

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION
CRL.M.P. NO. 19816 OF 2009
IN
WRIT PETITION (CRL) NO.37-52/2002

IN THE MATTER OF:

DEVENDRA BHAI PATHAK AND ORS.

PETITIONERS

VERSUS

STATE OF GUJARAT AND ORS.

RESPONDENTS

BRIEF WRITTEN SUBMISSIONS:

1. The Special Investigation Team was constituted by the Government of Gujarat pursuant to the order / direction of the Hon'ble Supreme Court dated March 26, 2008 to carry out further inquiries/ investigation into nine cases, with the object of ensuring that all those who were guilty of offences were arraigned and punished.
2. The context of the said order / constitution of the SIT, was material which established that:

- (i) FIRs had been wrongly and incompletely recorded & names of accused officers & those politically connected had been dropped/excluded
- (ii) that inquiries / investigations had not been adequately carried out especially regarding the involvement of police officers, civil servants and politically influential individuals in these offences both by way of actual involvement and by way of complicity: deliberate inaction
- (iii) There were threats to and intimidation of witnesses
- (iv) Prosecutors were appointed who had earlier appeared for the accused and who were associated with organizations who were involved in the offences,
- (v) *Bail Orders granted out of turn by the lower and higher courts in Gujarat ensured that that these politically influential accused moved free in areas and neighbourhoods of their influence that were also the sites of the worst carnages.*

3. It is submitted that the record establishes that the SIT has failed:

- i. to adequately investigate/ inquire into the involvement of police officers, civil servants, ministers and politically influential individuals in these offences (both by way of actual involvement and by way of complicity: deliberate inaction),
- ii. *to investigate the carefully planned build up of arsenal, men and arms in the lead up to the Godhra tragedy of 27th February 2002*

(Volume II and III of CMP at pages 76-84 of the volume). This build up of bombs, swords, gas cylinders and chemical powders in preparation for the carnage was exposed both in Tehelka's Operation Kalank and affidavits of police officers former DGP RB Sreekumar and former SP Bhavnagar and DCP Crime Branch Ahmedabad Rahul Sharma

- iii. *has deliberately failed to investigate thoroughly documentary evidence including phone call records, mobile van records, control room registers, station diary entries and fire brigade registers, a scrutiny of which would have indicated the levels of, and extent of pre-planning and conspiracy that went into the post Godhra violence (Additional Affidavit to the CMP dated December 1, 2009)*
 - iv. has failed to ensure that all those involved are arraigned as accused, and has failed to take adequate steps to prevent threats to and intimidation of witnesses.
 - v. *has also failed to apply for the cancellation of bail of the most powerful arraigned ensuring that they are free while the trials are conducted.*
4. In the cases relating to Naroda Patiya & Naroda Gam where over 110 persons were brutally murdered and girls and women were brutally gang raped:
- (i) 129 witness statements were NOT recorded by the SIT [Ref Vol B pg 256 – 260]

(ii) Although numerous witness statements [Ref: Vol B: Sr No 3/ Witness No 18 – Pg 260; Sr No 32/ Witness No 228/1 Pg 270, Sr No 53 / Witness No 409 Pg 276, Sr No 15/ Witness No 142 Pg 264] had referred to the active involvement (police firing on Muslim victims) and deliberate inaction of policemen under the charge of **Police Inspector K K Mysorewala** (now promoted to Superintendent of Police) who had ordered police firing on Muslim victims after discussing with Maya Kodnani & who had repeatedly informed those desperately seeking his protection , that there were **“instructions/ orders from higher authorities not to protect you “; “there is no order to save Muslims” & “you have to die today”**; - has not been arraigned as an accused by the SIT. Nor has there been any investigation by the SIT into the **“higher authorities”** which had given him the order/ instructions not to protect Muslims – nor has any such **“higher authority”** been arraigned by the SIT.

An analysis of the call details of PI KK Mysorewala (09825190775) (now promoted) show that on 27.2.2002 there is only one call received by him from his official number. The number calling was 09825047044. On 28.2.2002, his phone records show that he (Mysorewala, a policeman) was in touch with VHP accused, Jaideep Patel, accused in the Naroda Gam and Patiya cases. He received a call from Jaideep Patel (09825023887) at 10:55:20 for 28 seconds. He was shown in Narol, Naroda at the time and this was when the massacre was at its height. All this material has been placed by us before SIT and

yet SIT has chosen to ignore the implications and not conduct further investigations.

