

**MEMORANDUM OF CRIMINAL ORIGINAL PETITION UNDER SECTION 438
OF CR.P.C**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

MADURAI BENCH
Crl. O.P. (MD) No WP of 2010
in
Crime.No.161 of 2010
(On the file of the Respondent Police)

Henri Tiphagne, M/53 (No Accd. ranking)
S/o. Ms. Yvette Tiphagne,
6, Vallabai Road,
Chokkikulam,
Madurai-2

... Petitioner

Vs.

State Rep. by Inspector of Police,
Veeravanallur Police Station
in Cr. No. 161/2010

...Respondent

Affidavit of Henri Tiphagne

1. Henri Tiphagne, son of Ms. Yvette Tiphagne, currently working as Executive Director, People's Watch and the State Advisor to the Citizens for Human Rights Movement (CHRM), having its office at No.6, Vallabai Street, Chockikulam, Madurai do hereby solemnly swear and affirm as under:

1.1 am the Petitioner herein and as such I am well aware of the facts of the case.

2. It is submitted that five accused have been implicated in a case for alleged offences under Section 170, 353, 416 and 506(i) of the Indian Penal Code in Crime No 161/2010 of Veeravanallur PS dated 15.08.2010 on the file of the respondent police.

3. It is submitted that I am the Executive Director of People's Watch, a Non Governmental Organisation and Member, National Core Group of NGOs of NHRC of India. I am an Executive committee member of Forum Asia, Executive council member of World Organisation against Torture (OMCT) and a member of Working Group on Human Rights India and United Nations (WGHR) Also I am a Board Member of the Dalit Foundation. Dalit Foundation is the first grant making organization in India committed exclusively to the eradication of caste discrimination and the empowerment of Dalits and other marginalized communities. It has its genesis in the search for institutional support by activists and individuals involved in the Dalit communities' struggle for equality. It was felt that setting up a foundation to focus on segments living in extreme poverty and facing acute caste-based discrimination, would accelerate the process of change in

the lives of Dalit communities.

4. The mission of the Dalit Foundation is to eradicate caste-based discrimination and atrocities, and to ensure equality and equal rights for all. The Dalit Foundation specially focuses on the doubly marginalized Dalit women, and the manual scavengers who occupy the lowest rung of the caste hierarchy. The objectives of the Dalit Foundation are to: (1) Create public understanding on the situation of Dalits and their right to equality; (2) Promote exemplary Dalit leadership to address the issue of social justice; (3) Promote Dalit art and culture **for** development and empowerment of Dalits; (4) Promote Dalit women leadership; (5) Eradicate untouchability, social discrimination and caste-based atrocities, with a special focus on Dalit women; (6) Provide support for livelihood - minimum wages, education, health, housing and insurance for laborers in the unorganized sector; (7) Protect rights over land, water bodies, villages, forests and other means of production; and (8) Create public understanding and a favorable public opinion.

5. The Dalit Foundation, along with its partners, focuses on the eradication of all manifestations of caste discrimination and other related Dalit issues. Their current outreach encompasses the issues of caste violence, eradication of manual scavenging, enhancement of Dalit women leadership, rights over natural resources, health and education. The aim is to support and encourage Dalit leaders working to create a public understanding of equality, rights and dignity.

6. Through the Grants and Fellowship Programme, Dalit Foundation provides small grants to individuals and organizations working on the issues of advocacy, education, self-governance and the enhancement of Dalit women leadership. In 2009-2010, Dalit Foundation supported 172 individuals and 33 organizations of which 76 were women or women headed organizations, across 17 states in **India**.

7. The Foundation serves as not only as a funder but also partners with the grantees and fellows, throughout the period of association in enhancing their capacity. For the aforesaid purpose, our partners attend frequent workshops that focus on perspective building, internalization of Dalit ideology and other training programmes stressing on strategy, leadership, advocacy work, impact assessment, self governance and linkages with other donors. These workshops also serve as common platforms for the partners to come together, share their views and form an informal network, thereby fostering solidarity in the Dalit Movement.

8. In order to meet our objective of promoting exemplary Dalit leadership, Dalit Foundation also provides fellowships young Dalits activists through the Young Professionals Programme to cultivate a cadre of young Dalit leaders. They are provided exposure to the grassroots and their potential as leaders is enhanced thorough intensive trainings over a period of 2 years. Another programme designed to strengthen the Dalit Movement among professionals and students is the Professionals Programme whereby fellowships for 1 year are provided to Dalit professionals from the Fields of law, medicine and journalism.

