

IN THE SUPREME COURT OF INDIA

CRL.M.P. NO.19816 OF 2009

IN

WRIT PETITION (CRL) 37-52 OF 2003

IN THE MATTER OF:

DEVENDRA BHAI PATHAK AND OTHERS

PETITIONERS

VERSUS

STATE OF GUJARAT AND OTHERS

RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF PETITIONER NO.6

I, Teesta Setalvad, aged 47 years, resident of Nirant, Juhu Tara Road, Mumbai 400049 solemnly state as under:

1. I am the Petitioner no.6 in the aforesaid case and am fully aware of the facts and circumstances of the case and in that capacity am duly competent to swear and depose as under.
2. I am filing the present affidavit in continuation of the application filed by the Petitioners herein bringing to the attention of this Hon'ble Court the manner in which the SIT was conducting itself.
3. In this aforesaid application we have, as the major victim survivors group ensuring that the victims and eyewitnesses access justice, for the first time since the appointment of SIT on March 26, 2008 laid out the substantive shortfalls in its investigation. Since the filing of this application, certain other facts and circumstances have come to light that further reveal SIT's continued failure to get to the root of the matter in these critical eight trials.
4. Detailed issues that reflect the incomplete investigations by SIT feature in the aforesaid application and the Volume II annexed therein. The continued and further lapse includes the failure, or reluctance of the Special Investigation Team (SIT) to investigate Documentary Evidence like Phone Call records, Station Diary entries and Case Diaries, and

Control Room Log Books and Records. An investigation of such records, as the details below reveal, indict powerful accused and politicians and this reluctance of the SIT team, appears to be the result of it being infested with local officers of the Gujarat police who are the ones guiding the investigation rather than the independent, high profile officers from outside the state appointed by this Hon'ble court. Issues regarding the composition of SIT, and the urgent need to re-constitute this body have been made in detail in the application and are not being repeated herein. Factual details of the extent of concealment, especially related to documentary evidence are being brought on record to illustrate the gravity and magnitude of our concerns.

5. The entire litigation between victim survivors and the state, with an amicus for the court (now two) being appointed to guide the court in between was historic and path breaking. Several critical aspects of the faulty and motivated investigations have been brought on to the records of the apex court. These happened through i) an analysis of hasty bail granted to those accused of heinous crimes by the Gujarat high court when lower courts had refused them bail; ii) detailed tables of accused arraigned by victims in their first statements before the police that were thereafter watered down as political influence came into play; c) enforced by affidavits of the victims; d) supported by the testimony of Rahul Sharma former DCP Crime Branch who filed a CD with five lakh phone records of politicians and accused that was filed before the apex court in September 2006; e) *Tehelka's Operation Kalank*, transcripts of which were filed before this Honourable court in October 2007; f) Four crucial affidavits of former ADGP Gujarat RB Sreekumar that disclose high level efforts to subvert the process of criminal justice administration. In March 2007, the amicus curiae then supporting the transfer of the Gulberg case has specifically recommended that all these documents, including the CD of phone call records be analysed in detail. Annexed hereto and marked **Annexure A** is a true copy of the said note filed by the Amicus curiae.
6. The Special Investigation Team (SIT) appointed specifically to investigate without fear or favour was expected to thoroughly go into all this documentary evidence to arrive at its conclusion. After twenty months of its appointment, we regretfully state that there is a marked reluctance by SIT to get into any controversial aspects of investigations especially connected to either *Tehelka's Operation Kalank*, Shri Rahul Sharma's CDs of telephone records and the four critical affidavits filed by the former ADGP Gujarat Shri RB Sreekumar before the Nanavati-Shah Commission.

