

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION
TRANSFER PETITION (CRL.) NO. 194-202 OF 2003

IN THE MATTER OF:

National Human Rights Commission

Petitioner

Versus

State of Gujarat & Ors.

Respondents

AFFIDAVIT

I, Teesta Atul Setalvad d/o Atul Setalvad, aged 45 years, r/o Nirant, Juhu Tara Road, Juhu, Santacruz (W), Mumbai 400 049 do hereby solemnly state and affirm as under:

1. That I am the Secretary of the applicant-intervenor in the abovementioned matter and fully conversant with the facts and circumstances of the matter and in that capacity am fully competent to swear and depose this affidavit.
2. I say and submit that I am filing this rejoinder affidavit in response to the affidavits in rejoinder filed by the state of Gujarat, first on 14-03-2007 by Shri CB Trivedi, Deputy Secretary to the Government of Gujarat, Home Department and thereafter a PaperBook containing tables and other charts dated 7-4-2007.
3. At the outset I would like to say and submit that these submissions by the state at this belated stage in the proceedings are nothing short of an attempt to further delay the matter as the affidavits have been filed at a belated stage.
4. I say and submit that despite these delaying tactics adopted by the state of Gujarat we have meticulously responded to each effort to obfuscate the facts before the Hon'ble Court. I say and submit that this is the purpose also of us filing this rejoinder at this stage.
5. I say and submit that as far as pages 6-10 of the note are concerned, the contentions regarding protection of witnesses have been specifically disputed by the witnesses in question. I crave leave to refer in detail to these affidavits that reveal (supported by photographs) that victim survivors of the Gulberg massacre, the Naroda Gaon and Patiya mass crimes, the Sardarpur and Ode

massacre cannot return to their original place of stay within Gujarat. I say and submit that the state of Gujarat is ominously silent on this aspect of relief and rehabilitation that is incontrovertibly linked to the struggle for justice and restitution.

6. I refer to pages 10 and 11 of the note dated 7-04-2007 that refers to the appointment of public prosecutors by the state of Gujarat, a factor that continues to question the victim citizen's faith in the deliverance of justice given the fact that they have tended to be appointed with specific ideological and political affiliations. I say and submit that I also refer to pages 2 and 3 of Shri Trivedi's affidavit dated 14-03-2007 wherein he explains the circumstances under which Shri Vinod Gajjar had first appeared for the accused and thereafter been appointed by the State of Gujarat and in fact also represented the state before Judge Mehta. I say and submit that *once again* it was left to a citizen's group to point out this fact before the Hon'ble Court (in our affidavit of September 2006) and the state of Gujarat has admitted that Shri Gajjar had accepted the brief for the accused in Supplementary chargesheet no 152/2002 and also for some of the accused in Session Case 167/2003. I say and submit that these are the very trials that are under the scrutiny of this Hon'ble Court pending decision on pleas of re-investigation and transfer. I say and submit that as has been admitted by the State of Gujarat – that he was rendering his services as Additional Central Government Counsel at the Gujarat High Court from April 26 2000 to April 25, 2006. It was during this period that on June 2, 2004 that he was appointed Additional Public Prosecutor for the City Sessions Court, Ahmedabad. I say and submit that the explanation by the state of Gujarat gets better and better and it reads "*Prior to his being appointed as Additional PP he had accepted the brief for the accused persons.*" The fact remains that the advocate in question in that case, had accepted the brief for the accused despite being a Government Counsel and the State chose an advocate who had filed his vakalatnama for the accused to represent its case fairly and also continues to make assurances to this Hon'ble Court that there would be a fair trial.
7. I further say and submit that in relation to pages 10 and 11 of the note of 7-4-2007 wherein details of the Public Prosecutors have been listed, we have accessed through the Right to Information Act, the fees paid out to various Public Prosecutors by the State of Gujarat. I say and submit that this reveals some interesting facts, inference regarding the same can be drawn on a mere perusal. I annexe hereto as **Annexure A** colly hereto this application in translation and the reply.

8. I say and on pages 14 to 16 of the State's note filed on 7-04-2007 in reply to the amicus curae's Note dated 22-03-2007 the State has tried to marshall arguments as to *why the investigation should not be independently investigated*. I say and submit that substantive issues of fact have shown through this onerous litigation that the victims and eye witnesses have lost faith in the apparatus at presently in operation in the state of Gujarat. I say and submit that upright officers of the law and administration have been victimized and isolated as can be seen from the State of Gujarat's comments on page 21 of this note wherein the state makes a rather curious comment on Shri Rahul Sharma's proffering the copy of the CD's containing details of all telephone calls made by officers of the police from February 27, 2002 to March 2002 annexed in an affidavit of September 2002 filed on behalf my organisation. Instead of appreciating an officer of the state cadre who is committed and interested in correcting the injustice heaped on victims, the state comments on the fact that he did not hand these over to the senior officers in the city of Ahmedabad. I say and submit that the very fact that honest officers of the police, be it Shri Sharma or Shri RB Sreekumar who has filed detailed (four) affidavits before the Hon'ble Nanavaty-Shah Commission, found recourse to perform their Constitutional duties by placing details of the *malfunctioning in Constitutional Governance before an Inquiry commission and not before their senior officers who stand indicted for bending to the pressures of the elected Executive of the state*, is a sorry comment in itself that needs to be scrutinized closely by this Hon'ble Court. I crave leave to attach certified copies of the affidavits of Shri RB Sreekumar and Shri Rahul Sharma at a later stage. I say and submit also that Shri Sharma during his deposition before the Nanavaty Shah Commission dated 30-10-2004 to which he has annexed a letter written by him to then Commissioner of Police KP Kaushik dated 4-6-2002 wherein he makes clear that he did not like the way he was brought in to comment on investigations and chargesheet related to the Gulberg and Naroda Gaon and Patiya massacres. I say and submit that we have annexed both these documents in our affidavit of September 2006 (Annexure B Colly). I say and submit that it is clear that *even now in the state of Gujarat there is a tension between honest officers of the law and the executive that is determined to destroy evidence, subvert the struggle for justice and the very foundations of Constitutional Governance*. I say and submit that it is no coincidence that when Shri Kaushik had asked Shri Sharma to cosmetically look at the investigations into these major carnage cases, they were being

handled by the Crime Branch and by an officer no less than Shri Vanzara, IPS who is now indicted of a serious crime.

