

George Fernandes' Statement  
before Chief Metropolitan Magistrate, Delhi  
on February 10, 1977

Sir,

My comrades and I have been arraigned before you, charged with various offences under sections 121 (A) IPC, 120 B IPC read with sections 4, 5 and 6 of the Explosive Substances Act 1908 and sections 6(3) (b) and 12 of the Indian Explosives Act 1884 as well as substantive offences. Para 13 of the chargesheet states that we the twenty five accused "and other unknown persons had entered into a well planned and deep-rooted criminal conspiracy having wide spread ramifications to overawe by means of criminal force and/or the show of criminal force the Central Government and to commit various offences."

The State has submitted a list of nearly 600 persons it proposes to examine as witnesses to prove its case against us. Some 600 odd documents the State intends to rely upon to establish what it terms as a well planned and deep-rooted conspiracy to overawe the Central Government, have also been made available to us. We shall deal with these witnesses and with these documents at the appropriate time.

The chargesheet against us was filed before you on September 24, 1976. And the State has taken exactly four and a half months to finally complete recording the statement of its super star witness, approver Bharat C. Patel.

According to the State, its entire case against me and my comrades stands on what this approver has stated before you. Not only has the Prosecution made an emphatic declaration to that effect, but it has gone on record to state that "no direct

evidence is likely to be available to prove the existence" of the conspiracy except what this approver has been made to declaim.

Let me quote from a document that is a part of the voluminous record of this case. This document numbered D-195 is over the signature of the Investigating Officer of this Conspiracy Case, Mr Abnash Chander, and is an application filed before your honour on June 25, 1976, three months before the chargesheet was filed.

The Investigating Officer has said in this document inter alia:

2. That during the course of investigation, one of the accused, namely Shri Bharat C. Patel S/o Chhota Lal B. Patel R/O Shirali, Alkapuri, Baroda, had made a confessional statement before Shri Bharat Bhushan, Metropolitan Magistrate on 8.6.76 which is on record of this Hon'ble Court.

3. That during the course of investigation it has been established that the acts committed in pursuance of the Criminal Conspiracy to overawe the Government took place in various States of India, including Delhi.

4. That the confessional statement made by Shri Bharat C. Patel has not only unfolded the details of the conspiracy but also the overt acts committed by him and by other co-accused in this case both in Delhi and elsewhere and as to how the object of the conspiracy was to be achieved.

5. That since it is a case of deep rooted conspiracy to commit offences under Explosives Substances Act 1908 and Section 121A IPC and has wide ramifications involving a number of other accused persons, no direct evidence is likely to be available to prove the existence of the same and offences committed by the co-accused including part played by Shri Bharat C. Patel in pursuance of the conspiracy. Repeat: no direct evidence is likely to be available to prove the existence of the same and offences committed by the co-accused, including the part played by Shri Bharat C. Patel in pursuance of the conspiracy.

6. That during the course of investigation, evidence could be available to prove that in pursuance of the criminal conspiracy, gelatine sticks, its accessories and subversive literature

were procured and were also recovered from the possession of a co-accused in Delhi, besides the recoveries effected outside Delhi.

7. That during the course of investigation it has been further revealed that the master brain behind this conspiracy was George Fernandes and it was he who besides committing the offences himself had also assigned the commission of overt acts in pursuance of the above to the other co-accused in this case.

8. That as submitted earlier no direct evidence could be available to establish that it was George Fernandes who was the master brain behind this conspiracy and it was at his instance that the gelatine sticks etc. had been procured for causing destruction of public property in various parts of the country. Repeat: No direct evidence could be available to establish that it was George Fernandes who was the master brain behind this conspiracy and it was at his instance that the gelatine sticks etc. had been procured for causing destruction of public property in various parts of the country.

9. That in order to unfold the entire case of criminal conspiracy, to prove the involvement of George Fernandes and other co-accused in this case and the commission of offences in pursuance of the conspiracy aforesaid, it may be difficult to connect the missing links of evidence without the aid of an approver.

10. That from the confessional statement voluntarily made by Shri Bharat C. Patel, it has been brought on record that he has not only made an exculpatory statement but has also incriminated and has unfolded the involvement of the other accused and in support thereof has brought on record certain documents which go to show not only his involvement but that of other co-accused.