7. This failure has now reached unprecedented proportions. On 7.09.09, after advocates for witnesses had filed an application before the trial court for ordering re-investigation into phone call records, fire brigade records, station diary and case diary entries, the SIT was forced to submit some documents in response a month later. A perusal of these documents reveals a blatant desire by SIT to fool the courts and not investigate the cellphone records of the accused caught on camera by *Tehelka*. The IO Shri JM Suthar has deliberately not investigated the phone call records detailed by Shri Khaitan and instead chosen to mislead the court(s) by investigating another set of mobile phone numbers altogether. Annexed hereto and marked **Annexure-B (colly)** are two statements of Ashish Khaitan dated 19.1.2009 and 12.3.2009. IO Sutar's gave his response to the order dated 7.9.2009 by the Trial Court by filing first on 7.9.2009 and then on 2.11.2009 detailed documents showing numbers that he had investigated. He has in this further investigation ordered by the court investigated the then phone number of former Godhra MLA Haresh Bhatt (for whom we are told that 'no call details are available') However, this IO, JM Suthar for SIT appears to have deliberately avoided investigating those numbers available in Ashish Khaitan's statement recorded on 19.1.2009 at Gandhinagar. For instance, Shri Suthar does not record those numbers relevant to the case, that of Prahlad Raju, (09377197926) as stated in Ashish Khaitan's statement nor Mangilal Jain (094263667633) and Madan Dhanraj (09377456091), the very accused caught on camera by *Tehelka* admitting to and gloating on the heinous crimes committed.
8. On 14.11. 2009, advocates for the victims and witnesses made a formal application before SIT to arraign former DCP Crime Branch Rahul Sharma as witness in the Gulberg Case. A translated copy of this application is annexed here **Annexure C**. In his deposition before the Nanavati-Shah Commission, Shri Sharma had deposed about the time he was DCP Crime Branch Ahmedabad in 2002. He had been brought in by then Commissioner of Police Kaushik, to be part of the investigations into the Gulberg, Naroda Patia and Naroda Gaam cases which were then being investigated by the Crime Branch, Ahmedabad. While deposing, Shri Sharma had produced a copy of AT & T and Cellforce Phone Records (five lakh) procured by the Crime Branch and which he felt would be relevant to the investigations into the role of politicians and powerful accused. In their application dated 14.11.2009 made to SIT, witnesses have pointed out the testimony of this officer and the evidence he had elicited and presented (that is available with SIT) would be critical for the Gulberg trial, too. Specifically this evidence would be critical in

corroborating phone calls made by accused, influential politicians, victims etc and to evaluate the effectiveness of the response. Shri Sharma had, on 7.05.02 in a letter to then Commissioner Kaushik (a copy of which he produced before the Commission), detailed the questionable manner in which investigations into these three cases were being carried out. True copies of the certified copies of both the testimony and the letter are annexed hereto as **Annexure D colly**.

9. In response to the court's order for further investigations passed by the Trial Courts in this case, SIT has responded, rather blithely stating that the landline phone call records of the brutally slain former Parliamentarian Ahsan Jafri, 'have been destroyed.' In this connection, since 2.11.2009 at least three crucial eyewitnesses have deposed stating that Shri Jafri made frantic calls, including one to the chief minister, he was roundly abused after which he decided to give himself up to the mob so that other innocent lives would be saved. SIT could have been systematic in its investigations and delved deep into how and why Shri Jafri's records were destroyed, by whom and under whose instructions or orders. On May 9 and 28, 2008 when I was asked to tabulate detailed points for further investigation before SIT, I had specifically stated that investigation into Shri Jafri's calls, and Shri Sharma's testimony and the CD produced by him are mandatory. A copy of my statements made before SIT have been appended in Volume II of the aforesaid application. Yet this was not done and the requisite investigations are lacking. This reluctance by SIT to get to the bottom of critical communications between those in power, those in responsible positions of law enforcement and administration and key accused guiding, leading attacks while actually ensuring that killings, rape and arson take place appears to stem from a calculated design to shield, not punish the guilty.
10. I say and submit that in support of these grave allegations, I present below documentary evidence that has emerged following our own, citizens investigation into the phone records. We humbly place excerpts of these before this Honourable court in the firm belief that we will get justice. I happen to be the Secretary of an organization, Citizens for Justice and Peace which has been assisting the victim survivors access a laborious criminal justice system and has carried out its own investigations into the five lakh phone records that reveal certain shocking findings:
11. Analysis of the Calls Made and Received by KG ERDA IO Meghaninangar (now accused by SIT in its chargesheet dated May 16, 2009)