- (iii) Although numerous witness statements [Ref: Vol B: Sr. No 15/ witness No 407 Pg 264, Sr. No 51/ Witness No 406/1 Pg 276 & Sr. No 54/ witness No 410 Pg 277, Sr. No 55 Witness No 412 Pg 277, Sr. No 56 Witness No 413 Pg 278, Sr. No 57 Witness No 420 Pg 278, Sr. No 58 Witness No 421 Pg 278, Sr. No 61 Witness No 425 Pg 279, Sr. No 67 Witness No 433 Pg 281] have referred to the actual involvement of the SRP Personnel and in particular **SRP Officer K. P. Parekh** in firing on fleeing Muslim victims, in encouraging the mob to attack Muslims and in categorically refusing to protect Muslims and who had informed hapless victims that ***“Today you have to die. No one can save you. We will never save you, we have order from higher authorities to kill you”***; -- neither officer K. P. Parekh nor any SRP personnel have been arraigned by the SIT as an accused
- (iv) 15 witnesses have named Babu Bajrangi Patel as the leader of the mob that slaughtered 95 people and of having personally killed many & having cut open the stomach/ womb of Kauserbanu and killed her foetus [Ref: Vol B Pgs 288 – 292]. Despite this the SIT has not moved for cancellation of his bail. He roams free today to threaten & intimidate victims & witnesses. He has even been allowed to go abroad. (CMP Pg 13)

Babu Bajrangi Patel has also stated on video tape to Tehelka, that he was protected / housed by Chief Minister Modi in State Government guest house in Mount Abu, that his bail was managed and that judges were changed to get him bail. He has stated that justice Dholakia had refused bail and that his case was later brought before Justice Akshay Mehta in order to get him bail. Apparently there has been no investigation / inquiry into these aspects by the SIT.

- (v) 53 witnesses have named Suresh Langda Richard Chara of instigating the mob to rape, kill & burn Muslims and of being directly involved in murder and rape [Ref: Vol B Pgs 292 to 297]. Despite this, the SIT has not moved for cancellation of his bail. He roams free to threaten and intimidate victims & witnesses (CMP Pg 13)

Suresh Chara has stated on videotape that he was congratulated & garlanded by Chief Minister Modi when he arrived there later in the evening. Apparently there has been no inquiry/ investigation into this aspect by the SIT.

- 5. Goldberg Case: This offence relates to the cold-blooded rape and killing of 70 hapless Muslim victims including Ehsaan Jafri, in the heart of Ahmedabad city, over a 11 hour period on 28th February 2002.

- i. Significantly the SIT has arraigned an additional 25 persons as accused, including **K. G. Erda: PI Meghaninagar Police Station** (now promoted to ACP) who was also the Investigating Officer for this case/ offence. However the SIT has totally failed to inquire/ investigate into the circumstances in which repeated calls for police assistance went unheeded, in the very heart of Ahmedabad city, for _____ hours and whether this was merely criminal neglect or a matter of design.

- ii. P.I. Erda's phone records shows that during the hours of the carnage on 27th & 28th February 2002 he had made regular calls (23 calls: 13 + 10) to the Police Control Room / Police Commissioner P C Pandey, calls (2) to Joint Commissioner M.K. Tandon & calls (2) to DCP Gondia. The SIT has apparently not interrogated Jt. Commissioner Tandon, or DCP Gondia or Commissioner P.C.Pandey (now DGP Gujarat State) as to the nature of their communing with PI Erda and the steps they took in the matter or their failure to respond / act.

- iii. Jt. Commissioner Tandon has admitted to the Nanavati Commission that he was telephonically informed at 2.00 pm that Ehsaan Jafri was in mortal danger; - he apparently did nothing. Commissioner of Police P. C. Pandey had in fact visited Gulberg Society at 10.30 am and promised Ehsaan Jafri adequate police protection/ assistance – no such protection was in fact made

available. PC Pandey's call records indicate that from 2.30 pm to 9.00 pm on the 28th he was in touch with police officers in charge of these riot hit areas. The SIT does not appear to have questioned Pandey or Tandon or pursued the matter.