11. That it will be in the interest of justice and in order to bring home the charges against the co-accused persons in this case that the said Shri Bharat C. Patel who has already made a clean breast of the whole case within his knowledge, may be made an approver who would be in a position to unfold the entire prosecution story privy or subsequent to the commission

of the different offences in this case after taking such necessary steps which this Hon'ble Court may consider just and proper according to law.

So, in the prosecution's own words, this approver who is now standing before you is the one and only man on whom the State depends upon to "unfold the entire prosecution story", such as it is.

You will now permit me, Sir, to refer to another document D-196/5. This document bears your signature. It is an order on the abovementioned application of the Investigating Officer and is also dated June 25, 1976. You have said in your order, and I quote:

In the application moved by the I.O. of this case for granting the pardon to Bharat C. Patel accused it is inter-alia mentioned that there is no direct evidence to prove the existence of the criminal conspiracy and the part assigned to each of the conspirators in pursuance hereof. It has further been submitted that no direct evidence could be available to establish that it was George Fernandes, the principal accused in the case who was instrumental in hatching the conspiracy to over-awe the government by the use of criminal force and that there is no direct evidence to substantiate this fact. Repeat: there is no direct evidence to substantiate this fact.

Further you state:

After going through the confessional statement of Bharat C. Patel I have satisfied myself that he has not only stated the part played by him, offences committed by him in pursuance of the conspiracy but has also stated the parts/overt acts committed by the other co-accused in this case in pursuance of the criminal conspiracy aforesaid.

The main consideration before me while granting the application of the I.O. is that whether it would be expedient in the ends of Justice, that if Bharat C. Patel is granted pardon and is examined as an approver he would unfold the entire prosecution case within his knowledge and also the commission of overt acts by him as well as other co-accused and that his statement would be available to prove the missing links which

the investigating agency has not been able to collect. The general principle of law in this regard is that a great criminal should not be given pardon so as to punish a lesser criminal.

Further after going through the confessional statement of Bharat C. Patel as well as from the petition filed by the I.O., I am inclined to believe that the part played by Bharat C. Patel was lesser than the one played by George Fernandez, Vikram Rao and Kirit Bhatt, other accused in this case."

Another consideration with which I am inclined to accept the prayer of the I.O. is that there is no direct or indirect evidence to prove as what plans were actually discussed in detail in the secret meetings which were held in Delhi and elsewhere and as to what parts were assigned to different accused for implementing the object of the conspiracy by the principal accused in this case.

After perusing the case diaries I have further grounds to believe that there is no such evidence from which irresistible conclusion could be drawn in this regard. Repeat: there is no such evidence from which irresistible conclusion could be drawn in this regard.

Then, Sir, you have stated:

I have given my careful consideration to all the facts and circumstances of the case and after putting certain questions to Bharat C. Patel who is present before me, I consider that it is a fit case for grant of pardon to the said Bharat C. Patel upon condition of his making a true and full disclosure of the whole of the circumstances within his knowledge relating to the commission of the offences and to every other accused person concerned in the commission thereof.

Simply put, Sir, you have already prejudged the veracity of the statements made by this approver on behalf of the State, and having done that you now expect us to cross-examine him. It just does not make any sense. If anything, it is very farcical which, of course, is what this trial is.

Or else, how can one explain the fact that while from Mrs. Gandhi downwards, ministers, ambassadors, officials and other sundry spokesmen of this government have been assuring the

would that my comrades and I would be given a fair trial, I was not allowed one single meeting with my lawyers till January 28, 1977—that is for seven and a half months from the time of my arrest and four months after the charge sheet was filed? It is only on January 29, 1977, when my application for free and unhampered legal interviews came up for disposal before the Delhi High Court that the Counsel for the State got up to say that the Government would now allow me such access to my lawyers.

