

Statement by Teesta Setalvad, Secretary Citizens for Justice and Peace before the Special Investigation Team (SIT) appointed by the Hon'ble Supreme Court through its Order dated 26.3.2008

Date of Statement at the SIT Office Gandhinagar: Friday May 9, 2008

GODHRA

Part II

Please Note the Following Facts Vis a Vis Godhra:

I. Provocation by Kar Sevaks, Lack of Precautionary Measures by Centre

At Rudauli station, other similar incidents, such as forcing the Muslims to shout 'Jai Sri Ram'; pulling the beards of some of them including stabbing with *trishuls*. Despite the severity of these incidents, there was no prompt action taken either by the railway authorities or the police nor were those seriously injured rushed to the hospitals.....”

Report in *Jan Morcha, Faizabad* published in Faizabad on February 25, 2002, two days before the Godhra incident on the return journey of the same Sabarmati Express

Annexure 2- Page 12, Volume II, CCT, Crimes Against Humanity—Gujarat 2002, para 1.1: also see annexure 7, Volume 1, CCT

“It appears that some *kar sevaks*, identified by their saffron headbands and *trishuls* had climbed on to the roof of coaches of the Sabarmati Express as it stopped at the Godhra Railway station, stripped themselves and made obscene gestures at Muslim women residing just opposite the station who had come out to perform morning chores. There was also some stone throwing both from within and outside the compartments.”

“The train reached Godhra station at 7.30 a.m. (three hours late) on February 27, 2002. There were certain incidents on the platform. There were some reports to the effect that a Muslim Girl was molested by the *kar sevaks* who attempted to pull her into the train was averted due to the intervention by Muslim vendors at the Godhra Railway Station. (*Sophia her sister and mother were waiting to travel back to Vadodara at the platform. Her statement needs to be recorded by SIT*)...

Annexure 2-Page 13, Volume II, CCT, Crimes Against Humanity—Gujarat 2002, para 1.5

Annexure 2Page 13, Volume II, CCT, Crimes Against Humanity—Gujarat 2002, para 1.6

Note: These incidents indicate both unruly behaviour on part of the *kar sevaks* as well as lackadaisical security and law and order measures by Central Intelligence borne out by Gujarat State ADGP, RB Sreekumar affidavits before the Nanavati Shah Commission

II. Mystery of Fire

“It is also not clear whether the train was stopped because of the fire in the coach or the coach was set on fire after the train stopped. If it was the latter, why was the train stopped at all? It is reasonable to presume that because of the fire in the coach someone must have pulled the chain and the train was stopped by the engine driver.”

A close examination of the Coach, and the manner in which caught fire established (a fact that the FSLR report thereafter confirmed) that the “fire came from inside. We have seen an inner side of the coach. The intensity of the fire was such that even the iron rods, the seats, the fans were all burnt to such an extent that we found them twisted and molten out of shape.....”

Annexure 2Page 14, Volume II, CCT, Crimes Against Humanity—Gujarat 2002, Paras 2.1-2.4.6

Annexure 2Forensic Science Laboratory Report, State of Gujarat, Page 289, Volume I, CCT

III. Was Godhra allowed to happen?

“It is clear from the evidence recorded by us that on February 27, 2002, after the Godhra tragedy through the Rapid Action Force (RAF) was called in, no adequate powers were given to it. Though curfew was declared in Godhra the RAF men were made to sit in the officers mess, helpless, unable to do anything. It appears that though the fire brigade station is only five minutes away from the railway station, it took a while for the fire brigade to reach the torched coach. That day, there were only three SRP men on duty; of the 111 GRP (Government Railway Police) stationed at Godhra, only two or three were on duty. Two GRP Jawans reached the spot within minutes; it is a matter of a serious conjecture why they did not fire shots to disperse the mob.”