- iv. Moreover it is undisputed that two cabinet ministers Ashok Bhatt & I. K. Jadeja were sitting at the Police Control Rooms in Ahmedabad City & at Gandhinagar. Ehsaan Jafri made almost 200 calls for assistance. PI Erda spoke regularly to the Police Control Room. The SIT has apparently not questioned either Bhatt or Jadeja as to their role, acts/ inaction in the Control Room or pursued this matter.
- v. In fact Mr. Shivanand Jha member SIT was the Asst. Commissioner of Police Ahmedabad and in charge of the Control Room – and would accordingly be able to depose as to the calls received from PI Erda, the role of the cabinet ministers who were present & P C Pandey.
- vi. The Concerned Citizens Tribunal had recorded the statement of a cabinet minister that on 27th evening a meeting was held by the Chief Minister, with the Home Minister, the Chief Secretary Subba Rao, the DG Police Chakravarty & Police Commissioner Pandey at which the Police were instructed not to do anything to contain the "Hindu reaction" after Godhra Mr. Sreekumar Addl.

DGP R.B. Sreekumar has on affidavit stated that he met DGP Chakravarty in the Chief Ministers antechamber and was informed by him that the Police had been instructed not to act. Despite all this material the SIT does not appear to have questioned either Chief Minister Modi, or Chief Secretary Subba Rao, or DGP Chakravarty or ADGP Sreekumar – or pursued this aspect.

6. Sardarpura Case: In this case also being tried at present in a special court, the role of the SIT has been superficial and designed with a view to ignore investigating substantive documentary evidence. Key witnesses (police) present at the district police stations and control rooms have not been examined as have not key witnesses (CRMP 19816 page 11-13)
7. British National Case: Two eyewitnesses have turned hostile (CRMP 19816 page 19-20) and when SIT was questioned about this by us DR RK Raghavan said, “what did you expect from Hindu Patel witnesses from Gujarat?” The Hon SC appears not to have been apprised of this circumstance of key witnesses turning hostile.
8. Godhra Trial: In the Godhra Trial the SIT has not conducted any further investigation or re-investigation at all but has completely accepted the previous investigations, under great cloud conducted by an interested Gujarat police. (CRMP 19816 page 9)

9. Failure to Interrogate Substantive Documentary Evidence of State Complicity

i. **PC Pandey 's Role as Revealed After an Analysis of the CD**

He was in his office till about 1:00 am on the night of 27.2.2002 that is the early morning of 28.2.2002. In normal times, he used to leave office at around 7 pm every evening. It was an apprehension and of trouble and a seasoned assessment that after the Godhra incident, some trouble may break out that on 28.02.2002 that made him stay so late. This clearly suggests that he was aware of the gravity of the situation following the Godhra carnage on 27.02.2002.

He arrived at his office in the morning at around 8:00 am. His normal schedule shows that he used to arrive at his office at about 10:30 am. His early arrival again shows that he was aware of the gravity of the situation.

Mr. Pandey left his office at around 9:45 am and went towards Gota. This is likely to be his visit to the Sola Civil Hospital, where the dead bodies of the Godhra Victims had been kept. He returned and reached office at around 10:50 am. He was confined to his office for the whole of the day and did not move out till about 19:10 hrs, when he probably went to Gulberg Society, Meghaninagar.

The important point to be noted is that during the peak period of the communal riots, he did not move out of his office. (It also appears that he did not issue any instructions to any of his officers and let things take their own course. However, this aspect would be discussed later.)

An Analysis of the phone records of Mr. P.C. Pandey presented by us to SIT shows that on 28.02.2002 shows that he had received/dialed a

total of 302 calls on his mobile phone. He had dialed 39 numbers from his mobile phone. Out of these 39 calls, he had called up the DGP, Mr. K. Chakravarty, 6 times. He had dialed Mr. Shivanand Jha 8 times and his DCP's 8 times. He had called DCP, Zone IV, Mr. P.B. Gondia only twice (meaningful conversations) at 15:16:12 hrs and 15:54:39 hrs.