- A. K G Erda's phone call records show that he had been in constant touch with the Control Room through 27.2.2002 and 28.2.2002. In fact even the day of the Godhra Train Burning tragedy PI Erda had been in touch with the Control Room from 1.21 p.m. to 11.10 p.m., even being in touch with his immediate superior Gondia.
- B. On 28.2.2002, of the 28 logged calls made and received by him,, 13 were made by him to the police; 10 calls logged on his mobile show that he called the Control Room 10 times speaking for a total of 688 seconds that is about 12 minutes; three Calls were made by him to the local, Meghaningar Police Station during which he spoke a total of 65 seconds that is a little over a minute; 2 calls were made to DCP Gondia and 2 calls to Joint Commissioner of Police, MK Tandon.
- C. The fact that this police officer, the man on the spot, the PI was in touch with the Control Room except between 15:33 p.m. and 17:52 p.m. (that is for a period of two hours and twenty minutes) when he preferred to call his immediate bosses DCP Gondia and Joint CP MK Tandon could also lead to some revelations. This is because this was a critical period of the killing and carnage at the Gulberg Society when frantic messages to the Control Room could have yielded more immediate help and results.
- D. In Police and Law Enforcement language, a call to the Control Room means a call to the Commissioner of Police, Ahmedabad in this case. Various Officers in charge of the Control Room are expected, area wise to report to the CP every 15 minutes. A close scrutiny of the Phone Call login records of the various Police Stations connected with these trials, the Police Control Room, Shahibaug Ahmedabad, and State Control Room, Gandhinagar would reveal which officers had performed their duties and informed their superiors. If these records then show that after having received such critical information from a close coterie of senior officers who were in touch with the CMO did not act, then allegations of conspiracy get substantiated. It was expected that SIT would ruthlessly investigate these records to arrive at a watertight conclusion, one way or another. SIT's failure to do and to submit charge sheets in the critical Gulberg Massacre case without any of these investigations being attempted leave alone completed, suggests a desire to cover up

what all along the Gujarat Police and State of Gujarat have been trying to do.

- E. To top it all, the phone call records of PI Meghaninagar KG Erda also reveal that on 28.2.2002 he was in touch with influential and key accused at various times of the day. At 15:20:35: Erda (98250116221) receives a call from 792682186 (then MLA Maya Kodnani's Office No.), a call lasting 19 seconds. It is submitted that Kodnani was Minister Women and Child Development in 2009 when she was given notice of arrest by SIT. She then absconded for several days before surrendering to be arrested. Smt Kodnani thereafter resigned her position and was refused bail by the Gujarat high court. At 18:20:31: Erda (98250116221) again called 09825006729 (Maya Kodnani's mobile) and speaks for 93 seconds again from the Meghaninagar area. Mysteriously PI Erda, at 17:59:24 on 28.2.2002, (98250116221) also called 09824255788 a mobile number of accused Nimesh Patel, who is accused of killing 8 people in Naroda village. The call lasted 24 seconds. In what could be the strangest co-incidence or have the ingredients of a sinister conspiracy, the accused Nimesh Patel spoke from his mobile number (098242255788) four times on 28.2.2002, at 12:40, (for 29 seconds) at 10:03(for 32 seconds) at 20:58 (22 seconds) and at 12:21 (154 seconds) to accused MLA and Minister Maya Kodnani on 28.2.2002 as well.

12. I say and submit that this Analysis of the PI Meghaninagar in 2002, KG Erda offers a mere glimpse of the various indicators that could emerge if a decent, honest and thorough study of all documentary evidence were to be undertaken. I further say and submit that our citizens' investigation on the entire gamut of phone call records is still on and we have regularly supplied our conclusions to SIT. Even details of KG Erda's phone call records have been submitted to the SIT on November 25, 2009. I further say and submit that it would be a tragedy of the greatest proportions if, despite this careful scrutiny provided to it by witnesses and citizens groups, a Special Investigation Team (SIT) with unbridled powers and unlimited resources, concludes slip shod investigations and arrives at unconvincing conclusions in their chargesheets and reports.

13. I say and submit that three eyewitnesses since November 2, 2009 in the Gulberg Society case have deposed that Shri Ahsan Jafri made frantic phone calls to the powerful before he was abused and gave himself up for the massacre. Our investigations into the Cellphone Records provided by former DCP Crime Branch Shri Rahul Sharma (in 2002) to the Nanavati Shah Commission show that these testimonies of key eyewitnesses are supported by hard documentary evidence. Specifically, our inquiries show that Shri Jafri (from his landline number 0792125166) made several calls that day. Two were critical, one made at 11:31 am and another at 1:42 that is just before he was killed. Though a statement of Shri JS Gedon, police sub inspector ATS dated 24.3.2009 supports these findings, SIT continues to deliberately deny knowledge of such calls.
14. I say that the above example demonstrates that there is some restraint that the SIT is exercising in truly getting into the bottom of the matter. I humbly pray to this Hon'ble Court to seek a clarification from the SIT for the reasons for their restraint and constraints if any are faced by them in addition to re-constituting the SIT.

Deponent

VERIFICATION:

Verified at Mumbai on this 1st day of December 2009 that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Deponent