9. Dalit Foundation also aims to build a positive Dalit identity on the foundations of a positive Dalit culture. Thus, in order to promote Dalit arts, the Foundation also provides fellowship support to Dalit artists.

10. Recently, in order to nurture young leaders to ensure the sustainability of the Dalit Movement, Dalit Foundation launched a new programme called Identifying and Nurturing Young Dalit Leaders whereby Uie Foundation will identify Dalit children up to die age of 16 who have displayed leadership potential and will support them through scholarships and capacity building programs. Their most recent endeavor towards our objectives is the Senior Dalit Activist Program, with objective of developing Dalit leaders who work at the grassroots level and directly impact the community in their area. The Senior Dalit activists will supported through fellowships for 3 years. The Dalit Foundation is a registered Charity and has as its Present Trustees the following persons : Mr. Gagan Sethi (Gujarat) - Chairperson, Mr. Martin Macwan (Gujarat) Dr. Syeda Hameed , (Member, Planning Commission of India , New Delhi) Dr. Ruth Manorama (President, National Alliance of Womens Organizations - NAWO) Mr. Henri Tiphagne, (Executive Director of People's Watch and Member, National Core Group of NGOs of NHRC of India) Ms. Marie Thekekkara

(Free Lance Journalist) Ms. Kamala Bhasin (Human Rights activist of South Asian repute)

11. People's Watch, which is an internationally recognized NGO that has been actively engaging itself in the protection and promotion of human rights in Tamil Nadu since 1995; and has now, after 15 years of work, expanded its concerns throughout the country. The vision of Peoples Watch has been to create a society free from human rights violations and discrimination by cultivating a human rights culture through the participation of a pluralistic society. Its mission is to create a visible and measurable human rights culture in India. Mr. Miloon Kothari (Former Special Rapporteur of the UN on Housing) and Mr. K.R. Venugopal IAS (Retd) Former SR of the NHRC India) are also the Trustees of People's Watch.

12. Towards the above end, People's Watch has formed Units and charted out different programs. Human Rights Monitoring is primarily done through scientific fact findings, gathering information regarding cases of human rights violations through primary sources, most important of all, through the victims themselves and reaching out directly to the organization and through secondary sources. Women's rights will be a new area of concentration as well.

13. As human rights monitoring alone cannot render justice or give answer to human rights violations. People's Watch undertakes legal interventions in issues taken up by it in the various fora for legal justice. These legal interventions are in the courts and commissions within the State of Tamil Nadu and at the national level. Interventions are also made at the international level by seeking support and solidarity of various credible human rights organizations and approaching the UN mechanisms available for highlighting issues of human rights violations in India.

14. People's Watch has also established a Helpline to help victims of human rights violations. The Helpline of our organization is available at any time, day and night. The aim of the Helpline is to give immediate

assistance to affected persons, regardless of what they have suffered.

15. People's Watch also promotes Human Rights Campaigns to render support and solidarity to a number of issues and campaigns that were not initiated by them. It is part of a leading campaign in India. Realizing the need to take the initiative in the issue of torture, the organization has also started the Campaign Against Torture in Tamil Nadu. The Campaign Unit conducts a cultural yatra against torture each year centered on the International Day in support of Torture Victims which culminates in a cultural night.

16. People's Watch has also formed Citizens for Human Rights Movement (CHRM). Through the growth of over 1800 locally-based cells covering over 130 taluks, a growing number of individuals are engaged in human rights monitoring, intervention and awareness-building across the state. They become part of Citizens for Human Rights Movement that engages women and men from a broad spectrum of society's political parties, movements, castes, religions, trade unions, civil society groups, human rights defenders and others. Grounded in their shared commitment to the values of human rights, these coalitions attract tremendous grass-roots support and form taluk, district and state committees with male and female coordinators to lead. People's Watch provides appropriate leadership training, runs workshops and refresher courses for human rights defenders, and supports this 'Citizens for Human Rights Movement' in any way necessary to sustain its ongoing effectiveness.