How the state and its coercive apparatus has operated to create evidence against me and my comrades has been thoroughly exposed in an affidavit filed before your honour by Dr (Miss) Girija Huilgol on December 23, 1976. In the course of her solemnly affirmed and sworn affidavit, Dr Huilgol, who is cited as a prosecution witness against us says:

I was taken into custody on March 30, 1976, in Dhulia, and from that moment onwards I have been, and still am, under constant investigation and interrogations. In the course of the never-ending interrogations, I was told that I would be detained under MISA and my mother and brother too would be picked up, and our family ruined; that I would be made an accused in the so-called Conspiracy case, and I would have to spend the rest of my life in prison. On the other hand, I was also told that if I agreed to give evidence against George Fernandes and his friends and colleagues, my father would be released, the prosecution against my father would be withdrawn and I would be substantially helped.

Even at the moment, I am being subjected to constant threats and terror. I am still being told that the freedom of my father depends on my "co-operating" with the CBI by giving evidence against George Fernandes and his friends and colleagues. I have been told that my own freedom and liberty, as also that of my mother and brother also depends on my saying and doing things that the CBI would want me to say or do.

My younger brother Lawrence Fernandes, was arrested on

May 1, 1976 in Bangalore. He was brutally tortured for 15 days, his bones fractured, his teeth broken. He was starved, denied even drinking water, and was reduced to a physical and nervous wreck. He is still in prison. His only offence is that he refused to disclose my whereabouts to the dictator's police. Another younger brother, Michael, is in detention under MISA for over 13 months now. My wife and three-year-old son are in exile, but fighting.

Mrs Snehalata Reddy, a Socialist, an artist and a lady of rare accomplishments who was arrested in Madras on May 1, 1976, was continuously interrogated about the activities of the underground resistance movement against Mrs Gandhi's dictatorship. She was confined in an ill-ventilated solitary cell in the Bangalore prison till her health completely broke down. When the prison authorities realised that her end was very near, she was released on parole in early January, 1977. Within a few days, she was dead—a victim of the barbarity of Mrs Gandhi's dictatorship.

Why is the State engaging itself in this ruthless pursuit against me and my comrades? It is only because of our uncompromising opposition to the dictatorship of Mrs Gandhi. When the state controlled radio and the censored press were telling the world how the people of India had accepted Mrs Gandhi's dictatorship and her dynastic rule, I was engaged in organising an underground resistance against her fascist dispensation. Those who joined me in this activity were men and women who were fired with the ideals of freedom and liberty, who were not willing to make any compromise with dictatorship; who were willing to stake everything in defence of human rights, who were willing to pay the price of their convictions.

Mrs Gandhi and her Establishment cannot countenance the existence of such uncompromising opposition to her authoritarianism. She not only feels the need to smother such opposition, but by organising this court room extravaganza she hopes to tell everyone of the fate that awaits anyone who may dare stand up to her.

You will have seen, Sir, how the State-controlled news

agency, Samachar, has been putting out garbled versions of what is stated in the Court here by this approver. The state-owned radio has also been pressed into service to give to the country a totally perverted version of the court proceedings.

No matter what submissions we make before you now, as far as you are concerned, you have already held me and my comrades guilty. Your order of June 26, 1976 granting conditional pardon to the approver, Bharat Patel, is quite explicit on this point. In the circumstances, we do not intend to add to the ludicrousness of the trial by cross-examining this approver in this court.

On that fateful June 26, 1975, in a remote fishing village called Gopalpur-on-sea in Orissa, when I heard that another state of Emergency had been declared, my immediate reaction was that Mrs Gandhi had assumed the mantle of Hitler. And I decided then and there to spare nothing, nothing at all, my life included, to fight and overthrow this dictatorship. Many of my friends and comrades took exception to this conclusion. But I must express my gratitude to Mrs Gandhi for setting at rest the misconception in everyone's mind by declaring in the Lok Sabha on 22 July, 1975: "You called me a dictator when I was not. Now, yes, I am." The agency creeded this statement. The censors killed it.

I shall not narrate here what Mrs Gandhi's dictatorship has meant to the country. A bridled judiciary; a muzzled press; sterilised people; hundreds of thousands of innocent citizens imprisoned; the brutal torture, killings, shootings in jails and outside; the campaign of lies and slander against Jayaprakash Narayan and others; concessions to monopolies; the workers denied their rights; the false claims of the so-called gains of Emergency—we have witnessed all this and more in these 19 months of dictatorship.