Annexure 2 Page 20, Volume II, CCT, Crimes Against Humanity—Gujarat 2002, Para 6.5

IV. Deposition of Smt Jayanti Ravi (IAS) Collector of Godhra on February 27, 2002 before the Commission on May 7, 2002

Annexure 1- Compilation on Godhra for CCT annexed here

V. Statements of Railway Police officials, the Guard, the Conductor and the Lobbyman before the Shah-Nanavati Commission

Rajendra Rao Raghunath Rao Jadhav, Railway driver (residing at Ratlam Madhya Pradesh);

Satyanaram Pachuram, Guard on the Sabarmati Express

Gulab Singh Laxmansinh, parcel clerk, Railways

Akhil Kumar Gulzarilal Sharma, Assistant Station Master, Godhra Railway Station

Vinodbhai Ganpatbhai Chauhan, larry owner, Godhra Railway station

Rajendra Prasad Mistrilal Meena, Assistant Station Master, Godhra Railway Station

Hari Mohan Phulsingh Meena, Assistant Station Master, Godhra Railway Station

Lalan Prasad Kishorilal Chaurasiya, provision store owne, near Vastral Octroi Gate, Godhra

Virpal Chhedilal Pal, traveler on the Sabarmati Expres

Suleiman alias Sublin Mohhedbhai Batuk, resident of Godhra

Annexure 1- Documents Tendered to Concerned Citizens Tribunal being submitted to SIT

VI. Statements of Hari Prasad Joshi railway employee who appeared before the Banerjee Commission needs to be recorded

Annexure 4 Justice UC Banerjee Committee Report

VII. Statements of Kakul Pathak, Murli Mulchandani, Gopal Singh solanki, Prabhatsinh Chauhah and Jagdish Taral (fromVHP and BJP) need to be Recorded and their Roles Investigated.

Taral is a VHP Sabarkantha member who got a *trishul* from the train and also played another role.

VIII. (From SC TRANSFER PETITION NO. 66-72 OF 2004 (Godhra Trials) – Summary (Full documents can be provided if desired)

- (1) Eighteen chargesheets (17 Supplementary after the first one in May-2002.) All these need to be analysed carefully as the changing stances of the state of Gujarat which is the prosecution become clear. The first one alleged that the mob set fire to the train from outside. The state's own FSL report showed this to be near impossible.

Annexure 1- Compilation for Concerned Citizens Tribunal, 2002 on Godhra Documents

The last charge-sheet alleges that someone kicked the vaccum pipes of the moving train to a halt and picked holes in the metal thick partition between compartments, and thereafter entered the compartment to pour fuel inside the compartment.. Versions appear to have changed. The IO KC Bawa and Agjia need to be examined by SIT. Shri Noel Parmar who was in charge was erroneously *included* in the SIT team (despite allegations being made against his handling of the investigations in the Supreme Court has been given three-extensions after retirement. There seems to be an undue interest in keeping Parmar even now.

- (2) The other issue which required examination is the assiduous and undue interest by the state of Gujarat to deny bail to the Godhra accused. 84 accused of contradictory roles under various charge-sheets as POTA accused in custody have been in custody for over six years. Both the Trial Court and High Court have been petitioned several times to prune the accused but they have consistently refused to enter into the issue at this stage. No Bail application has been heard in the Gujarat courts after 2004. The matter is now pending before the Supreme Court