17. People's Watch also runs a Rehabilitation Centre for Victims of Domestic Violence and Torture (RCTV). Around the year 2000, People's Watch **became** acutely aware that survivors of terrible atrocities need physical and emotional rehabilitation. The Organization deals with victims from a multidimensional approach whereby the victims are integrated back into the mainstream society with the help of medical, educational and economic assistance provided by the organization. Two rehabilitation centers have been established in Madurai and Mettur, each able to serve victims from several surrounding districts. They provide protective

temporary shelter, a safe place for victims to share their stories and therapeutic psychological counseling for individuals, families and groups. The goal is to enable victims regain self confidence and freedom from the post traumatic stress disorder from which so many of them suffer.

18. People's Watch also has a media unit, a documentation centre, publication unit etc. and through an Institute of Human Rights Education (IHRE) for promotion of and education on human rights to human rights defenders, school and college students etc. The IHRE also conducts training programs at the state national and international levels. One such program that the IHRE of People's Watch had planned and was executing recently was the Training on Dalit Human Rights Monitoring organized by the HIRE of People's Watch for Dalit Foundation in Pillar House, Nagamalai Pudukottai from the 11th to the 20th of August 2010. The participants at this program were 61 persons from different states in India, namely, Uttar Pradesh, Uttaranchal, Maharashtra, Orissa, Andhra Pradesh, Karnataka, Kerala and Tamilnadu. There were also some participants specially drawn from the CHRM unit of People's Watch in Tamilnadu attending this program.

19. This training program contained three parts - the first being an input session of 4 days (11th to 14th August) the second being a field component of 2 days (15th and 16th August) and the final part being the reflection part of 4 days which would concentrate on skills in report writing, human rights advocacy and lobbying. The schedule of the training program and the schedule of the thirteen different teams from the training program that went on a field experience of 'human rights fact finding' are both attached in the typed set of papers.

20. As per the above program, one of the fact finding teams consisting of Mr. Gnana Diraviam (40) S/o Saminathan of Poonganagar, Thiruppuvanam, Sivagangai District, (2) Mr. Anandan (25) S/o Palani of Anbu Nagar, Manamadurai, Sivagangai District (3) Ms. Bharathi Pillai (26) D/o Thanu of 6, Vallabai Road, Chokkikulam, Madurai District, (4) Ms. Niharga Priya (28) D/o Sitharamiah of Tumkur District, Karnataka State and (5) Ms. Sudha (22) D/o Thamalammal of Davengere District, Karnataka State visited Veeravanallur on the basis of information received about the tortured Suresh, a dalit youth from Veeravanallur, Ambasamudram Taluk, Tirunelveli District by the police officials of Veeravanallur Police Station.

21. The above fact finding team then proceeded to Veeravanallur PS at about 06.30 PM to obtain the statement of the police officials. At that time, the Sub Inspector of Police was not available in the PS. This information was received through the writer in the PS. The fact finding team then obtained the telephone number of the Sub Inspector and walking out of the PS. At that time, another woman Sub Inspector, Ms. Ms. P. Roswin Savimo, was coming towards the PS. She immediately recognized Mr. Gnana Diraviam, one of the members of the fact finding team who was known to her earlier during her tenure in the Thirupavanam PS near Madurai but located in Sivagangai District where Mr. Gnana Dirvaviam also works on the human rights field. So he went into the PS accompanied by the other members of the fact finding team into the Sub Inspector's room. The woman Sub Inspector immediately invited all the team members - due to her acquaintance with Mr. Gnana Diraviam to also have a coffee with her and ordered the Constable in the station to go and buy the coffee. It took a long time for the Constable who went to return since the coffee shop is located almost a kilometer away.

22. While they were waiting for the coffee to arrive, Mr. T. Murugesan, the Inspector of Police of Mukudal PS and in-charge of Veeravanallur PS at that time arrived to the PS. On seeing the team sitting with the woman Sub Inspector of Police he called the members of the fact finding team who exactly they were. The fact finding team shared with them in detail and told them about their training program and the fact that they were on a field visit to learn skills in human rights fact finding and that they had visited the PS only to receive die versions of the police in this case of torture of Suresh by the police constables, Murugan and Kaliappan.

23. The Inspector of Police then started gradually addressing the fact finding team in the singular and tiireatened them to produce their I. D. cards. The members of the fact finding team replied to hiin politely and explained to him totally unaware of any hidden design in the Inspector's statement. They told him about Dalit Foundation and its national level training program. They told him about the fact finding work related to die training program and gave him the training manual that had been used for the training program which was in two

volumes and contained around 800 pages in all.

