

## People's Union for Democratic Rights

### Political Trial Results in Pernicious Verdict: UAPA and the Gadchiroli Sessions Court judgment

The trial and conviction of six persons by the Court of Sessions Judge, Gadchiroli, sentencing GN Saibaba, Maheshi Tirki, Pandu Narote, Prashant Rahi and Hem Mishra, to life imprisonment and Vijay Tirki to ten years, is an unconcealed example of a political trial of an ideology and an organization under the draconian UAPA. The six accused have been convicted for being members of the banned organization, the CPI (Maoist), hence held guilty for conspiracy against the state without any evidence of them having committed any physical crime to further that 'conspiracy'. They have been charged under S 13 [Punishment for unlawful activities], S18 [Punishment for conspiracy], S20 [Punishment for membership of a Terrorist Organization or Gang], S38 [Offences relating to membership of a terrorist organization], S39 [Offences relating to support given to a terrorist organization] of Unlawful Activities Prevention Act and S 120 B of IPC [Punishment of criminal conspiracy]. While those in power use the law to penalize a 'conspiracy' against them, the Gadchiroli judgment reveals how UAPA is a weapon that in fact allows the Government to enter into a conspiracy against those who dissent or have political differences with it. The banning of such organizations, proscribing their literature, punishing membership ensures that information about the war that the state is waging on its own people, and politically dissenting views of such organizations are suppressed under the guise of punishing "terrorist acts" and terrorist organizations.

**Construction of 'Terror Offences' on flimsy grounds:** The judgment advances a claim for the "violent activities" of the six accused, something for which there is no shred of evidence. The six who are convicted were not found in possession of chemicals, weapons, explosives, large sums of money or anything which could connect them to a conspiracy to "create violence". The entire case against them hinges on membership of a banned terrorist organization, with the "support" and related terrorist offences being nothing more than possession of "naxal literature". The Gadchiroli judgment is an excellent example of how UAPA provisions when read together are prejudicial to the accused. Once a person is accused of being a member of a terrorist organization banned under UAPA, he/she is automatically placed at a disadvantage as such membership is tantamount in eyes of the investigating and prosecuting agencies to heinous offences. The literature "seized" by the Police has thus been deemed to be "information which is promotional literature of a terrorist organization...for circulation amongst the members of banned CPI (Maoist) and frontal organization RDF and other persons to create violence, to cause public disorder and spread disaffection against Central and state Government". [Para 22]. Once a person is charged under an anti-terror law, the course of justice falls prey to political considerations.

**Membership of a banned organization:** Proscription of an organization as unlawful, terrorist organization or terrorist gang sets in motion a legal process under UAPA where persons for mere membership can be held to have committed an offence. And since they are deemed as criminals any correspondence, meeting, literature found on them is considered proof of membership. It is 'guilt by association' through circumlocutory reasoning. Activities such as providing legal aid, medical assistance, soliciting information, and possession of "Naxal Literature", all become "terrorist" acts in themselves because an organization is banned.

Recognizing the leeway that anti-terror laws such as UAPA allow to the state executive, the Supreme Court in *Arup Bhuyan v State of Assam* (2011, 3 SCC 377) and *Sri Indra Das v State of Assam* (2011, 3 SCC 380) held that mere membership of a banned organization does not incriminate a person nor can he/she be held guilty of committing an offence under Section 124A of the IPC or under the Unlawful Activities Prevention Act. The utter disregard for the Supreme Court precedence in the Gadchiroli sessions court's verdict proves how proscription and membership are used by the state to 'construct' its political adversaries and eliminate them without having the need to substantially prove criminal activity.

**Expanding frontier of Conspiracy:** The ambit of conspiracy under UAPA has thus been expanded to bring under its purview all those who are remotely or otherwise connected with or anyone deemed to belong to an organization. To establish criminal conspiracy under Sec 120B of the IPC all that is required is to show some link, however tenuous, between the accused and the proscribed organization. In this regard, being found in possession of "naxal literature", correspondence, pamphlets, documents etc has become the new standard for proof of crime. It is ironic that when

freedom of circulation of thoughts is implicit within the fundamental right to freedom of expression, ideas critical of Government are only damned in the name of 'naxal literature'. As far back as 1950 in *Romesh Thapar vs the State of Madras* the apex court had ruled that the proper realization of the freedom of expression requires that literature be circulated. The very sharing of literature belonging to a banned organization, however, becomes evidence of crime!

**Malleable Procedures:** As offences under UAPA get magnified one would expect that rules of evidence would be strict to ensure that aggravated crime is accompanied by stricter rules of evidence. But on the contrary the invoking of UAPA makes for malleable procedures as the so called aggravated nature of the crime and guilt is taken for granted.

- The so called seizures of literature and digital evidence in the case are themselves in doubt. The search of GN Saibaba's house was conducted without independent witnesses and nothing was sealed before him. And although prosecution claimed that the search was video-graphed the videographer and video of the same was not produced at the trial. As a result 41 out of 52 items listed as seized from the residence of GN Saibaba raise doubts.
- Panchnamas of the 16GB memory card supposedly found on Hem Mishra were full of holes as the prosecution witness could not identify and distinguish between a card, pendrive, or a Bluetooth device.
- When defense demanded that subscriber detail records and call detail records of mobiles seized of three accused be provided because that would prove that they were arrested on 20<sup>th</sup> August 2013 from Ballarshah Junction Railway Station and not Ahiri Bus stand on 22<sup>nd</sup> August 2013, the same was refused. This was of critical significance because by showing arrest in Ahiri two days later the Police got away with two days of illegal custody, extraction of confessions and to bring the trial under the jurisdiction of the Naxal affected Gadchiroli district.

**Conviction and Punishment:** Without commission of a heinous crime, without any evidence of preparing for one, on the basis of possession of banned literature the conviction has resulted in putting away five persons for life and one to ten years of rigorous imprisonment. The Judge in fact lamented that "imprisonment for life is not a sufficient punishment...but the hands of the Court are closed.." [para 1014] which reveals the subjective bias of the Judge. The correspondence between a crime and punishment has been summarily done away with by the Judge.

Perusal of the 827 page long judgment brings out that whereas the case against Mahesh, Vijay and Pandu suffers from want of evidence, the case against GN Saibaba, Prashant Rahi and Hem Mishra is based entirely on claim of membership of a banned organization through electronic material, whose origin is shrouded in doubt. The variation in evidence or its absence, the varying extent of involvement and role of the five accused did not come in the way of punishing them with the same sentence of imprisonment for their entire natural life. The Gadchiroli judgment may be the most recent UAPA judgment but UAPA witnesses a long history of politically motivated trials where successive governments have persecuted individuals/organizations/associations, marking them out as political pariahs.

We believe that the six convicted Political Prisoners are being punished for their political beliefs and not for violent crimes. They have been deprived of their right to espouse their political perspective and castigated for exercising their constitutional right to dissent. In the light of the above PUDR urges the higher judiciary to overturn this pernicious judgment and address how a law like UAPA, which violates every principle of liberal jurisprudence can be allowed to remain a part of the statuette when its very existence amounts to dishonouring and discrediting the Indian Constitution. PUDR demands:

1. Acquit GN Saibaba, Mahesh Tirki, Pandu Narote, Prashant Rahi, Hem Mishra and Vijay Tirki.
2. Repeal UAPA

23rd April 2017