9. I say and submit that the state of Gujarat has been silent on the other annexures to our September affidavit that include a list of missing persons, a list of religious places desecrated many of which have not been reconstructed (all official records) and the abysmal compensation paid to victims, especially those of the mass carnage cases. I say and submit that the State's response to the pattern in granting bail to a significant percentage of the accused (including politically powerful and connected accused) in the post Godhra carnage cases while as many as 84 of those charged in the Godhra mass arson case (including one young man who is near 100 per cent blind) shows a discriminatory attitude among different wings of the state operating in the state of Gujarat. I say and submit that the official figures provided by the state of Gujarat to different agencies (Women's Parliamentary Committee) and the National Human Rights Commission related to Compensation show serious discrepancies. Further, I say and submit that another official document showing the Details of attacks on women and children from 27-2-2002 (information in Numbers) show a discrepancy in numbers. I say and submit that these have been annexed hereto as **Annexure B Colly** along with a Detailed Analysis of the Compensation prepared by the *Citizens for Justice and Peace*.
10. I say and submit that it is interesting that the state has not responded to the fact that the *public prosecutors representing the state of Gujarat, in the post-Godhra cases have not at all applied for the cancellation of bail of the accused*. I say and submit that this attitude reeks of an attempt by the state to assure that mass murderers roam on bail before trial. I say and submit that similarly while droning on about the fact that the response of the state to re-investigation in all the cases have been fair and impartial, the state is completely silent as to why persons who are influential and part of the political group have not been arraigned as accused despite being specifically named by the victims. I say and submit that similarly the state is silent on how accused number 1 of the Naroda Patiya Massacre for instance, Shri Babu Bajrangi, a noted criminal has been publicly committing other crimes like kidnapping and enforced rape and yet , not only has his bail not been cancelled but the *state of Gujarat has not even applied for cancellation of bail*.
11. I say and submit that despite detailed facts and instances put before us in our affidavits, the state is silent on the mass subversion of justice across the state of Gujarat by the clubbing of FIRs that is also evidenced in these carnage cases.

12. I say and submit that in para 12 on page 16 of the note dated 7-04-2007 the state of Gujarat is again adopting a purely technical approach on the issue of handing cases to the CBI. I say and submit that as victim survivors and citizens it gives us no pleasure that each time the *very faith of the citizen and resident against the political and administrative machinery is questioned*, the police machinery of that state becomes tainted, especially under the present circumstances where a focused and vindictive administration is determined to obstruct the cause of justice. I say and submit that in such circumstances, the victim and citizen has no option but to ask for CBI investigation *because we have no other independent federal investigating agency but the CBI*. The politicization of the police force and central investigating and prosecuting agencies is a deplorable trend that needs to be corrected but until that happens, the fate of victims and citizens cannot be left to the vagaries of the political class. Time after time when this and other Hon'ble Courts of the country have transferred investigations to CBI the faith of the citizen has been redeemed.
13. I say and submit that at page 8 onwards of the state of Gujarat's note attached to the affidavit of Shri Trivedi dated 14-3-2007, the state is trying to say that many averments were made by victim witnesses on affidavit before this Hon'ble Supreme Court and not in police statements nor find place in the FIR. I say and submit that this is just the point. Despite repeated attempts to get their statements before the police recorded, victims of Gulberg society met with no response. They filed applications through lawyers under Section 173(8) of the Code of Criminal Procedure. These have been detailed and find place in these pleadings. The fact that they have approached authorities is not denied at all by the state. Despite that if the re-investigation has been blocked, if the real accused do not figure, how can the victim believe that the state of Gujarat is keen to correct past wrongs? I say and submit that I attach hereto as **Annexure C Colly** the affidavit of one of the eye witnesses of the Gulberg massacre, Shri Firoz Khan Gulzar Khan Pathan filed before the Nanavaty-Shah Commission as far back as 30-05-2002. The facts enlisted by this victim and eye witness show that efforts have been made *from the start to get the misdemeanors in investigation corrected*. This affidavit contains details of Shri PC Pande's (then Ahmedabad Police Commissioner's) visit as also names the accused *that did not get recorded by the police in their statements*. Yet the state of Gujarat in their rejoinder continuously attempts to discredit the claims and statements of victims that reveals the attitude of the government and administration. Also annexed hereto in **Annexure C Colly** are two more affidavits filed before the Nanavaty Shah Commission by one Shri Yusuf Badarbai Pathan and another

by Shri Mehboob A Mansoori also stating details of Shri PC Pandey's visit to Gulberg Society.

14. I say and submit that below are the point by point rebuttals to the state of Gujarat's rejoinders.
15. I say and submit that with relation to the Gulberg massacre that took place on 28-2-2002, the witnesses and victim have stated time and again that the following accused though named by them are still roaming in the area – Maheksingh Dhupsingh chowdhary also; Narayan Channelwalla (victim of leprosy) Chunilal Jethaji Prajapati (ex BJP corporator), Advocate Jagrupsingh Rajput (ex BJP corporator) practicing sessions court. I say and submit that besides victims have stated that accused like Pappu Pratapbhai and Jeetu Pratapbhai named by them have never been caught and accused like Kapil Munnabhai and Dr Atul Vaidya never named by the police as accused despite pleas in writing by the victims. I say and submit that Girish Prabhudas Sharma is a wanted and absconding accused as also are Ramesh Choti and Ashish Pande.
16. I say and submit that the state's admission at page 34 stating that of the 43 accused names named as accused, the 'correctness of only 25 accused out of 43 is yet to be decided' is a bit of a farce since 25 out of 43 is over 50 per cent. I say and submit that this has been the contention of the victims and eyewitnesses: those innocents have been picked up while major powerfully influential accused have not been named.
17. I say and submit that as regards the massacre at Gulberg society, the state of Gujarat's contentions are self-contradictory. I say and submit that at page 7 para 11 the state of government has admitted that of the 46 accused of heinous crimes in the Gulberg society case, only 5 are in jail. The rest are roaming free on bail. The averment by the state that *anticipatory* bail was not granted in this case is no clean chit as bail was granted within 6 months of the crime. It was in the Ode massacre that *anticipatory* bail was granted and the Public Prosecutor did not oppose anticipatory bail.
18. I say and submit that on page 9 paras 17-18 of the State's Rejoinder dated 14-03-2007, the State is shielding itself behind the fact that only some witnesses expressed lack of faith in the state police after the entire matter had been put forth before the Hon'ble Apex Court. However this does not explain away the police's independent duty to consolidate investigations and specifically arraign the names of the accused that have also been mentioned in affidavits before the Nanavaty Shah Commission. Besides the witness complaints for re-investigations were made after the chargesheets had been filed and this puts the

conduct of the police further in question. (Para 20 Pg 20 in State's rejoinder) I say and submit that the State is conspicuously silent on the citing names of *influential persons as accused*.