24. Incidentally the training manual also contained in each volume at the back cover the details of Dalit Foundation and People's Watch - with their complete addresses and communication details. As the Inspector of Police was questioning the members of the fact finding team and also reading in detail the training manual, he also went out of his room on a few occasions to make and receive phone calls. But the members of the fact finding team did not smell any trouble ahead for them during this entire hour or so of his interaction with him. They did not even suspect that this was a tactical delay effort on the part of the Inspector of police and genuinely believed that he was only verifying their details.

25. It was only about 9.30 PM that Mr. Rainu, the Deputy Superintendent of Police of Ambasainuthram arrived and then the team members started feeling that the attitude of the police was gradually changing. They were asked to move into another room where there were chairs put for each of them and without their immediate knowledge they found that there were about three constables placed sitting outside that room guarding them from outside. It is at this stage that the women members of the team then got up and told the DSP that they would prefer to leave now since they had waited for a very long time for the information related to the case of torture of Suresh and they were even willing to come the following day if they were willing to give any information to them.

26. It is at this stage that the DSP spoke rudely to them stating that this was a government office and that they could come and go whenever they wanted and that they had to remain there since they had to be enquired thoroughly. It is then that the members of the team then started suspecting that there was something fishy taking place and called Mr. Pandian one of the Program Assistants assisting in the training program. Seeing Diraviam make this call, the Inspector of police then started seizing the mobile phones from the fact finding team members. The Inspector of Police then also started treating them indecently. They kept all the women and men human rights defenders in the police station up to 11.00 pm. while the police were engaged in taking each of them to a separate room to get their identification marks.

27. The police then foisted a false case Under Section 170, 353, 416 and 506(i) of the Indian Penal Code in Crime No 161/2010 of Veeravanallur PS. Having received information from Diraviam at about 9.45 PM that they were

being detained, the Program Assistant of the training Mr. Pandian immediately informed me who was actually traveling back in his car from Nagercoil after a meeting of Persons with Disabilities that he had addressed there that evening and earlier in the day a meeting on human rights at the St. Xavier's College, Palayamkottai. All efforts that were made by Mr. Pandian and Mr. Henri Tiphagne and the staff of the Tamilnadu unit of People's Watch to contact the Veeravanalur Police station or the Inspector of Police Veeravanallur or the Superintendent of Police of Tirunelveli turned totally useless with all of them either refusing to pick up calls, or picking up calls and then shutting them off abruptly.

28. The team members in custody were never told that they were being arrested; they were never informed at any time in the PS what the case that was being foisted on them was; they were never told who had preferred a complaint against them etc. Thus the 'arrest' and their 'remand' were all totally contrary to the provisions the DK. Basu guidelines of the Supreme Court of India which mandates that every person who was arrested was informed at the time of his / her arrest the reason of the arrest etc.

29. Mr. S. Ganesan the Regional Human Rights Coordinator of People's Watch from Tirunelveli traveled to Veeravanallur only to be informed that the accused had by then been transported to Cheranmahadevi, to the house of the Judicial Magistrate for being remanded to judicial custody. As Mr. S. Ganesan was leaving Tirunelveli to Veeravanallur, he had also asked one of the members of the CHRM unit of People's Watch in Veeravanallur, Mr. Chithirai Selvan to go to the Veeravanallur PS and meet the fact finding team members in custody at the PS to find out exactly what had happened to them since there was no phone or mobile communication possible with the PS or the team members or for that matter any superior authority. When this CHRM member from Veeravanallur unit of the CHRM reached the PS, the Inspector of Police immediately also took him inside the PS but did not allow him to meet the 'accused'. Instead the police made him sign some papers in the PS without telling him what exactly they were and then asked him to get out of the PS immediately.

30. The team members were then taken by Inspector of Police, accompanied by Sub Inspector Mr. Murugan and a Woman Sub Inspector of Police in a TATA Sumo vehicle and produced before the Judicial Magistrate in his house at about

11.45 PM. One of the 'accused', Bharathi Pillai then explained in detail for over 20 minutes what exactly had happened to them and also that they were totally unaware of what the case registered against them was. It was only when the Judicial Magistrate read out to them the complaint that had been registered against them and the provisions of the IPC under which they were being remanded that did the 'accused' understand that the complainant in the case was none other than the woman Sub Inspector of police who had initially ordered the coffee that they never found the time after the arrival of the Inspector of Police to the PS.

31. From there they were then taken to the hospital for medical examination and finally the three women activists were sent to the Kokarakulam Women Sub Jail in Tirunelveli while the two men were taken to the Ambasarnuthram Sub Jail. They were remanded finally only at about 2 AM or so.