- (3) Role of the State of Gujarat in denying Bail to all the accused in the Godhra Case as compared to granting hasty bail to accused in post-Godhra cases needs to be examined.
- (4) In the police 161 statements: arrested on the spot with weapons, i.e. on the morning of 27-2-02. In the arrest memo and recovery memos: the arrest and recovery of weapons is shown as at the police station at 9-30 p.m. on 27-2-02. Were they standing obligingly in attention with weapons at the police station for over 12 hours before someone could recover them after being arrested on the spot?
- (5) Accused No. 10 Inayat Jujhara is said to have been arrested on the spot with a weapon. His office, a Government undertaking, Irrigation Department has however issued a duty certificate showing that he was on duty that morning upto 12 noon. How was he arrested around 9 a.m. on the spot? It appears that policemen who have given 161 statements to enable his arrest.
- (6) 20 accused out of accused nos.1-28 were arrested as members of the mob, 24 hours after the event without any statement or complaint naming them. 161 CrPC statements mentioning their names were recorded as late as two days after their arrest. These poor Muslims were arrested first and documents to implicate them were recorded afterwards. The trial court has consistently refused to enter into this glaring defect at this stage.
- (7) Five of the accused are shown as identified by a witness Dileep Ujjambhai Dasariya. Dileep Ujjambhai Dasariya has stated on affidavit that he was not even on the spot, but on duty 25 kilometers away. The school where he teaches has certified this fact. The Prosecution has however refused to bring this fact on record. It is alleged that the said witness has named the accused nos. 53,63,64,65.
- (8) Repeated applications by accused and their relatives for repairing of investigation have been rejected by the Trial Court.

- (9) Default Bail applications are pending without decision since May 2003 in the Ahmedabad High Court. In fact bail applications were stayed by the Hon Gujarat HC because trial had been stayed and only after this was specifically brought to the notice of the Hon SC have procedures for seeking bail begun again.
- (10) Accused No. 54 Ishaq Mohammed Mamdu is completely blind. His bail application has been consistently rejected though the only allegation against him is that he was part of the mob.
- (11) All Police Witnesses are Serving officers at the Godhra Railway Police station under the same Investigating Officer. Out of 74 cases accused in all POTA cases, 36 accused persons have been acquitted in Godhra Town CR No 66/2002 –Incident near Neelam Lodge on the very same day. Police witnesses are common witnesses for same accused in both cases.
- (12) Siraj Jamtha one of the accused who is said to have been released and cited there as such had lung cancer because of which after a medical check up he was given one month's paraole and then given bail *purely on medical grounds*. He has thereafter passed away.
- (13) Another accused, Salim Gaffar Shaikh who applied on a principle of parity was allegedly refused bail by Hon High Court in Gujarat that rejected his bail plea.
- (14) Four accused have filed an application challenging the application of POTA in the month of July 2003 but until today no orders have been passed by the POTA Court. An application has also been moved before the division bench of Gujarat HC in which three accused –Inayad Abdul Sattar Jhujharia accused no 10 in chargesheet 1, POTA case 1, Ahmed Abdul Rahim Hatim, accused no 35 in POTA caseohammad Mushtaq Khan Ashraf Khan, accused 30 in POTA case 1—three accused have filed a petition on 17/6/2003 challenging the applicability of POTA. To Date this has not been heard or disposed of. Application Pending. Hence the Deputy Secretary contentions are incorrect.

- (15) On the 27-2-2002, in Godhra 3 incidents occurred. Two offences were registered with the Godhra Railway police station by Cr. No 9/2002 and 10/2002. In Cr. 10/2002, there are 11 accused persons in all. In Godhra town police station, Cr. No. 66/2002, most of the same persons are named as accused. For e.g., the list of absconding accused are common. Therefore it can be said that short cuts methods have been followed in the entire investigation.
- (16) The witnesses of Cr. No. 66/2002 are common with those in Cr. No. 9/2002. (this is a gross discrepancy). In this case, evidence given in the statement of witnesses was of the kind on the basis of which the accused have been acquitted. These self same witness statements have been used as the evidence relied upon for the rejection of bail of certain accused under POTA. For e.g. the accused no 36, (Asif Alias Babu Siddiq Kader), the witnesses are PSI R.G. Parmar, Jaswant Singh Kalubhai; Accused No. 42 (Mohammed Hussain Abdul Rahim Kalota), the witnesses are R.G.Parmar, Chatur Walji, Jaswant Kalubhai and Sanabhai Ji bhai, Mangal Bhai Ramji Bhai, Jaswant Gulab, Babubhai, Baljibhai, Mansinghbhai, Kuojobhai are witnesses; for accused no. 48, (Bilal Haji) the witnesses are R.G.Parmar, Chatur Walji, Jaswant Kalra and Sanabhai Ji bhai, Mangal Bhai Ramji Bhai, Jaswant Gulab, Babubhai, Baljibhai, Mansinghbhai, Kuojobhai are witnesses; For accused no. 49, 50 and 54 (includes the accused who is 100% blind) the witnesses are R.G.Parmar, Chatur Walji, Jaswant Kalubhai and Sanabhai Ji bhai, Mangal Bhai Ramji Bhai, Jaswant Gulab, Babubhai, Baljibhai, Mansinghbhai, Kuojobhai are witnesses.
- (17) After filing of the first chargesheet by the police, the governments FSLR report came out in May 2002 when the Investigation was under **Agjia who needs to be examined by SIT as does DR MS Dahiya Assistant Director SIT**. [This report pointed fingers at the prosecution's own case] After this happened the entire team of police investigation officers were changed and Asthana and Noel Parmar were put in charge

