**URGENT LETTER PETITION TO HON'BLE CHIEF MINISTER OF MAHARASHTRA**

May 17, 2021

To,

1. Shri Uddhav Thackeray  
Hon'ble Chief Minister

2. Shri Dilip Walse Patil  
Hon'ble Home Minister

**Copies of this Petition being sent to:**

3. Shri Sanjay Kumar  
Chief Secretary, Government of Maharashtra

4. Shri. S.V. Achame  
Superintendent, Taloja Central Prison  
Navi Mumbai

5. Shri CA Indurkar  
Superintendent, Byculla District Prison  
Mumbai

**Subject:** To release all accused persons in the Bhima Koregaon violence case on temporary bail amid the deadly second wave of COVID

**Dear Shri Uddhav Thackeray,**

We, at Citizens for Justice and Peace (CJP), a Human Rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians, are deeply worried about 15 accused arrested in Elgar Parishad and Bhima-Koregaon violence case. We have learnt about some deeply disturbing incidents related to their health, which warrants their immediate release on temporary bail.

Father Stan Swamy (**84 years old**), Prof Hany Babu (**55 years old**), Adv Sudha Bharadwaj (**60 years old**), Adv Surendra Gadling, and other Bhima Koregaon (BK) political prisoners are all independently in a critical health condition. The unchecked COVID-19 second surge that has affected our prisons in Maharashtra, with reports of dozens affected in the prisons the situation, is even more alarming.

We, in our endeavour to defend human rights, started two petitions on change.org to foster support for this cause; one pertaining to the release of all political prisoners and another separately for Professor Hany Babu due to his worsening health condition. We have received a heart-warming combined grand total of 13,900 signatures (approximately) and counting.

**Academics Anand Teltumbde, Shoma Sen and Hany Babu (in GT hospital); Adivasi rights activists Father Stan Swamy and Mahesh Raut; poet Sudhir Dhawale; lawyers Surendra Gadling and Sudha Bharadwaj; writer-researcher-journalist Gautam Navlakha, activists Rona Wilson, Arun Ferreira and Vernon Gonsalves, and members of the cultural group, Kabir Kala Manch: Sagar Gorkhe, Ramesh Ghaichor and Jyoti Jagtap, all have had their democratic rights violated.**

#### **Father Stan Swamy health deteriorates**

Fr Xavier, who last saw Fr. Swamy, during his arrest in October, said that Father Swamy has an enormous ability to bear pain and never complains. Yet, on the morning of **May 14, 2021** he said that he was in pain. He criticised the huge problem of access to information that was later reinforced by other speakers as well. Although registered at Taloja jail as Swamy's contact, Xavier cannot make calls to the imprisoned. He waits for weekly calls by Swamy that he calls "noisy and difficult to hear from." During his last call (date unknown), Swamy complained of cough, fever, runny stomach with no respite except for antibiotics provided by the ayurvedic doctors.

#### **Prof Hany Babu's health critical**

Professor Hany Babu is suffering from a serious eye infection that could lead to loss of vision in one eye. The 55-year-old professor has also tested positive for Covid-19 on May 13 and is currently admitted in GT Hospital's Covid ward. He is also being tended by Ophthalmologists as his eye remains severely infected. According to his wife, Jenny Rowena, due to damage in nerves and muscles, he can't coordinate both eyes and continues to have double vision in in his left eye.

Before being taken to GT Hospital on May 14, Hany Babu was lodged in Taloja Central Prison, Maharashtra and had been complaining of an acute eye infection, pain, and gradual loss of vision since May 3, 2021. His wife Jenny Rowena, along with his brothers, Harish MT and MT Ansari had also released a press statement on May 11 stating that despite getting anti-bacterial ointments, there was no improvement in his infection. Due to an acute water shortage in the prison, he did not have access to clean water to even wash his eye, and was forced to use soiled towels to dress it.

The prison Medical Officer had informed Hany Babu that the prison did not have adequate resources to treat his eye infection, so the Professor immediately requested for consultation an eye specialist. But he was not taken for consultation as prison authorities claim an “escort officer was not available”.

It was only after his lawyer Ms. Payoshi Roy sent an email on May 6, 2021, to the Superintendent, Taloja Jail, that he was taken to a Government Hospital in Vashi on May 7, 2021, where he was examined by an Ophthalmologist, prescribed certain anti-bacterial medication, and advised to return for a follow up treatment. But he was reportedly not taken for the advised follow-up examination, again, due to lack of escort officers. He was finally taken to JJ Hospital on May 12 after eight calls and another email by Ms. Roy on May 10, emphasising the gravity of the situation. Once he was admitted to JJ Hospital, he tested positive for Covid-19. After pressure from human organisations like CJP, media and political leaders, Hany Babu was shifted to GT Hospital in Mumbai.

During a press conference held on May 15, attended by Hany Babu’s family, CJP learnt that the family has not been informed about the proper diagnosis, treatment being administered even though Babu’s family pressed for information about his CT count, health statistics or any other test-result information. Dr Harish Tharayil, Professor Babu’s brother said that the family is also waiting for official information from the prison and the National Investigation Agency (NIA).