19. I say in response to the state's contentions on page 10, Para 19 regarding the change of Shri Chetan Shah as public prosecutor (another advocate that had appeared for the accused!) we would like to reiterate that any change or correction by the State of Gujarat *has only been because of the scrutiny of the Hon'ble Supreme Court*.
20. I say and submit that at Para 23 Page 19, the state of Gujarat offers a strange explanation for the clubbing of offences and FIRs when such a chain of grave crimes have taken place.
21. I say and submit that at Para 22 page 16 of the State of Gujarat's rejoinder, that the State of Gujarat appears to be going out of its way to deny that Shri Farhad Mody, brother of Dara Mody visited the Commissioner of Police, Ahmedabad related to the seven to nine hour long attack on Gulberg society. I say and submit that as per the information put on affidavit by the witnesses and victims, it appears certain that Shri Farhad Mody was at the Commissioner of Police's office and Shri Dara Mody was at the Meghaninagar police station, both trying desperately to save the lives of their family that is Smt Rupa Mody and her two children, Binifer and Azhar. I say and submit that 12 year old Azhar 9in 2002) has been missing since that fateful day.
22. I say and submit that at Paras 12-14 at pages 17-18 of the State's Rejoinder the State gives limp excuses about the attack on Smt Zakiya Jaffri, Smt Mobina and Shri Rais Khan Pathan (of the Citizens for Justice and Peace) in August 2004 *in the premises of the Nanavaty Shah Commission*. I say and submit that it was a well publicized attack and while the non-filing of complaints by those is pinpointed as an issue, these attacks must be understood in the light of the overall atmosphere in the state of Gujarat. Besides, I say and submit if citizens of a State within the Indian Union are attacked in full public glare, it must oblige the State's Police to register a case *suo moto*, conduct an investigation and punish the guilty. I further say and submit that Shri Bajrangi, number 1 accused in the Naroda Patiya massacre led the attack within the premises of the Nanavaty Shah Commission on the aforementioned persons.
23. I say and submit that at Para 22 at Page 11 of the State of Gujarat's Rejoinder there is a strange and vehement denial of the Commissioner of Police Shri Pandey's visit to the Gulberg Society around 10.30 to 11 am on 28-02-2002. I say and submit that the affidavit of Shri Firoz Khan Gulzar Khan Pathan (**Annexure B**) **filed in May 2002** before the Nanavaty Shah Commission also

mentions this. Newspaper records and television channel recordings have repeatedly mentioned Shri Pandey's visit to the Gulberg society I say and submit that this aspect deserves closer scrutiny and investigation.

24. I further say and submit that in this connection the State of Gujarat has seen it fit to annexe the affidavit of Shri PC Pandey, then Commissioner of Police, Ahmedabad presently, Director General of Police Gujarat. I say in this connection that at page 63 until page 108, this affidavit contains a detailed history of communal violence in Gujarat and the city of Ahmedabad. It is after page 109 that the former Commissioner details the circumstances around the 2002 carnage, deployment of forces etc. I say and submit that the issue of the non-declaration of curfew orders here in Ahmedabad in advance (in Vadodara the curfew was declared much more promptly) until the afternoon of February 28 despite the bringing here of the dead bodies from Godhra is not alluded to. I say and submit that overall the state of Gujarat and the senior officer's who's affidavits are included here do not explain how firm action was not taken to prevent fomented communal violence after the tragic Godhra mass arson of February 27, 2002.
25. I say and submit that while there is a reference to the gathering of crowds at the Sola Civil hospital Ahmedabad, curfew was not declared. I say and submit that the report of the *Concerned Citizens Tribunal-Crimes Against Humanity Gujarat 2002* as also the Personal Register of Shri RB Sreekumar (**Annexure C to September 20, 2006**) there is clearcut evidence albeit circumstantial of the presence of Cabinet Ministers IK Jadeja and Gordhan Zadaphiya in the State and City Police Control Rooms at Gandhinagar and Ahmedabad on 28-02-2002. Similarly there is from the same sources circumstantial evidence of a meeting that took place at the instance of the then and now chief minister, Shri Modi wherein senior cabinet ministers, the then chief secretary (Shri Subha Rao) and then state DGP Shri Chakravarthi were instructed not to perform their Constitutional duties all put together reveal a lack of Constitutional Governance in the state.
26. I say and submit that the inclusion by the state of Gujarat of Shri PC Pandey's affidavit before the Nanavaty Shah Commission before the Apex Court but the non-inclusion of the four critical affidavits filed by Shri RB Sreekumar and the affidavit of Shri Rahul Sharma point to a selective attitude of the state that continues to be interested in shielding the guilty.
27. I say and submit that the contradictions about Smt Rupa Mody's affidavit before the Hon'ble Apex Court is sought to be belied by the State of Gujarat's claim in its rejoinder that she was assisted by Inspector of Meghaninagar

Police Station, Shri Erda. I say and submit that Smt Rupa Mody's case and emotional state is the classic example of a victim mother who's son has been 'missing' after a brutal attack. In her emotionally vulnerable state, Shri Erda visits her, takes her to the police station and promises to locate her son if she signs a particular claim. She has put *all these facts* before this Hon'ble Court on affidavit. Hence the state of Gujarat's claims are selective and partial, concealing the true facts.

28. I say and submit that at Para 25 Page 20 of the State Rejoinder the state of Gujarat has not denied that Shri Ahsan Jaffri made as many as 200 calls for desperate help. I say and submit that the State should provide the recorded calls of the former Parliamentarian Shri Ahsan Jaffri and in this context an Independent Investigation into the CD provided by Shri Rahul Sharma (**Annexure B Colly of the September 20, 2006 affidavit by Teesta Setalvad**) would become extremely relevant.
29. I say and submit that at page 21 the State offers no explanation as to the impunity with which the accused roam free in the areas on bail; at page 22 admits the missing persons but is quick to add that little can be done to declare them dead; vague on the matter of the absence of further investigation (Page 21, Para 2, Page 23) Pg 24 para 38 hasty bail.
30. I say and submit that vis a vis applications by witnesses and victims to the State of Gujarat's police Authorities about further Investigations it is clear from the record that these applications were made periodically from *November 2002 onwards* to authorities like the Commissioner of Police, Ahmedabad (First such application with sworn Affidavits was made on 25-11-2002). I say and submit that the State of Gujarat admits in its Rejoinder at Pages 27-32, specifically page 29, that the Commissioner of Police was utterly silent on these complaints, not responding to victims for a whole year until October 2003. It was only after October 5, 2003 that the State Police got into the act, i.e. after the Hon'ble Apex Court had been seized of the matter.
31. I say and submit that these are the obvious lacunae as far as the State of Gujarat's claims related to the Ode Trial: I say and submit that at page 177 the state is denying the incident that has resulted in one murder but non-registration of an FIR despite the affidavits of several witnesses.
32. I say and submit for the first time at Pg 176 related to the Ode Incident does the state police admit that 300 grams of small pieces of charred bones were recovered with ashes and identity was not established. I say and submit that the state police is silent on what it did with the recovery. I say and submit that it is clear from the affidavits of the victims and relatives that none of these were