Analysis of calls made from his landline in office to mobiles of officers show that he connected to mobiles operating in Ahmedabad City only 13 times. Out of these 13, 12 were incoming calls on his landline phone. He made just one phone call from his landline number and that too was probably not to an officer. In addition, this single call was made at 20:10:56, when most of the action had already taken place. It can be concluded that he did not use the landline to pass orders or instructions to his field officers.

As has been reported in the newspapers, Mr. Pandey had claimed that he had no information of the happenings in Naroda Patiya or Gulberg Society. This is virtually impossible in field situations. Further, his knowledge of the two incidents gets support from call details, as has been explained above.

It must also be that since Mr. Pandey was not informed of the incidents, he would not have sent any message to the officers in the field.

Thus, it can be concluded that there was virtually no instruction from Mr. Pandey to take action against the violent mobs at different places. If we take into consideration the "admissions" made by Mr. Shivanand Jha to fellow officers, it raises strong suspicions that he (Mr. Pandey) acquiesced in the crime.

The statement of Mr. Pandey before a prominent television channel only speaks his mind and his deep involvement in the conspiracy. He had said, during the riots, *"Where the whole society has opted for a*

certain colour in a particular issue, it's very difficult to expect the policemen to be totally isolated and unaffected."

Was Mr. Pandey speaking of his own state of mind when he said this? Did he also want this (the communal pogrom) to happen?

As had appeared in the newspapers, the SIT had concluded that Mr. Pandey was busy handling the dead bodies of the victims of Godhra Carnage. There are two aspects of this. Firstly, cell phone records show that he was sitting in his office all day long. He hardly seems to have done anything with respect to the dead bodies except paying a visit in the morning to the Sola Civil Hospital.

Secondly, is it a priority for a police officer to "handle" the dead bodies when the whole city is burning? Should he omit his basic duty to protect human life and property and, instead, go about "handling" the dead bodies? If he was so sensitive about the dead bodies, why did he allow the bodies to be brought all the way from Godhra by road through the streets of Ahmedabad? Did he also want the passions to flare up? The whole story of Mr. Pandey attending to the dead bodies of the Godhra train carnage victims seems to be maliciously cooked up. It is felt that he has just thrown up an alibi and expects everyone to accept it.

The inaction on the part of Mr. Pandey is very apparent. The question that arises is regarding the cause of this inaction. Did he omit to take necessary measures out of his own volition? Or was he coerced into doing this? The first option is less likely because Mr. Pandey had nothing to gain from this. The second option is more likely. If this were so, who could have "pushed" Mr. Pandey into such gory acts of omission? It could only have been someone who was significantly more powerful than him. The needle of suspicion points towards the political leadership, which had everything to gain in view of the impending elections and the poor electoral fortunes of the BJP.

There is another viewpoint in this. On the evening/night of 27.02.2002, a meeting was held under the chairmanship of the CM, Mr. Narendra Modi. Mr. Pandey was one of the officers who attended the meeting. What instructions were issued by him in the meeting? Were the officers instructed to take firm action? If that was so, then would any officer have dared to disobey the CM over a legal order? And above all disobey the present CM? It is most unlikely.

The government, till this day, has also not taken any disciplinary action against any officer for not following its legal orders. This suggests that it has not agitated by the intentional lack of compliance of its legal orders. Hence, that such a thing would have happened is most unlikely – almost impossible.

The other possibility is that the officers were instructed to “let things happen”? This instruction seems to be consistent with the conduct of the officers and very much in the interest of the political party in power. It is also consistent with the conduct of the government to the whole issue – officers who supported the ‘mission’ were suitably rewarded with important postings; officers, who stood up for their call of duty, were shifted to insignificant and difficult posts.

ii. M K Tandon’s Role as Revealed by an Analysis of the CD

He, too, was in his office late in the night till about 1:15 am on 28.02.2002. In normal times, he also used to leave office at around 7:00 pm. Further, he arrived at his office at about 8:30 am on the morning of 28.02.2002. As in the case of Mr. P.C. Pandey, his being in his office till late hours and arriving early suggests that he, too, was aware of the gravity of the situation.