of the investigation. Ajay Kanubhai Baria, one of the chief witnesses whose statement have been used to arrest the accused, has been kept under the strict control of the Vadodara police station.

(18) The statements before the police as well as the 164 statements clearly indicate that the witnesses are active participants in the committance of the crime. The allegation is more serious against these persons (witnesses) than those accused who have been apprehended and given no bail for the last two years. Now the very magistrate who has recorded statements of these two witnesses (Baria and Kalandar) under section 164, the very same magistrate after realizing the seriousness of this lapse and the role of the IO, he refused to record the statement of Jabil Binjamin Behra on 29-1-2003.

(19) With regards to the statement under section 164, related to another witness, taken by CJM Godhra, two persons whose statements are recorded (Prabhat Singh Gulab Singh Patel and Ranjit Singh Dhudabhai Patel- servants of the owner of Kalabhai petrol pump), their statements have been recorded on 10-4-2002. In that statement there is not a single word about Razzak Kurku and other members of the core group who allegedly bought *Kerbas* of petrol for the crime. They are silent on this. Not only that, the police authorities along with the help of supplier authorities sealed two petrol pumps including Kalabhai's petrol pump and took samples of the petrol and diesel being sold there and also requisitioned the register of sale and purchase and the bill book immediately after the Godhra incident. Therefore it is reasonable to assume that during the progress of these steps taken on 27-2-2002 itself, they must have made detailed inquiries on the critical question of supply of petrol or diesel to any parties, including these two accused, who allegedly took away the *kerbas* of petrol in bulk, by a bike and the tempo. Besides the law is very clear that loose petrol cannot be supplied in *kerbas* or containers. The Petroleum Regulation Rules are very clear on this. The point to be noted here is that the very petrol pump that was

sealed for a pretty long time was brought in the source of core group plan a whole year later. After the whole year when there was silence and no evidence supporting the prosecution case, and after the statement of Behra was recorded (which was also done not in accordance with law), Prabhat Singh and Ranjit Singh were again kidnapped and a confessional was attempted to be recorded. It must be noted that Ahmed Kalota the uncle of accused no. 42, Mohammed Hussain Kalota gave a written application to the CJM, additional sessions judge, expression apprehensions regarding the “kidnapping” of Prabhat Singh and Ranjit Singh and their illegal confession being recorded. The press and electronic media at the time had reported extensively on this matter.

Note : Both Prabhat Singh Gulab Singh Patel and Ranjit Singh Dhudabhai Patel need to be examined alone and not under the influence of the local police or their employers,

(20) Thereafter, the statement of Prabhat Singh and Ranjit Singh was first recorded by the police authorities on 23-2-2003 and they were produce in the railway police van before the CJM. A very important but painful fact has to be note about the functioning of the judiciary in Gujarat. The CJM who had refused to recorded statements under section 164 earlier, upon a mandatory direction (order) of Additional Sessions Judge K C Kelra, passed an order stating that “as and when these witnesses come forward to record statements under section 164 in connection with Godhra Cr. No. 9/2002, these statements should be recorded”.