- returned to the victims' families. I say and submit that serious questions about a) concealing of evidence appears to be the norm here b) serious questions as to the rites performed on the victims are raised c) serious questions as to what the state police did with the remains are raised here.
33. I say that at page 177-178 para 1 the so called contradiction mentioned by the state is a small discrepancy.
34. I say and submit that the averments by the state of Gujarat at Para 3 on Page 179 are not based on reality as all the victim survivors of the Ode massacre live in their fields and cannot return. There is a fragile peace as people who were victims of a mass trauma go on with the business of living but even now the accused roam free.
35. I say and submit that the admissions by the state of Gujarat at Para 4 Page 180 confirm the statements made by victim survivors on affidavit. For the record, these were never admitted by the state of Gujarat before this. I say and submit that repeated concerns by victim survivors about accused on anticipatory bail and absconding accused freely going abroad have been proved correct and do not speak well for the state of affairs in Gujarat. I say and submit that despite the Hon'ble SC's stay of this trial on 21-11-2003 one of the accused of this matter was roaming free and even left India on 19-5-04. I say and submit that this means that despite the SC order from Oct 3, 2003 and June 2004 when he was allowed to flee from the country, the Gujarat police did nothing to arrest him. I say and submit that it is a grave question that the state of Gujarat only processed the Red Corner Notice on 22-1-2007 and the question is why was it done so late? It appears as a sorry state of affairs that on the question of missing bodies, absence of DNA tests, absconding accused etc, it is only after relentless pressing by the victim survivors and supporting groups that the State has admitted these facts before the Apex Court.
36. I say and submit that victim survivors deny the statement at Para 9 that there are no threats to victims and witnesses. I further say and submit that the details at Page 190 about one accused are not borne out by statements of victim survivors.
37. I say and submit that at Pages 190-191 the state of Gujarat makes certain claims about the Fire Brigade from Umreth being called and answering the call about the ghastly fire at Ode. However I say and submit that the letters annexed at Pages 212 and 213 (letters of the Umreth Municipality and Anand Municipality) these are not contemporaneous letters at all and therefore raise questions. I say and submit that the first is a letter dated 27-10-2006 of the Umreth Municipality about an incident that took place 4 and a half years ago...

I say and submit that this is not a convincing record if not supported by a Fire Brigade Register maintained by the Fire Brigade in all parts of the country. I further say and submit that at Page 213 the letter of the Anand Municipality is dated 1-11-2006, again raises more doubts than satisfying them. Both communications appear to be a post facto attempt to simply show unsupported by records that no mob had hindered the fire brigade!!

38. I say and submit that Smt Rehana Vora has consistently denied police claims that she had given any statements clarifying that there were no attempts at coercion to the police (Page 196 of the State's Rejoinder)
39. I say and submit that victim survivors have stated clearly that on 1-3-2002 it was the assistance of leaders from other neighbouring places that saved their lives. They stand by this though it is denied by the state at page 206 of the Rejoinder.
40. I say and submit that the victim survivors have through photographic evidence placed before Judge Mehta detailed how isolated and traumatized their existence is until today. Hence we refute the state's contentions made at Page 211 in their rejoinder that the situation in the village is 'normal'.
41. I say and submit that the state's claims to payment for payment of compensation to victims of the Ode massacre and others in Gujarat are belied as can be observed by this perusal of the Chart on payment of Compensation annexed hereto as **Annexure B Colly**. I say and submit that after stating that there is no issue regarding the safety of witnesses the state of Gujarat contradicts itself by stating at Annexure II Page 220 of the State of Gujarat's affidavit dated 14-03-2007 at point c) that "Some of the witnesses have not returned to Ode." I say and submit that none, least of all persons belonging to the toiling peasant classes whose sole means of survival is their land would not return if they were assured safe rites of passage and a safe sojourn in a village they have lived for several generations. I say and submit that at Page 221 the victims' claims about grant of anticipatory bail and bail have been admitted. I say and submit that Smt Rehana Vora has denied the police claims of her statement ostensibly made on 28-4-2004 and 31-08-2004.
42. I say and submit that the state's claims at page 222 that protection will be provided as and when witnesses decide to return home is cavalier to say the least. I say and submit that the attempt to defend ASI RG Patel at Pages 223-224 when the matter is under investigation, when the malafides of the state police have been called into question suggests an overwhelming desire to shield those responsible for dereliction of duty.

43. I say and submit that between page 225 and 227 of the state's rejoinder wholly unacceptable reasons have been given for clubbing of 128, and 27 FIRs into two omnibus FIRs. I say and submit that this makes a laughing stock of the criminal justice system. (related to the Naroda Patiya and Gaon incidents)
44. I say and submit that at page 281 the role of PSI ML Rathod is admitted but malafides are denied (This is related to the Sardarpur incident) I say and submit that survivors have denied the state's claims made at Page 182 that no eye witnesses were preset at Pathan Mohalla and therefore there statements were not recorded. I say and submit that not recording their statements is clearly an attempt by the state's police to suppress proper investigation details and weaken the prosecution case. I say and submit that the excuse of the State at Page 282 that the Panch Witnesses were relatives of the accused (admitted) but defended stating that the IO was not aware of the relationship is not convincing. I say and submit that at Page 283 no real explanation is given for a pathetic investigation and records being drawn up that resulted in the close of the case in the first instance in 'A' summary. Similarly at page 284 the state of Gujarat is silent on whether or not it contested the application of bail made by the accused. I say and submit that only select statements from the Raval Community were recorded (Page 284).
45. I say and submit that on page 6 the state blithely states that the victim survivors of the Sardarpur massacre have been rehabilitated by the Mihirbhai Agni Trust. I say and submit that this is a private organization and the relocation is at Satnagar. I say and submit that there is a cavalier attempt to brush off the conditions of living. They live in fear and impoverished without their livelihood and photographic evidence has been submitted to Judge Mehta.
46. I say and submit that the excuse recorded by the state of Gujarat at Page 286 of their Rejoinder that the conditions imposed on the accused who are out on bail are not convincing as these are influential persons from the Patel community who launch a brutal and pre-planned massacre on the Shaikh Mohalla. I say and submit that the very fact that they can enter and leave the village with impunity has kept the legitimate survivors out of their homes and dwellings, refugees in their own land.
47. I say and submit that at Pages 286 of the Rejoinder the State of Gujarat admits that a Mosque was burnt by the same accused in May 2002 after they were released on bail. I further say and submit that at page 288 Para 23 the State also admits that the Local Durgah destroyed in 2002 has not been repaired which is a sorry commentary on the state of affairs in the state of Gujarat even five years after the carnage of 2002.