### **Sudha Bharadwaj’s failing health**

Speaking on behalf of Sudha Bharadwaj’s family, Smita Gupta said that Bharadwaj’s daughter Maaysha still finds it difficult to contact jail authorities. Bharadwaj already suffered from several co-morbidities before the incarceration. Her pulmonary tuberculosis, diabetes, hypertension and the unventilated environment along with poor nutrition make her vulnerable to Covid-19.

Sudha also has rheumatoid arthritis. Her teeth are in such a state she can barely manage to eat. She has lost hair, weight and last year a report showed she is eczemic, according to activist Smita Gupta. She added that earlier, 40 people in the jail tested positive during a rapid antigen test that is known to miss some infected people. During the last call, Bharadwaj talked of worsening health since May 7 when she was vaccinated. She listed severe diarrhoea for three weeks, body weakness, tastelessness. Meanwhile, jail authorities only offered antibiotics despite no response from the body.

### **Surendra Gadling’s health poor**

Advocate Surendra Gadling’s wife Minal deplored the authorities for not allowing spectacles as well as medicine to be sent to her husband. When his vision suffered, Surendra Gadking had asked for a check-up but he was told all doctors have left the jail due to Covid-19. His inmates finally told him to check the levels himself which have turned out to be very high. Even in July 2020, he showed Covid-symptoms and worried about loose motions and severe cough but did not receive any medication.

### **Mahesh Raut's health conditions**

Inmate Mahesh Raut's sister Monali recollected during the press conference, how she had called the jailer on her brother's behest for medicine. He had asked for a thermometer and oximeters as well but officials said she was not allowed to send such a parcel.

The issue of violation of basic human rights is not limited to just Professor Hany Babu in Taloja. Family members and friends of the 14 Bhima Koregaon accused have time and again asserted how their health has deteriorated after being lodged in overcrowded, unhygienic jails with almost no infrastructure.

### **Bhima Koregaon accused denied basic rights**

The families of all accused in the Bhima Koregaon case who have remained imprisoned since 2018 complained about lack of communication with the undertrials and apathy from the jail authorities of Taloja and Byculla jails.

In a press conference organised on May 15, CJP learnt the harrowing accounts of the political prisoners and unending sufferings for lack of healthcare infrastructure amid such extraordinary circumstances. Activist Harshali Potdar said that the condition in both aforementioned jails is worsening by day. As per her communications, she said that around 60 jail staff, along with food staff, were reported to have Covid-19 in Taloja.

In the case of undertrial prisoners, Covid-tests have not been adequately administered although people such as Hany Babu were reported to be positive. She accused Taloja jail authorities of mental harassment of both prisoners and family members by not following court orders. Potdar also mentioned that despite court orders, no family has received a 20-minute video call from any of the undertrials. As for audio calls, people only managed three-to-four-minute calls as opposed to the expected minimum-10-minute calls. Even letters arrive a month late both inside and outside jails after heavy scrutiny by officials.

### **Supreme Court's Order after Covid-19 Second Wave**

The Hon'ble Supreme Court, in **Re: Contagion of Covid-19 Virus in Prisons**, (Suo Motu W.P Civ. No. 1 of 2020), has taken serious note of the congestion in prisons, ordered release of other under trials. The supreme court had also ordered that, "It is necessary to maintain levels of daily hygiene and sanitation required to be improved. Suitable precautions shall be taken to prevent the transmission of the deadly virus amongst the inmates of prisons." But the jail authorities have failed to take precautions to contain the virus in overcrowded prisons or even provide them the basic facilities.

It had also said that "...the fight against the pandemic is greatly benefitted by transparent administration", which seems glaringly lacking with the family members of the Bhima-Koregaon accused, yearning for contact about their well being inside jails.

In its order dated May 7, the court actually took stock of the overcrowded prisons while noting that there are more than four lakh prisoners in India, and that it is overburdened beyond optimal capacity. It said, "we may notice that the requirement of de congestion

is a matter concerning the health and right to life of both the prison inmates and the police personnel working. Reduction of impact of Covid-19 requires this Court to effectively calibrate concerns of the criminal justice system, health hazards and rights of the accused."

In view of this deadly transmission, it ordered the release of some undertrials and prisoners and also asked states to engage with the High Power Committees to consider the release of prisoners. In view of the top court's order, it is imperative for all these arrested persons' right to health to be released without any further delay.

**With absence of testing in prisons, in fact RT-PCR Tests being denied to the prisoners there is a gross violation of the basic right to dignified life in Maharashtra. Now, in addition to the absence of testing, there is COVID-19 spread which is unchecked leading to the possibility of there being a threat to their lives. No trial in sight they face the possibility of losing their lives.**

### **Laws related to medical aid to prisoners**

Sir(s), it is the duty of the State to safeguard the health and wellbeing of all citizens of the country and to also ensure that this health is not extinguished by the inefficiency of the State. The Maharashtra Classification of Prisons Rules, 2015, that has been framed under the Prison Act, 1894, lays down provisions mandated for prisoners and undertrials in need of immediate medical attention.