(21) These confessional statements and statements dated 10-4-2002 were not supplied to accused persons. The accused had to urge for a copy and thereafter the POTA court ordered the IO to supply copies. There is also a point to be noted regarding the holding of identification parades. In most cases all parades were held in the chamber of the Mamlatdar, Godhra whose office is located in the premises of Godhra town police station. The manner in which persons living 5 km away were

brought in by the prosecution to identify the accused, when normally for the purposes of identification persons present on the spot of the crime are the genuine and natural choices for this, suggest that even this aspect of investigation was being conducted under the influence of the prosecution.

(22) **One of the persons, Sikander shown as an absconding person has not been arrested though in the narration of many of the police witness and confessional statements his behaviour directly points whom to be an accused.** Instead leaders of the minority community who have played a leadership role in giving relief to the victims of the post Godhra carnage have been targeted and arrested without evidence. Maulana Umerji, Harun Abid and Harun Rashid are some examples.

(23) The state of the Godhra accused raises serious questionmarks as they have been denied their basic freedom and a fair hearing. While in the trials related to other incidents, powerful and influential accused have been let off, basic efforts to get bail have proved futile for the Godhra accused. There are a total of 135 accused persons and bail has been granted to 16. [This includes bail granted to 3 persons who were juvenile at the time of the incident.] Eighty four persons are still in judicial custody including two persons who were juveniles at the time of the incident. The last bail order was granted by the Gujarat high court on 30/10/2004 and there have been no hearings of bail applications since then. The prosecution has filed a report under section 169 of the CrPC against 12 accused persons and there are 22 absconding accused. One of them, a Maulvi was implicated by the accused/witness Sikandar by stating that he was allegedly seen on the terrace of the Masjid at Godhra, whereas it was found that he was not there in Godhra at all but in Maharashtra on the said day.

(24) There were serious discrepancies in the arrest laid out in the table below, that this has been pointed out to the state and yet they simply refuses to address these concerns.

TABLE

Table to show that 20 of the accused 1-28 were arrested as members of the mob, 24 hours after the event without any statement or complaint naming them.

1 Accused No 1 in Pota Case 1/2003

Name –Mohammad Ansar Kutubuddin Ansari

Arrest 27/02002

Time 2130 hours

Statement of Five Policemen

Witnesses Statement Recorded—01/03/02

2.Accused No 2 in Pota Case 1/2003

Name--Baitulla Kadar Telee

Arrest 27/02/02

Time 2130 hours

Witness Statement-01/03/02

3.Accused No 3 in Pota Case 1/2003

Name-Feroz Khan Gulzar Khan Pathan

Arrest-27/02/02

Time 2130 hours

Five Police Statements

Witness Statement 01/03/02

4.Accused No 6 of Pota case no 1/2003

Name-Ishaq Yusuf Luhar

Arrest 27/02/02

Five Police Statements

Witness Statements 01/03/02

5.Accused No 9 of Pota case no 1/2003

Name Sabir Anver Ansari

Arrest- 27/02/02

Time 2130 hours

Two Police Statements

Witness statement- 01/03/02

6. Accused No 10 of Pota case no 1/2003

Name Inayat Abdul Sattar Jujara

Arrest -27/02/02

Time 2130 hours

Two Police statements

Witness statement- 01/03/02

7. Accused No 11 of Pota case no 1/2003

Name Nasirkhan Sultankhan Pathan

Arrest-27/02/02

Time 2130 hours

Two Police Statements

Witness Statement – 01/03/02

8. Accused 12 of Pota case no 1/2003

Name-Sadiqkhan Sultankhan Pathan

Arrest 27/02/02

Time 2130 hours

Two police statements

Will all these be in the table?