48. I say and submit that from Page 283 to 284 the State of Gujarat in its Rejoinder dated 14-03-2007 gives a strange set of explanations for the street lights being turned off. In Para R the State blithely states “the Talati cum Mantri” shows that the Panchayat had not paid the bill for three months prior to the incident. Hence the GEB disconnected the connection.” I say and submit that this is a strange and sinister explanation. First and foremost, such a statement/clarification cannot be given by the Talati, this clarification should in terms of responsibility have been given by the Deputy Engineer GEB (Gujarat Electricity Board) Sub-Division at Ladhoh. Secondly, since when were the Bills not paid? Why were the lights turned off that night of all nights? Thirdly, the connections in these areas are two phase, one for street lighting and public use the other for domestic users (one is a neutral phase.) If therefore the Talati mantri’s claim is true about bills not being paid, it should have been the lights of the domestic users that ought to have been turned off, not the street lights. Fourthly once the lights were turned off, who was the Shaikh Mohalla that was attacked spotlighted by hanging up a fox light to enable easy attack? I say and submit that these are crucial questions that need to be answered.
49. The contents of the above affidavit have been read over to me and explained to me and I say that the paras 1 and 51 to be true and correct to the best of my knowledge.

Deponent

VERIFICATION:

Verified at Mumbai on this 2nd day of May 2007 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

Annexure A

PIO/ID/124/04/2006/I

Law Department
4 Sardar Bhavan
Sachivalaya
Gandhinagar
Date: 10/5/2006

Sender
B. K. Bhuva
Public Information Officer
Law Department
Sachivalaya, Gandhinagar

To,
Shri Zafar M. Gandhi
2111/9, Paanch Kuva
Navi Mohalaat, Ahmedabad

Shriman/ Dear Sir,

Following the application dated 10-4-2006 requesting information (ID/124/2006) you are informed that,

The data/information required by you regarding the five advocates mentioned in your letter has been received from the information department's related branches, which is enclosed herewith. All the five advocated have been designated/appointed Special Public Prosecutors for Pota related cases; while Shri Panchal, Shri Dhruv and Shri Trivedi have also been appointed/designed for cases other than Pota, the details regarding which as well as the fees paid to all five are included.

Yours faithfully
B.S. Bhuva
Deputy Secretary,
Government & Public Information Officer
Law Department
Government of Gujarat.

Law Department
4, Sardar Bhavan
Sachivalaya
Gandhinagar
Date: 3 May 2006

To,
Asst. Secretary,
Department of Law, I Branch
Sachivalaya, Gandhinagar

Sub: Rule 2005; Right to information
Application dated 10-4-2006 of Zafar M. Gandhi

Sir,

In response to your letter dated 12-4-2006 serial no. P/0/ID/No 124/1 we beg to inform you that the details regarding the appointments of Special Public Prosecutors for cases excluding POTA are as follows:

1. Shri J.M.Panchal	19 cases
2. Shri S.M.Dhruv	3 cases
3. Shei Umesh Trivedi	1 case

Yours Faithfully,

B.S. Panjwani,
Section Officer,
Department of Law
Government of Gujarat

Sr. No	Name of Spl PP	Fees Paid till 31-03-06
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POTA
&

Other Cases	1.	Shri HM Dhruv	Rs.92,86,000
POTA Only	2.	Shri Sudhir Brahmabhatt	Rs. 27,69,000
POTA & Other Cases	3.	Shri Umesh Trivedi	Rs. 28, 76,000
POTA & Other Cases	4.	Shri J.M. Panchal	Rs. 5,11,500
POTA Only	5.	Shri Vinod Gajjar	Rs. 5,74,000

Annexure B

For producing before Justice K. G. Shah (Retired) Inquiry Commission.

Subject:Notification No.COI/GUJ/Ahmedabad/11/96/2002

AFFIDAVIT

I, the undersigned Firoz Gulzar Mohammedkhan Pathan, aged 28 years, occupation tailoring work, Residing at Chamanpura, 15, Gulberg society, Ahmedabad, at present residing at Relief Camp, Dariakhan Ghummat, Ahmedabad, do hereby file this affidavit on solemn affirm and state on oath that:-

- 1) On last dated 28.02.2002, as there was call of Gujarat Bandh, both my parents, other family members and I were present at my house.
- 2) Suddenly, my brother Mohammed Imran came running, agitated and panting, stating that outside our society, a small mob of Hindus are stoning and breaking the shops. On hearing this, I came outside gate no.2 of my society and saw that persons belonging to a mob of Hindus, holding lethal arms like swords, gupti, javelins, pipes etc. were present. There were also four to five persons from the

police standing near our society, the Gulberg society, Chamanpura, Ahmedabad. Though witnessing this, they were silent spectators. No policeman from the chowky nearby tried to control the mob, calm it down, perform a lathi charge to disperse it nor attempt to call for more forces. clam and not made any lathy charge and not tried to get more police force. Within moments, more and more crowds joined the mob that soon swelled to a mob comprising of 10 to 15 thousand people.

- 3) I, Firoz Khan, seeing these developments before my eyes felt terrified and went inside the Gulberg society. After some time I even heard voice of mobile van of the police. Around that time I had seen that one policeman of police mobile poured water on one burning rickshaw and extinguished the fire and thereafter the mobile went away from there.
- 4) Soon after the police mobile van moved away, the Police Commissioner Shri P. C. Pandey came to our society and he also came inside the Gulberg society and had a talk with Shri Ahsan Jaffery. Shri Ahsan Jaffery (Ex-M.P.) while talking to Shri P. C. Pandey strongly urged that the police should depute an S. R. P. point here outside the Gulberg society. He also told the Commissioner that if he could not make proper *bundobust* then we, the residents of Gulberg society would vacate our houses and would go away to some other place. Thereafter Shri P. C. Pandey, Police Commissioner, Ahmedabad had given him (Shri Ahsan Jaffri) in my presence that we would get sufficient police *bundobust*. Saying this he, Shri P. C. Pandey went away from the Gulberg society. At the time when Shri P. C. Pandey left went away, police van was present. But, after some time, when a mob of about 4 to 5 thousand Hindu persons came near the Gulberg society, immediately the mobile van of police left from there. The leadership of the mob was in the hands of one Narayan Channelwala, Girish, Dharmesh, Mukesh, Ambesh, Dilip @ Kalu Parmar, Kailash Dhobi, Prabhu Mochi and Kapil who were residents of the neighbourhood around the Gulberg society, and above leaders of above mob and others in the mob had lethal arms

like open swords, gupti, javelins, pipes etc. The persons who were in the leadership of this mob and persons of mob had, by now, started stone pelting on Gulberg society. This was around 11.30 -12 noon.