As had been mentioned earlier, Mr. Tandon had visited Gulberg society at around 11:25 am on the morning of 28.02.2002 but as police witness testimonies reveal before the trial court, despite coming with a striking force and a restive and violent mob met him, junior officers pleaded

with him to send men and arms, he left with this well equipped force to another location. MK Tandon's phone calls records show that he was received many calls from both political bigwigs and some accused. Was his decision to leave Gulberg society unprotected a professional decision or governed by political pressure? At 00:00:32 on 28.2.2002 he received a call from Govardhan Zadaphia, MOS Home and later in the day around 5 p.m. a call from Kaushik Jamnadas Patel, state minister for power. Nimesh Patel, accused of killing eight people was also in touch with him at 22:28:34 on 28.2.2009.

While just outside Gulberg society, Mr. Tandon receives a call from Commissioner of Police PC Pandey and its is assumed that the two would have spoken about the violence and restiveness of the mob at Gulberg. Eases a bit. This means that when Mr. Tandon got a call from Mr. Pandey, police had either already resorted to firing or the mob surrounding the Gulberg Society had become so restive that police firing was imminent. In such a situation, Mr. Tandon would certainly have mentioned to Mr. Pandey the grave environment prevailing at the Gulberg Society.

Inexplicably, after talking to Mr. Pandey, Mr. Tandon heads for Naroda Patiya. If this movement was on the instructions of Mr. Pandey, it shows that Mr. Pandey, who has reportedly pleaded ignorance of the incidents at Gulberg Society and Naroda Patiya before the Commission of Inquiry, was actually fully aware of the entire happenings. And that he lied before the Commission (may be also before the SIT).

Mr. Tandon reaches Naroda Patiya at around 12:15 pm, imposes curfew at 12:29 pm in Naroda Patiya (wireless message is available), and then leaves Naroda Patiya at about 12:33 pm – within 4 minutes of imposing the curfew! At this point a huge mob had already gathered at Naroda Patiya and its intentions to kill and plunder were apparent. It was for this reason that Mr. Tandon had to order the imposition of the curfew. However, Mr. Tandon made no effort to implement the curfew.

He left the place leaving the hapless residents of Naroda Patiya undefended.

After leaving Naroda Patiya, Mr. Tandon goes to Dariapur & Revdi Bazaar areas where nothing is happening and all is quiet. Thus, Mr. Tandon is neither at Gulberg Society nor at Naroda Patiya despite having full knowledge of the prevailing situation at the two places. He is not present at the place where the crime is taking place despite having sufficient police force at his disposal. He, thus, intentionally abdicates his responsibility and abets the commission of the crime by the riotous mob.

Was this omission on the part of Mr. Tandon a mere act of cowardice or was it an intentional omission to leave the mob to kill, rape and loot? Given that he had earlier been instructed by Mr. P.C. Pandey to “let things happen”, it is most likely that he fell in line and allowed the pre-planned pogrom to be executed without any obstruction or resistance.

iii. Analysis of Calls and Location of Mr. Shivanand Jha:

He, too, was in his office late in the night till about 1:15 am on 28.02.2002. Normally, he used to leave office at around 7:00 pm. Further, he arrived at his office at about 5:10 am on the morning of 28.02.2002. As in the case of Mr. P.C. Pandey, his being in his office till late hours and arriving very early suggests that he, too, was aware of the gravity of the situation.

It is seen that both the sector heads – Mr. M.K. Tandon and Mr. Shivanand Jha did not move out of their offices till about 11:00 am despite mounting tensions and reports of gathering mobs and skirmishes. Even Mr. P.C. Pandey, who had gone to Sola Civil Hospital, does not appear to have been involved in the control of riots. He probably was more concerned with his visit to the dead bodies at Sola Civil Hospital. As has been discussed earlier, all the three officers

did not take early action to nip the riots in the bud, as has been provided for in the Gujarat Police Manual.