(25) Five of the accused are shown as identified by a witness Dileep Ujjambhai Dasariya. Dileep Ujjambhai Dasariya has stated on affidavit that he was not even on the spot, but on duty 25 kilometers away. The school where he teaches has certified this fact. The Prosecution has however refused to bring this fact on record. It is alleged that the said witness has named the accused nos. 53,63,64,65. In the transfer petition is annexed, the affidavit of Aminabibi wife of accused Saeed Abdulsalam Badam residing in Chikhodra village in Godhra taluka stating how her husband, a poor labourer has also been falsely

implicated by the accused based on the solitary statement of Dilip Dasardiya who by his own admission was not present at the scene of the crime on February 27, 2002.

(26) Accused number 54, Ishaq Mohammed Mamdu is completely blind. The civil surgeon Godhra had certified to his hundred percent blindness in 1997 following which he has received assistance as a handicap person from both the state and central government. His father has made applications for reinvestigation to his arrest but this has not been undertaken or made public. On the contrary, in a pathetic attempt to justify the arrest, the state of Gujarat has obtained a doctor's statement, dated June 2002 that states, vis-à-vis the 1997 certificate that though he is blind he can see upto 1 metre. There is no record of physical examination of the accused prior to obtaining the doctor's certificate. The contention of the State is that he was part of the mob. Despite this fact, his bail application has been consistently rejected though the only allegation against him is that he was part of the mob.

(27) Another accused person Fakruddin Musalman, aged 42 expired in the judicial custody on 30/04/2003. Accused person, Siraj Abdulla Jamsa aged-50 also expired after being granted bail. He was suffering from cancer. Gulzar Agnu Ansari, aged about 23 years, is suffering from tubercolis. Maulvi Husain Umerji, aged about 60 years, is suffering from a malfunctioning of kidney, high blood pressure and arthritis. Siddiq Abdulla Badam, aged about 38 years, from suffering from Bone T.B. Anvar Mohammed Menda, aged about 33 years, is suffering from serious mental depression. Idris Ibrahim Charkha, aged about 32 years, is also suffering from serious mental depression. Anver Husain Ahmed Pittel, aged about 30 years, is suffering from piles.

(28) This conduct of the investigating agencies and the prosecution by the state of Gujarat in the Godhra trial is questionable and needs to be interrogated by SIT.

(29) In the SC. Besides relatives of the accused, six Hindu victims, family members of nine alleged accused in the Godhra tragedy, who have been illegal detained for over 5 years. They need to be questioned by SIT

(30) Questionable Application of POTA. The invocation of POTA itself has been under scrutiny **(see Report of the Central POTA Review Committee-Annexure 5)**. On February 27, 2002, i.e., when the alleged offence occurred the POTO was not applicable. It was on February 28, 2002 after the Godhra incident, that the state of Gujarat issued a notification declaring the whole area to be a notified area under POTA. The government of Gujarat did not publish the circular regarding application of POTO on February 28, 2002. Even then, an attempt is made to wrongly apply POTA in this case by notifying declaration of the Ordinance under Section 4 of the Act on February 28, 2002. This means, that POTA came to be invoked *in the Godhra case* consequent to the confessional statement dated February 5, 2003 of Jabir Binyamin Behra, but the said Jabir has since, on September 25, 2003, retraced said confessional statement. POTA was applied to other alleged offences against all the accused. This addition was made after a report of the DySP, dated February 18, 2003. The petitioner further submits that on perusal of the events as mentioned above, it becomes clear that on 27th Feb, 2002 the ordinance in question i.e., POTO was not in existence in the state of Gujarat. In absence of any specific provision in law *no retrospective effect* can be given.

Interestingly, five days before POTA was applied in the Godhra train case, i.e. on February 14, 2003 bail was given for the first time by the Gujarat High Court to the accused, all accused of alleged offences. It is therefore clear that POTA was applied to ensure that further bail orders are not passed.