- 5) Thereafter, I Firoz Khan went inside my bungalow no.15 situated inside the Gulberg society and spoke to my parents. Around this time, opposite our bungalow there is another bungalow with a wall adjacent to the railway line. At this time, outside that wall also, a mob of Hindus had gathered and from there also the persons of mob started throwing burning tyres, burning torches, glass bottles, acid bottles, on our society. The homes and flats within our society had started catching fire. By this time the windows of our bungalow, no 15 was on and within moments the windows and doors of other bungalows were also set on fire. We residents frantically tried to extinguish the fire. At this time persons of the mob were breaking the wall near railway line. By about 2.00 to 2.30 P.M. the mob had broken the wall and 8 to 10 thousand persons from the mob and rushed into the Gulberg society. Persons from the mob, Jitu, Pappu (both brothers), Girish and other 6 to 7 persons rushed towards our house and there was open sword in the hand of Jitu. He threw this unsheathed sword towards me due to which I even sustained an injury. He had also given one blow on the wrist of my right hand and given one blow on my head. After this assault, my parents, brothers and sisters and I ran towards bungalow no.19 of Shri Ahsan Jaffri Saheb to take shelter and I went onto the terrace of bungalow No.16. From the terrace, I saw that Jitu and Girish had given me a blow from the sword on the back and head of my mother and Jitu and Mukesh had snatched away cash amount of Rs.40,000/- from the bag of ornaments of gold my mother's hand. Due to that blow of the sword, my mother was blood soaked. The persons names of whom are mentioned are of my area, therefore, I know them by their names. The persons of the mob had also set on fire the Indica Car kept in Bungalow No.16 and they also set on fire other vehicles in the society.

- 6) The mob rushed into the society by breaking the wall from the railway line and the mob standing outside the society gathered and stood by finally coming in front of the house of Shri Ahsan Jaffri.
- 7) I, Firoz had seen all this from the terrace of bungalow No.16 that the persons of the mob had spread terror in the society armed with lethal started to give blows to residents and within moments they killed some persons. I say in this attack they also killed my mother named Mariyambibi Gulzar Mohammed. The death of my mother was caused due to giving blows of swords by Jitu and Girish.
- 8) I, Firoz got down through staircase situated at opposite side on bungalow no.16 after about one and half hours.
- 9) After seeing evidence of all those dead bodies and the terror of the mob, I, Firoz, to save my life went into the neighbouring Dr. Gandhi's chawl through a wooden staircase and from there by walking on track of railway line I reached the Kalupur meter gage and from there I went in Madressa named "Faizanul Quran" situated in Girdhari Mill compound and took shelter there. Thereafter, all alone I came to Dariakhan Ghummat Shahibag, where my friend Salim met me, and he stated to me that, your father, two brothers and one sister have been killed attack on the society.
- 10) After Shri P. C. Pandey left Gulberg society, until 4.30 P.M. at evening I applicant was there in Gulberg society but he did not return and he did not even send t any police *bundobust*.
- 11) Thereafter on dated 02.03.2002, policemen brought 17 dead bodies to the Kalandari Masjid situated near Dudheshwar road Water tank. A declaration regarding this was made through the mike and therefore I went for identification of dead bodies, after which I applicant had identified dead bodies of my father named Gulzar Mohammed Pathan, aged 58 years, mother Mariyambibi aged 48 years, and sister Firdoshbanu aged 25 years and brothers named Irfan Mohammed aged 21 years and Imran Mohammed Hafiz aged 19 years. The Police had handed over those five dead bodies to me, and thereafter, after

finishing necessary Islamic procedure, all five dead bodies were buried in Kabrastan of Kalandari mosque. Till today, my younger brother named Arif who was at Juhapura on the day of incident has survived and he is in camp with me.

- 12) Police came to record my statement in relief camp on dated 05.03.2002, wherein I applicant had given complaint with name wherein I had given names of Girish, Jitu, Pappu Pratapbhai Thakore, Res. Piru Bhatiara's Chawl, Near Bal Bharati school, Chamanpura (J. P. Panwala), Ramesh Pandey, Ambesh, Kapil Munnabhai Dharmesh, but when I received copy of my police statement at that time I applicant was surprised and in that statement which statement I made before investigating officer on dated 05.03.2002, the above names which I stated in those names only reference of name of Ramesh Pandey and Girish was written in my statement and other names like Dilip Chaturbhai, Mangilal, Prabhu Mochi and Kailash Dhobi's names were written by police suo motu. I applicant had not stated these names, because I was not knowing names of these people. Thus police has suo motu after going in police station had deleted some names with their whims from names of accused stated by me in my statement and had added some names.
- 13) Thus, it is my humble belief that a responsible officer like Police Commissioner, Ahmedabad had also by not sending police force at above place through such huge terror and killing was continued by mob of Hindus in Gulberg society, has made an abetement in the commission of offence. If Police Commissioner Shri P. C. Pandey would have really thought to send police assistance then he could have sent police force in time and he could have saved residents of Gulberg society who were killed by mobs of Hindus and who spread terror in society.

I am enclosing 3 Xerox copies of affidavit and 3 Xerox copies of statement of I applicant-deponent. I applicant got treatment of my injuries in above relief camp. The papers of treatment are not given to me.

The above fact is true and correct as per my knowledge and belief.

Ahmedabad.

Date:25.06.2002.

Identified by me

Sd/- F. G. Pathan

Solemnly affirmed before me by

Shri Firoz Mohamed Gulzar Mohamed Pathan,

Who is identified by Shri M. B. Qureshi, Advocate

Whom I personally know.

Date: 25.6.2002

Sd/- illegible

City Civil Court,

Bhadra, Ahmedabad.

For producing before Justice K. G. Shah (Retired) Inquiry Commission.

Subject:Notification No.COI/GUJ/Ahmedabad/11/96/2002

I am producing following documentary papers.

1. Xerox copy of complaint.
2. Xerox copy of panchnama.
3. Paper cuttings regarding incident.

3 Xerox copies of affidavit and 3 Xerox copies of statement of applicant-deponent before investigating officer.

The applicant had took treatment in relief camp. The case papers are not received therefore, the same are not produced.

Before Hon'ble Justice K. G. Shah (Retired) Inquiry Commission, Shahibaug, Ahmedabad.

Statement on Oath

Name:- Yusufbhai Badarbhai Pathan

Age year:- 44 years

Occupation:- Casual Labour work.

Residence:- Flat No.5, Block No.557/27, 3rd floor, Gulmarg society, Ahmedabad.

Presently

Residing at: Dariakhan Ghummat Relief Camp, Ahmedabad

Do hereby state by filing this affidavit that...

I am residing at the above address. I am citizen of India.

There were total five members in my family. I had one son and two daughters and my wife we all were living together. My wife Zubedaben aged 39 years, was serving in Rubin Bakery situated near Sharda high school, Near Kalapinagar.

On dated 28.02.2002 at about 9.30 to 10.00 A.M. in the morning, the mobs of Hindus were gathering from all four sides in my area. At that time leader of my society Shri Ehsan Jaffery, phone called Police Commissioner, Ahmedabad and informed him so Police Commissioner came. Shri Jaffery Saheb had talk with him and stated to us that Police Commissioner has given assurance of doing sufficient police bundobast.

On the same date at 11.30 A.M. mob of more persons rushed from all four sides on my society, and at that time no help of police was reached. We all persons were hiding at different places to save our lives. This mob had made beating and cutting and killing people in the houses and compound of society from 11.00/11.30 A.M. in the morning till 5.00 P.M. at evening and killed people. They had burnt some people there by pouring petrol and kerosene, wherein my wife was also caught and I feel that she was caught, because, from dead bodies found from compound of society, dead body of my wife is not found. Out of my children, one daughter and one son were with their mother and with my one daughter I went upstairs of house and we were hiding.