If this is true, then the acts of omission on the part of Mr. P.C. Pandey and Jha could be part of a larger conspiracy to allow the mobs to kill and plunder. Consequently, he would stand as an accused in all the major riot cases being investigated by the SIT, namely, the massacres at Gulberg Society, Naroda Patiya and Naroda Gam.

iv. Reluctance by SIT to Investigating the Chain of Command

DCP Zone IV PB Gondia is in touch with key accused, Mayabehn Kodnani, Jaideep Patel and Nimesh Patel seven times through the day.

Details:

The DCP Zone IV, P B Gondia (9825049197) receives a call from accused Jaideep Patel at 11:40:02, the again at 11:52:29 also from Jaideep Patel. Again Jaideep Patel and Gondia are in touch at 12:20:44.

At 13:53:59 another accuse d Nimesh Patel is in touch with this senior officer and then again at 14:13:47.

At 17:05:33 P B Gondia (9825049197) received a call from 792686136, the office landline of Maya Kodnani then MLA and now accused in both the Naroda Gaam and Patiya cases.

In the morning of 28.2.2002 at 10:30:11, Gondia receives a call from Maya Kodnani's mobile (09825006729)

At 18:55:59 and then again at 21:43:23 P B Gondia (9825049197) received a call from Nimesh Patel (9824255788). It appears as if this officer was regularly reporting to these two as at 22:10:52 P B Gondia (9825049197) made a call to 09824255788 (Nimesh Patel) and then at

11:40:02 he (09825049197) received a call from Jaideep Patel (9825023887)

v. Failure of SIT to Investigate the Locational Details as Revealed by an Analysis of Five Lakh Phone Calls on the CD

Locational Details of the Powerful and the Accused

NAROL, NARODA

27.2.2002

At 05:10:53 Ashok Bhatt, cabinet minister for health accused of sitting in the city control room and preventing policemen from doing their duty was at Naroda-Narol At 09:55:24 on 28.2.2002 around the time the massacre began, Ashok Bhatt was at Narol, Naroda. He received three calls there. Another key person from the coterie of the chief minister was at this location, Tanmay Mehta, PA to the Chief Minister who was there at Naroda at 16:02:OP Singh, PA to the chief minister was also there at 16:02:25 and they were in touch with each other. Ashok Narayan Additional Home secretary also accused in the Zakia Jafri Complaint was also present here at 5:41:32 (Narol, Naroda) as was IK Jadeja, minister at 17:35:25

Analysis of Location of Key Persons at Meghaninagar

MEGHANINAGR

27.2.2002

Close members of the chief minister's cabinet and coteries were at Meghaninagar on 27.2.2002. At 15:48:39 Ashok Bhatt (919825039877), minister for health was here and around the same time Anil Mukim, Additional Principal Secretary to the chief minister was also here. (15:33:40). Mukim was also here at 16:02:02 and then again that night at 22:01:18. Others present there at Meghaninagar which is the jurisdiction area where the Gulberg society is located the

day the chief minister was in Godhra was OP Singh, PA to the chief minister at 15:48:16. PK Mishra, Personal Secretary to the chief minister is also present at Meghaninagar at 15:48:11 on 27.2.2002 and so also is Tanmay Mehta, PA to the chief minister (at 15:35:01)

Interestingly among policemen who are in the same area on 27.2.2002 are PB Gondia DCP Zone IV who is there at 00:36:26 that is on the early morning of that day.

28.2.2002

On the day of the massacres at Gulberg society and Naroda Patiya and Gam, IK Jadeja, cabinet minister for urban development was at the Meghaninagar area at 15:56:40. MOS Home, Zaphia was there at 17:02:38

- vi. A Thorough Professional and Independent Investigation into the Integrity of the CD and Its Contents needs to be undertaken. The phone call records of the chief of police, PC Pandey's need to be collated with wireless communications, control book records, message books and phone records. **This has been studiously avoided by the SIT.**
10. In fact the SIT has shown a singular lack of interest in inquiring/ investigating into the circumstances in which (i) the Police force either played an active role in the riots/ attacks/ offences at Gulberg & Naroda, or stood by and allowed the commission of the offences & failed & refused to provide protection to the hapless victims often stating that they were under instructions to refuse assistance/ protection (ii) senior officers at the Police Control Room failed to react to repeated calls for assistance and despite being in communication

with the officers at the riot sites , stood by while a bloodbath / orgy of violence continued for 11 hours in the very heart of the city (iii) the evident involvement of two ministers of the Government in the control room , where information was received of these situations – but no steps taken to respond thereto (iv) the role of the chief minister, home minister, chief secretary , DGP Chakravarty & Police Commissioner P C Pandey in ensuring that no effective steps were taken to prevent or curtail the bloodbath/ orgy of rape and violence which continued for as much as 12 hours in the heart of the city.