**Rule 3(2)(5)** lays down that The Chief Medical Officer shall:

"pay special attention to the quality and quantity of the water supply to the prison. If contamination is suspected, he shall send water samples to the local testing laboratories and take corrective measures where needed."

**(6)** Inspect at least once a month the sources, surroundings and distribution of water supply. When there is a reason to suspect that pollution or contamination is likely, to occur, he shall take suitable steps to ensure the purity' of water by chlorination or otherwise.

**(14)** The medical officer may treat the sick prisoner with the help of tele-medicines and send the sick prisoner to the Government hospital only if tele-medicine and treatment within the prison hospital are inadequate to treat the inmate."

### **Other Supreme Court Rulings**

Undertrials and Prisoners too, have a right to health under the Right to Life guaranteed by the Article 21 of the Constitution of India. In **Sunil Batra (ii) vs Delhi Administration** (1980) 3 SCC 488, the Supreme Court has held that basic human rights cannot be denied to a person even though he remains confined in jail as per procedure established by law. Recently, when the jailed Kerala based journalist Siddique Kappan took a fall in Mathura Jail and tested positive for Covid-19, the supreme court held that he should be transferred to a hospital for better care and medical attention. In **Kerala Union of Working Journalists Versus Union Of India**

**& Ors.** (Writ Petition Criminal No. 307 of 2020), the Supreme Court held, “We state that the most precious fundamental ‘right to life’ unconditionally embraces even an undertrial.”

Amid a rise in Covid-19 cases and since the trial in the Bhima Koregaon violence case is no where to close to start, it is only practical to release all arrested persons for better care and treatment to the ones who desperately need it.

Dr. Varvara Rao, who has been charged under similar provisions in the same case was granted bail by the Bombay High Court, keeping in mind his deteriorating health conditions in February, 2021. The Bench had noted that Dr. Rao’s continued incarceration as an undertrial would violate his Right to Life under Article 21 of the Constitution considering his precarious health condition.

In **Dr. PV Rao vs NIA and others** (Cri. Appeal No. 52 of 2021), the court held, “Even otherwise, in the present case also, the respondents have conceded that at least 200 witnesses will be examined by the prosecution. The chargesheet itself runs into 1000 pages...We are of the opinion that this court, as a constitutional court cannot be a mute spectator to the undertrial being sent to the prison and then to government hospitals where his health deteriorates further, to be ultimately shifted to the private special speciality hospitals, upon intervention of courts and such movements of the undertrial continue back and forth only because his bail application is turned down...”

The conditions of jails and no knowledge about their health in such a critical time, warrants a humanitarian approach. The Bombay High Court had also taken cognisance of the inadequate facilities in jail, hoping for the State to ramp up amenities for all inmates. In the suo motu public interest litigation it registered, by the name, **High Court on its own motion vs State of Maharashtra and Ors** (Suo Motu PIL No. 1 of 2021), the Division Bench of Chief Justice Dipankar Datta and Justice GS Kulkarni noted the submission made by one of the intervening applicants “that the correctional homes do not have adequate number of doctors, nurses and other paramedical staff. Reference has been made to Taloja correctional home where only 3 (three) doctors are available who practice Ayurveda.”

“If indeed that be so, it is a poor reflection of the State’s health and medi-care facilities for the inmates of the correctional homes, betraying apathy and indifference to attend to their needs”, the Bench itself had noted through its order dated April 29, 2021.

Taloja Prison as of now houses around 3,500 prisoners as opposed to its capacity of 2,124 inmates, with a 133 percent occupancy rate. It is also important to note that some prisoners test negative for Covid, but end up testing positive when tested outside of prisoners.

Sir(s), Right to Health is fundamental to Right to Life under Article 21 of the Constitution of India and it is the obligation of the State to protect this right of all citizens. In **State of Punjab and Ors vs Mohinder Singh Chawla** (Civil Appeal Number 16980-81 of 1996), the Supreme Court held that, “It is now settled law that

right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities.” In **Kirloskar Brothers Ltd. vs. Employees State Insurance corporation** 1996 (2) SCC 682, the Supreme Court highlighted the same obligation and the duty of the State to protect its citizens.

### **Prayers**

Hon’ble Sir(s), these undertrials have death staring them in their faces. The State of Maharashtra that stands tall on the teaching and principles of Indian rationalists and social reformers like Bal Gangadhar Tilak, Jyotirao Phule, Keshav Karve, Prabhodhan Thackeray and Bhimrao Ambedkar are now treating its citizens with complete apathy and callousness. Three years have rolled by, and these prominent activists, intellectuals, social workers, lawyers, cultural artists are in prison on fabricated, false charges.

CJP humbly urges and requests the Hon’ble Chief Minister and the Home Minister to recommend the release of all these accused persons to the High-Power Committee, as their lives are at risk. They are all law-abiding citizens of this country that have anxious and concerned family members, desperately waiting for their release.

Yours sincerely,

Citizens for Justice and Peace