At the evening time, police came in compound of society and police stated that any person hiding who are alive should come downstairs, so I and my daughter came down. At that time my two children who were with my wife and who were separated, how they came before me that I don't know. As those children were hiding anywhere in society they came before me. But no whereabouts of my wife is found or out of dead

bodies lying there, there was no dead body by which my wife could be identified. We were taken to Shahibaug police station. Thereafter at night time, we were taken in Municipal School near Dariakhan Ghummat. I at present also live there.

The articles of my house are looted and by breaking very much damage has been caused to my house. However, I have received an amount of Rs.5000/- Rupees Five thousands towards damage to house and amount of Rs.1250/- Rupees one thousand two hundred and fifty only towards damage to households. I cannot live at that place by getting house repaired with cost of Rs.5000/-.

If police protection could have been received by us then loss of lives and damage caused in society could have been stopped.

The above facts as stated by me are true and correct.

Ahmedabad.

Sd/- Pathan Yusuf Badar

Date:04.06.2002

Yusufbhai Badarbhai Pathan

Solemnly affirmed before me

By Yusufbhai Pathan who is identified

By Shri Mansuri B. D.

Whom I personally know.

Identified by me

Mansuri B. D.

Advocate.

Before Hon'ble Justice K. G. Shah's Inquiry Commission, Shahibaug, Ahmedabad.

Statement on Oath

I, Mehboob Alanur Mansuri, aged adult, occupation: bed sheet, Residing at 13, Gulmarg society, Chamanpura, Omnagar, Ahmedabad-1, by taking oath of my religion and by filing this affidavit state that,

I am citizen of India and I am residing at above address in Bungalow No.13. There are 19 bungalows and 4 flats situated in my society wherein Muslim families and one Parso family and in bungalow no.1 on corner inside society one Hindu Mochi family also live. In my society about 40 young men and 25 old aged and about 100 women and about 30 children were living.

On dated 27.2.2002, pursuant to Godhra massacre, VHP and Bajrangdal had given call of Bharat Bandh with support of BJP. Due to that I kept my shop of bed sheets situated in front of my society closed. At about 10.00 A.M. in the morning on ten to fifteen scooters about twenty persons came in front of my society and they were shouting Jay Shri Ram, Jay Bajrangbali and beat, cut and burn Muslims, therefore other people also came from nearby places and big mob was gathered. The persons of mob and persons came on scooter had swords, trishuls, pipes, scythes, sticks etc. lethal arms, and in that mob there were Narayan Kabra, Bharat Rajput, Kapil, Gabbar, Krishna, Ramesh Choti etc. persons. Outside my society, a shop of cycle named Ankur of Habibkhan is situated, and his son Yusuf was at shop and persons of mob started beating him and therefore he was coming in my society by running. At that time in his back Ramesh gave blow of knife. At that time persons of mob broken shop of tailor named Metro Mans' wear of Anwarkhan Ahmedkhan Pathak situated near my society and looted it and started to burn it. At that time, Gulmarg police chowky is situated outside my society where five to six police persons were present, who were seeing all these acts by standing there. The mob was slowly getting huge form. Therefore Muslim families living in nearby areas Dr. Gandhi's chawl, Mamu Pathan's chawl, Patrawali Chali, Papusing's chali, Santokben's chali etc. chawls left their houses due to fear and came running in my society to take shelter. Thus as mob held lethal form, we all ran before Shri Jaffery who was living in

bungalow no.19, where Shri Jaffery Saheb was constantly making telephone calls in police control room and at other different places and making effort to get help of police. At about 10.30 A.M. in the morning, Police Commissioner Shri Pandey came personally to meet Shri Jaffery with police persons. I and other persons of society at that time came out with Jaffery Saheb from his house and went at gate of society to meet Shri Pandey. Shri Jaffery Saheb had requested Shri Pandey Saheb, Police Commissioner to make protection of our lives and properties in all manner and to provide proper police protection, therefore Shri Pandey Saheb had given such assurance to we all that proper police protection would be provided, therefore Shri Jaffery Saheb had requested him that if you could not provide proper police protection to us in time then shift we all from here at other place, but Shri Pandey Saheb said that I will provide police bundobust now immediately.

Thereafter we locked gate of our society and came inside society. About 30 to 40 women, men and children took shelter in house of Shri Jaffery and in other houses, other different houses of society the women and children were hiding. Very huge mob was gathered outside our society and was holding huge form and was shouting. At about 12.00 to 12.30 Noon the stone pelting and throwing of petrol bomb and torches on our society started from all four sides and from railway track side also at backside of our society constant throwing of metals started. The rioting mob had broken wall towards railway track of our society at about 1.00 P.M. and made hole in it and persons of rioting mob rushed inside and by gathering tyres, sticks etc. they made breaking and set on fire all bungalows of society, and by entering in respective bungalows they took out men and women and made lethal attack on them and started work of killing them. I was on terrace of bungalow of Jaffery sahib and where with me Salimbhai and eight to ten persons of nearby chawls climbed on terrace and we seen from there that from my bungalow no.13 my mother Shri Sonaben Alanur and my wife Anisha Mehbubhai Mansuri and Mohsin who was my ten years old son and Wasim aged 6 years they assaulted on them with lethal arms and killed them, and out of them my one daughter named Yasmin aged 13 years and son Mubarak aged 12 years went upstairs at third floor of my house therefore they were

survived and in bungalow no.2 my brother Kasambhai Alanur who went out at the relevant time, and in his family his wife Zebun Kasambhai, Nazma Kasambhai and Shakil Kasambhai were killed by persons of mob and threw them in burning fire and persons of mob had also started deadly attack on other bungalows and by entering there they made breaking and looting and done killing. At about 2.30 P.M. by breaking main gate of my society, mob made an attack on bungalow No.19 of Jaffery Saheb. They started to break iron net of bungalow of Jaffery Saheb, therefore Jaffery Saheb requested persons of mob by remaining inside net that if you have to kill me then I am coming before you, by saying so he opened net and went outside so persons of mob snatched him and took him in compound. The mob had started shouts to Kill, cut and burn Jaffery, therefore at about 3.00 P.M. in noon persons of mob had with swords, scythes etc. made pieces of Jaffery sahib and threw petrol, tyres etc. on his body and set on fire and they took out Faridaben Shakilbhai, Yasmin Rafikbhai, Faizal Rafikbhai, aged 5 years, Mehmuda Aslambhai, Shabnam Aslambhai, Ayesha Aslambhai, Irfan Aslambhai, Muskan Aslambhai, Saheda Aslambhai etc. taking shelter at lower part from house of Jaffery Saheb and killed them and threw them in burning fire and they also killed Aslambhai Abdulbhai, Sahil Salimbhai, Shamimbanu Kalimbhai who was living in bungalow no.13 and threw them in fire and burnt them. During this till 6.00 P.M. no police persons came to save persons of my society and no protection was provided to us. During this period the persons of mob made breaking, looting and spread terror in 19 bungalows of my society and killed and burnt women, men, and children whoever came into their hands. All atmosphere of my society became in transparent due to constant fire and smokes. At evening time police came in the compound of my society and shouted therefore I and nearby people got down and came out, where D.C.P. Tandon and other police persons were there. Who made an arrangement of police van for we people survived after some time and took us in Shahibaug police station and by making us sit there thereafter at 9.00 P.M. at night they left us in Municipal School, Shahibaug at Devjipura Dariakhan Ghummat.