An order for further investigation into not just the authenticity of *Tehelka's sting Operation Kalank* (already conducted by CBI under an order of the NHRC) but cross checking of phone numbers etc of the accused named therein was passed by the trial court on September 7, 2009. No efforts were made by SIT to list for DCP Control Room Rahul Sharma as witness in the Gulberg case though he was made a witness in the Naroda Patiya and Gam cases.

On November 14, 2009 witnesses applied to SIT for inclusion of Shri Rahul Sharma as witness in this case and also gave them detailed analysis of phone call records and location analysis carried out by us Following this application, Shri Rahul Sharma's statement recorded but no attempt to entirely analyse the CD with the full implications on the Gulberg Society Case have yet been made and presented to the Court.

11. This refusal to scrutinize documentary records thoroughly, professionally and with probity has to be viewed in the context of the fact that an analysis of the phone call records reveal startling facts

about not just *who was in touch with whom but also about location details of powerful politicians, accused and policemen are the scenes of the carnages the day before the occurred that is the date of the Godhra tragedy, 27th February 2002.*

12. This inaction/ singular lack of inquiry or investigation has to be viewed in

the context of the facts that:

- i. The main investigation officers: Geeta Johri, Shivanand Jha & Ashish Bhatia are all Gujarat officers who were their subordinate / answerable to DGP Pandey (who wrote their ACRs till a few months ago) & under the service & control of the State of Gujarat.
- ii. Shivanand Jha was in fact the Asst. Commissioner of Police Ahmedabad and in charge of the Control Room on 27th & 28th February 2002. In the investigation arising out of the SLP (CrI) 1088 of 2008, Shri. Shivanand Jha is also ought to be investigated as his name is mentioned in the list of those sought to be accused. Mr Jha had in fact deposed on behalf of the State before the Justice Nanavati Commission wherein he had supported the State's version of events. He has also served as the Home Secretary of the Gujarat government for nearly three years after 2002 when this matter was pending before the Hon'ble

Supreme Court and he had consistently taken the stand that the investigations of these cases should not be handed over to the CBI or transferred out of the State and that the ongoing process of investigation was appropriate.

- ii. The second SIT member from Gujarat, Smt Geeta Johri did perform diligently in the initial stages of an investigation related to another case known as the "Sohrabuddin Encounter case". However, as has been argued before this Hon'ble Court in the said encounter case, she has been seriously indicted for her inactivity and complacency in the matter after the three IPS Officers were arrested by Shri Rajnish Kumar Rai in the Sohrabuddin matter. It also appears that this officer, was favoured by the State soon after she was assigned the responsibility of the investigation into the Sohrabuddin encounter, on July 1, 2006, just a week after she started preliminary inquiry into the case, by acceding to an old request made by her for an alternate plot. The government gave her an alternate plot of land as requested by her measuring 330 sq meters in the same sector in Gandhinagar by waiving off the premium amount that has to be mandatory paid which, according to the rules, should have been 50 per cent of market value if she wished to change the plot. This along with the fact that her husband is facing corruption charges which are being inquired into by the Gujarat Government does cast doubt

on her ability/ willingness to inquire/ investigate into the complicity / role of senior police officers, civil servants and ministers of the Gujarat Govt.

- iv. The third and last member from Gujarat Shri Ashish Bhatia, in charge of Ahmedabad's Crime Branch, was specifically put in charge of the Gulberg and Naroda investigations and has been set out above has failed to proceed against Police Officers (Mysorewala) & SRP Officers (Parekh), and failed to inquire / investigate the role of Officers like Pandey, Tandon & Gondia as also whether their acts/ inaction was attributable to decisions taken / instructions given by the Chief Minister, the DGP & the ministers manning the control room.