Further, neither the state of Gujarat (the prosecution), nor the police officers, nor the POTA Court, Ahmedabad have accepted the decision of the Review Committee delivered on May 16, 2005 that has ruled that none of the alleged offences warrant the invocation of POTA. Matters related to bail for the accused and vis a vis the decision of the POTA Review Committee have been brought before the apex court. However these too, have continually faced delay. Over 45 accused (more than 50 per cent) have in writing made applications showing apprehensions of a fair trial inside the state of Gujarat. It is clear from

a perusal of these applications that they apprehend little chance of a fair and free trial in Gujarat. However, the stoic and persistent refusal of the investigating agencies to follow up and investigate the facts raised by these applications, and the failure of the special court to ensure this, suggests also that the trial into the Godhra tragedy is not being conducted in a matter that may inspire confidence of the citizen.

Accused who were jailed at the Vadodara central jail were transferred to the Sabarmati Central Jail and this transfer has also been challenged. This transfer has meant that accused families, already reduced to penury cannot even perform their basic fundamental right and visit their family members in jail. Through this the Godhra accused are forced to endure physical and mental torture and because of this one accused has died in the jail.

(31) The recovery of weapons is shown in the Panchnama as being through a personal search of the accused. Strangely this recovery has been as a matter of record, been carried out at police Station 12 hours after arrest and during custody in police station, implying that the accused persons were standing with the arms on their person at the police station for a good 12 hours after the arrest. Alternatively, the Panchnama suggests that the recovery was made at the police station 12 hours before their arrest as per production warrant on 28-2-02. There are such and more gross discrepancies in the evidence on record. From the first charge sheet, from the statements of the eye witnesses and witnesses who were injured, it is clear that the prosecution has not been able to get the evidence to prove that the accused no.1 to 15 have injured any passenger with the weapons. It appears that the witnesses against the accused no.1 to 15 have been concocted by the Investigating Officer, because they are the employees of their Police Station and the nearby R.P.F. Except them, there are no other witnesses. No bloodstains have been found on the weapons recovered and it appears that the accused have been arrested from different curfew areas after which the IO has adopted this theory. In the police statements recorded under section 161 of the CrPC, it says the accused were arrested at the spot with weapons, i.e. on the morning of February 27, 2002. In

the arrest memo and recovery memos, however, the arrest and recovery of weapons is shown as at the police station at 9-30 p.m. on 27-2-02. At least 20 of the accused from the first lot of 28 accused were arrested as members of the mob, 24 hours after the event without any statement or complaint naming them. 161 CrPC statements mentioning their names were recorded as late as two days after their arrest. These poor Muslims were arrested first and documents to implicate them were recorded afterwards. The trial court has consistently refused to enter into this glaring defect at this stage while bail is also consistently denied.

All police witnesses are serving in Godhra Railway Police station under the same Investigating Officer who is investigating the case further implicating the investigating agency on charges of bias. Out of 74 cases accused in all POTA cases, 36 accused persons have been acquitted in Godhra Town CR No 66/2002 –incident near Neelam Lodge on the very same day. Police witnesses are common witnesses for same accused in both cases.

(32) After filing of the first chargesheet by the police, the governments FSLR report came out in May 2002. [This report pointed fingers at the prosecution's own case] After this happened the entire team of police investigation officers were changed. Ajay Kanubhai Baria, one of the chief witnesses whose statement has been used to arrest the accused, has been kept under the strict control of the Vadodara police station.

The statements before the police as well as the 164 statements of these witnesses that allegedly led to the accused clearly indicate that the witnesses are active participants in the committal of the crime. The allegation is more serious against these persons (witnesses) than those accused who have been apprehended and given no bail for the last two years. The same magistrate who has recorded statements of these two witnesses (Baria and Kalandar) under section 164, the very same magistrate after realizing the seriousness of this lapse and the role of the IO, has refused to record the statement of Jabil Binjamin Behra on January 29, 2003.

ENDS