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A Doctored Case

The apex court joins in the myopia that's keeping Dr Sen in jail

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Doctor Or Naxalite?

- The state alleges he's only a "namesake" doctor. The CMC, Vellore, of which he's an alumnus, gave him the Paul Harrison award for his work.
- The police claim he was the courier for top Naxal leaders lodged in Raipur jail but never took action against jail authorities for failing to detect these alleged messages
- A police press release called him an "absconder", though he called up the police on his own and courted arrest
- Since he has been addressed as "Comrade" in letters to him from suspected Naxalites, it's taken as proof of his being a member of the banned CPI (Maoist).
- Government also claims there is "incriminating evidence" on Dr Sen's computer but the Andhra Pradesh forensic lab report says no such thing

It couldn't have been more ironic. The Supreme Court chose, even though by accident, the date designated as World Human Rights Day, December 10, to turn down the bail plea of noted rights campaigner Dr Binayak Sen. In many ways,

Dr Sen's role as an activist and his services to marginalised communities proved to be his undoing. At the end of the day, after hearing pleas from Dr Sen's counsel, noted constitutional expert Rajiv Dhawan, and the government of Chhattisgarh, the apex court did not find any merit in granting him bail. The doctor, who was arrested on May 14, 2007, and charged under the Unlawful Activities Act and the draconian Chhattisgarh Public Safety Act, will continue to languish in custody.

What is the basis of the Chhattisgarh police's case against Dr Sen? The chargesheet against him says he is a Naxalite sympathiser. This conclusion was reached after his name came up when the police recovered three letters from suspected Maoist Piyush Guha, arrested at the Raipur railway station. These were written to Guha by another alleged Maoist, Narayan Sanyal, presently lodged in Raipur Jail. The police claim Guha, under custodial interrogation, confessed that Dr Sen acted as courier.

Dr Sen did meet Sanyal in jail on several occasions. But each time it was with due permission from the jail superintendent and a body search before and after his meetings. And even if we were to accept that Dr Sen smuggled the letters out, what exactly was "incriminating" in them? One letter deals with farmer-related issues, the letter writer's health and so on. In another note, Sanyal is discussing issues relating to his case and the approach his lawyer has taken in court. In yet another, he complains of there being "no magazines" to read in jail and terrible conditions in prison. Activist-lawyers like Prashant Bhushan see the framing of Dr

of human rights of the marginalised or risk arrest".

Why and when did Dr Sen become the target of the Chhattisgarh government and police? Many say his sharp criticism of Salwa Judum, the controversial government-backed 'movement' against Naxals, his raising of issues of ill-treatment of suspects picked up by the police, of the pathetic conditions in jail and his criticism of the state government vis-a-vis human rights irked senior police officials. "The intelligence branch of the state police was already upset with Dr Sen raising these issues and they also found some support from their central counterparts in the Intelligence Bureau," a senior government official told *Outlook*.

In framing its case against Dr Sen, the Chhattisgarh police has relied heavily on the "confessional"

statements made under interrogation by Guha. This, despite it being repeatedly pointed out in various courts that custodial "confessions" are inadmissible as evidence in court. Guha has also stated before a magistrate that he was tortured for several days under illegal detention and made to sign blank papers.

However, there is more that investigators hold up as "incriminating evidence" pointing to Dr Sen's "deep" Naxalite connections. Among them:

- A postcard written by Sanyal to Dr Sen with the approval of the jail superintendent. This, according to the Chhattisgarh police, "prima facie proves the deep association the petitioner has with the Naxalite leader". Conveniently ignored is the fact that the jail superintendent himself has written letters to Dr Sen regarding Sanyal's case!
- Another postcard to Dr Sen from Madan Barkade, an alleged Naxalite leader lodged in Raipur jail. Unbelievable as it may seem, the state government contends on affidavit that since Barkade has referred to the doctor as "Comrade" in the postcard, it is proof enough that the latter is "a member of the banned CPI (Maoist)."
- A press release issued by Dr Sen on the horrible conditions in jails and the plight of prisoners and undertrials. This is held as further proof that he has "espoused the cause of Naxals".
- Dr Sen's visits to Raipur Jail to meet Sanyal. Though much is made of them, each visit was duly applied for and recorded in the jail manual. As the Chhattisgarh government refused to bring these records to court, it was left to Dr Sen's lawyers to source the documents invoking the RTI act. What the government counsel also did not bring on record was a letter dated September 6, 2006, from the DIG Police which clearly states that "this office (of the DIG) has no objection" to Dr Sen visiting Sanyal in jail. A copy of this letter was also sent to Addl DGP in charge of intelligence.
- A computer seized from Dr Sen's house. The state government counsel claimed it had evidence against him. But the report of the Andhra Pradesh Forensic Sciences Laboratory dated June 16, 2007, does not corroborate this.

The unkindest cut comes in the second paragraph of the preliminary objections filed by the state government to the bail plea. It states that Dr Sen "is a namesake doctor." Reason: during the search of his house the police did not find any "medical books, medicines, drugs etc". It is another matter that Dr Sen has a medical degree from the reputed Christian Medical College, Vellore. He is also one of the founders of the Shaheed Hospital near Bilaspur and was a member of the Jawaharlal Nehru University's faculty on community health. In 2004, he received the Paul Harrison award for his work in public health in rural areas.

Despite these gaping holes in their submissions, the Chhattisgarh government has managed to keep Dr Sen in jail indefinitely, raising serious civil liberty issues. "His arrest and efforts to keep him in jail are a major symbol of a contradiction today," says Dr Imrana Qadeer, professor of community health and social medicine at JNU, Delhi. "The health minister (Dr Anbumani Ramadoss) wants students to go to rural areas but who will go to villages to serve the poor and the marginalised after Dr Sen's case?" she asks.

described the denial of bail as a "serious attack on civil libertarians and human rights". For many like Prashant Bhushan, the arrest of Dr Sen and his continuing incarceration is the symbol of a "creeping fascism within the establishment".

People may be shocked by the flimsy grounds Dr Sen has been arrested under, and justifiably feel that his legacy in taking healthcare to the poorest of the poor may be in great peril, but the state government thinks human rights and public health are now the gravest threats to people's safety.