On July 1, 1975, I had prefaced a call from the underground I gave to the nation with the words: "A fascist dictatorship has been clamped on our land." This call from the underground spelt out the slogans of our resistance movement, I had said:



Our struggle is (1) for democracy, (2) for fundamental rights, (3) for rule of law, (4) against fascist dictatorship, (5) against Russian intervention in India's internal affairs, (6) against corruption, (7) against rising prices, and (8) against unemployment.

You will have noted, Sir, that these are the very issues on which the forthcoming general elections are being fought in the country. These again are the issues on which Mr Jagjivan Ram has resigned from the Cabinet and, with hundreds of thousands of the erstwhile followers of Mrs Gandhi, has set up the Congress for Democracy. It does not matter if I and my comrades are in prison and are produced in this court, bound in handcuffs and in chains. What we fought for in the underground are precisely these issues that have struck a chord in the breasts of millions of our countrymen.

The underground document of July 1, 1975, which was extensively circulated in India and abroad is shown as D-390 in your file in the case against us. The concluding lines of that document are:

Mahatma Gandhi's methods will guide us in our struggle. Mahatma Gandhi will be the unseen leader of our movement to liberate the country from fascist tyranny. It will be Mrs Nehru Gandhi versus Mahatma Gandhi.

That statement still holds good.

In keeping with my resolve, I fought against the dictator who tried to clothe herself with constitutional authority to rule the country. I also declare here and now that I shall continue to fight against her or any other dictatorship that may raise its head in our land.

I believe that it is the duty of every citizen of this country to do so. And that is why I and my comrades went about for nearly a year, hunted and hounded, rousing and organising the people to rise against the dictator and her son whom she tried to appoint as her successor.

I believed and continue to believe that the first step to fight against dictatorship, or any other evil or injustice, is to shed fear. This was what I was primarily involved with, in the days

that I spent in the underground, to shake the people out of the reign of terror, through my own example and that of hundreds of my comrades who have bravely fought at my side with determination and risking their all.

We were then aware, and are aware, that consequences will flow from our actions and our uncompromising opposition to dictatorship. We were, and are now, prepared to face what may await us, cheerfully and with pride. This is what great men have preached through the ages, and that is how Gandhiji made men out of our people and whom the present Government tried its best to emasculate through threats, bribery and corruption, and all such despicable things that have now become a way of life with the ruling clique. It is the duty of all those who love our country and wish to make this land of ours a place for men and women to live in freedom, dignity and happiness to be ever prepared to resist evil, injustice and authoritarianism—in all its forms—wherever it is found, and whenever it is found.

The elections that have been announced is one more opportunity to fight evil, but this is only one way, and a very limited one that comes but once in a few years. Those who believe this to be the only way, will do so at their peril, and at the cost of the freedom and well-being of our people. The fight against evil must be continuous, making the people ever conscious of their rights and aware of the dangers that are always present. Only that way can our country remain free, and prevent its being taken over as the private fief of an individual and her family.

Dictatorship does violence to the spirit of man. It is neither legal, constitutional or even moral. It leaves the people no legal and constitutional means to fight it. And even then, to fight it remains an inalienable right of all men, of all those who believe in the sacredness, dignity and freedom of man.

As Gandhiji said given the choice between cowardice and violence to resist evil, he would not hesitate to choose, and he recommended that the people choose, violence. While my belief in non-violence is a conviction, inherited from one of the great-

est thinkers and humanists, Dr Ram Manohar Lohia, I also believe, as Gandhiji believed, and no doubt Lohia himself believed, that injustice and evil should be fought wherever it raises its head. My fight against the dictatorship was born out of such convictions and it never entitled killing, or what the prosecution says, "criminal force."

In all the evidence that has been cooked up and marshalled against me in this case, the prosecution, in spite of their best efforts, could not even allege that I and the movement that I built up caused a single death, what to speak of violence.

Some twenty-five years ago, Dr Lohia had written: 'When Herr Hitler came to power in Germany, it was easy enough to notice how those brave and valiant and thinking Europeans belonging to the Socialist and Communist parties had lost all their manhood and, although I regret to have to say this word, behaved more or less like rats, scurrying to and fro for shelter from Hitler.'

Sir, I am proud, very proud indeed, that when Mrs Gandhi became the dictator, I and my comrades behaved like MEN.

February 10, 1977

George Fernandes