32. This is clear case of human rights defenders who were undergoing a Human Rights Education Training as Dalit human rights activists who were falsely charged and illegally arrested and remanded to judicial custody for no fault of theirs at all. The NHRC had issued guidelines on arrest. The guidelines clearly read as follows:

Arrest in cognizable cases may be considered justified in one or other of the following circumstances:

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.
- (ii) The suspect is given to violent behaviour and is likely to commit further offences.
- (iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.
- (iv) The suspect is a habitual offender who, unless arrested, is likely

to commit similar or further offences. [3rd Report of National Police Commission]

(v) Except in heinous offences, as mentioned above, an arrest must be

avoided if a police officer issues notice to the person to attend the police

station and not leave the station without permission. (Joginder Kumar's

case (1994) SCC 260)

(vi) The power to arrest must be avoided where the offences are bailable

unless there is a strong apprehension of the suspect absconding.

33. The above guidelines have not been followed in this case since there was no reason for arrest of the team members. This is a clear case of the police arresting the human rights defenders on a totally false complaint from the woman SI of the PS only because they dared enquire the case of torture by the serving Sub Inspector of the same police station, Mr. Murugan.

34. I apprehend that I may be arrested and remanded on the basis of investigation at the hands of the respondent police. It is submitted that I am an innocent of the offence and in no way connected with the same.

6. I am a law abiding citizen and have no bad antecedent whatsoever. I am willing to abide by any condition that may be imposed by this Hon'ble Court and ready to furnish sufficient sureties to the satisfaction of the court.

7. It is stated that I will be available for interrogation as and when required by the police. Further I will not make any inducement, threat, coercion or promise to any person directly or indirectly acquainted with the facts of the case or dissuade them from disclosing such facts.

Therefore it is respectfully prayed that this Hon'ble Court may be pleased to grant Anticipatory Bail to me, the petitioner in the event of my arrest pending investigation in Crime No. 161/2010 on the file of the respondent police and pass such other orders as deem fit and proper on facts and circumstances of the case and thus render justice.

Solemnly affirmed at Madurai and the contents were explained to deponent and he signed his name on this in my presence on the 18^h day of August, 2010

Deponent

Before me,

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Advocate, Madurai

TIRUNELVELI DISTRICT
IN THE COURT OF JUDICATURE AT
MADRAS
MADURAI BENCH

Crl. O.P.(MD) No. of 2009

in

Crime No. 161 of 2010

(On the file of Respondent)

AFFIDAVIT OF HENRI TIPHAGNE

**M/S. C. Ramachandran A.
John Vincent K.S.
Pandiarajan S. Greesh
Kumar**

Counsels for Petitioner

Memorandum of Criminal Original Petition U/S 438 of CrPC IN
THE HIGH COURT OF JUDICATURE AT MADRAS
MADURAI BENCH

CrI.O.P.(MD)No of 2010

in

Crime No. 161 of 2010

(On the file of the Respondent Police)

Henri Tiphagne, M/53 (No Accd. ranking)
S/o. Ms. Yvette Tiphagne,
6, Vallabai Road,
Chokkikulam,
Madurai-2

.. .Petitioner

Vs.

State Rep. by Inspector of Police,
Veeravanallur Police Station
in Cr. No. 161 /2010

.. .Respondent

PETITION FOR ANTICIPATORY BAIL U/S. 438 OF Cr.P.C.

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to grant Anticipatory Bail to the petitioner in the event of his arrest pending investigation in Crime No.161/2010 on the file of the Respondent Police and pass such other orders as deem fit and proper on facts and circumstances of the case and thus render justice.

Dated at Madurai on this the 18^h day of August, 2010.

Counsel for Petitioner.

Note:

1. Bail to the satisfaction of Judicial Magistrate, cheranmahadevi.
2. This is the first application filed before this Hon'ble Court.
3. No other application is pending before any other court.

Tirunelveli District
**IN THE COURT OF JUDICATURE AT
MADRAS MADURAI BENCH**

CrI. O.P.(MD) No: 9606 of 2010
in

Cr. No. 161 of 2010

(On the file of the Respondent Police)

ANTICIPATORY BAIL PETITION

**M/S. C. Ramachandran A.
John Vincent K.S.
Pandiarajan S. Greesh
Kumar**

Counsels for Petitioner