The persons of mob as above by holding lethal arms and by spreading terror and by making an attack on my society, they had done looting and breaking in my society and by setting on fire and by making an attack on alive men, women and children and by killing them and by burning some people alive, have committed cruel act. When police came at that time I and other persons got down and went in bungalow and towards compound so many dead bodies were lying there in burnt, semi burnt position and dead body of wife of Saidkhan was in naked position and dead body of wife of Akhtar was in naked position and at backside part of bungalow No.18 and bungalow no.19 I had seen naked dead bodies of women lying there, therefore I told Shri Tandon to make necessary arrangement about dead bodies of women lying naked, so he stated that I will shift all at safe place from here and will take legal action. After assurance of Police Commissioner Shri Pandey till 6.00 O'clock in the evening no police protection was given to us.

Though there are above mentioned facts, no arrangement was made for our protection by police department. In that manner Government of Gujarat has failed in giving protection to Muslims.

The above fact as stated by me is true and correct.

Ahmedabad.

Sd/- Mehboob A. Mansuri

Solemnly affirmed before me by

Shri Mehboob A. Mansuri who is

Identified by Shri

Clerk of Advocate Shri M. H. Shaikh,

Whom I personally know.

Date: 30.5.2002

Identified by me

Mansuri B. D.

Advocate.

Sd/- illegible.

On the stamp paper of Rs.20/-

Affidavit

I, the undersigned Firoz Gulzar Mohammedkhan Pathan, aged 27 years, occupation: tailoring work, Residing at Chamanpura, 15, Gulberg society, Ahmedabad, at present residing at Relief Camp, Dariakhan Ghummat, Ahmedabad, do hereby file this affidavit on solemn affirm and state on oath that:-

- 1) On last dated 28.02.2002, as there was call of Gujarat Bandh, I and my parents and family members were present at my house.
- 2) My brother Mohammed Imran came running and panting at my house and stated that, outside our society, small mob of Hindus are breaking the shops. By hearing this, I applicant came outside gate no.2 of my society and seen that persons of mob of Hindus were holding lethal arms like swords, gupti, javelins, pipes etc. There were four to five persons of police near my Gulberg society, Chamanpura, Ahmedabad, but they were seeing all this happening by becoming silent spectators. No policeman of above chowky tried to make mob clam and not made any lathy charge and not tried to get more police force. Within moments other persons were included in the mob and mob comprised of 10 to 15 thousand people.
- 3) I applicant by seeing this frightened and went in Gulberg society. After some time I heard voice of mobile van of police and at that time I had seen that one policeman of police mobile poured water on one rickshaw which was burning and extinguished fire and thereafter mobile went away from there.
- 4) After police mobile van went away, after some time, Police Commissioner Shri P. C. Pandey came and he went in Gulmarg society and had a talk with Shri Ehsan

Jaffery. Shri Ehsan Jaffery (Ex-M.P.) had talk with Shri P. C. Pandey that keep S. R. P. point here in Gulmarg society, and if you cannot make bundobust then we residents of Gulberg society will vacate our houses and will go away at other place. Thereafter by saying that sufficient police bundobust will be provided Shri P. C. Pandey, went away from Gulberg society and when Shri P. C. Pandey went away at that time police vans were staying. After some time, a mob of about 4 to 5 thousand Hindu persons came near Gulberg society and immediately mobile van of police left from there. The leadership of mob was taken by Naran Channelwala, Girish, Dharmesh, Mukesh, Ambesh, Dilip @ Kalu Parmar, Kailash Dhobi, Prabhu Mochi and Kapil Resident all near Gulberg society, and above leaders of above mob and persons of mob had lethal arms like open swords, gupti, javelins, pipes etc. The persons who took leadership of this mob and persons of mob had started stone pelting on Gulberg society. At that time, there was time of about 11.30 noon. Therefore we had closed down gate of Gulberg society.

- 5) Thereafter, I applicant went inside my bungalow no.15 situated in Gulberg society and asked to my parents. During that opposite my bungalow there is a wall near railway line and outside that wall also mob of Hindus was gathered and from there also the persons of mob started throwing burning tyres, burning torches, glass bottles, acid bottles, on bungalows of my Gulberg society, therefore there was fire on windows of bungalow no.15 of I, the applicant and within moments the windows and doors of other bungalows also set on fire. We residents tried to extinguish fire, at that time persons of mob were breaking wall near railway line. During time of about 2.00 to 2.30 P.M. in noon, mob had broken wall of cot and 8 to 10 thousand persons of mob rushed in my Gulberg society, wherein Jitu, Pappu (both brothers), Girish and other 6 to 7 persons rushed towards house of I applicant, and there was open sword in the hand of Jitu. He threw open sword towards I applicant therefore I sustained injury and he had given one blow in wrist of right hand and given one blow in my head, therefore mother-father, brothers and sisters of I applicant ran towards bungalow no.19 of Shri Ehsan Jaffery Saheb

to take shelter and I went on terrace of bungalow No.16. From terrace, I applicant had seen that, people had snatched away cash amount of Rs.40,000/- from bag of ornaments of gold in hand of my mother and due to that blow of sword, my mother became blood soaked. The persons names of whom are mentioned are of my area, therefore, I applicant know them by their names. The persons of mob had set on fire Indica Car kept in Bungalow No.16 and they also set on fire other vehicles in the society.

- 6) The mob rushed by breaking wall from railway line and mob standing outside the society gathered and stood by coming in front of house of Shri Ehsan Jaffery.
- 7) I applicant had seen from terrace of bungalow No.16 that persons of mob had spread terror in the society with lethal arms with them and started to give blows to residents and within moments they killed some persons wherein they also killed mother of I applicant named Mariyambibi Gulzar Mohammed. Death of my mother was caused due to giving blows of swords by Jitu and Girish.
- 8) I applicant got down through staircase situated at opposite side on bungalow no.16 after about one and half hour.
- 9) By seeing all those dead bodies and terror of mob, I applicant for saving my life went in Dr. Gandhi's chawl through a wooden staircase and from there by walking on track of railway line I reached at Kalupur meter gage and from there I went in Madressa named "Faizanul Quran" situated in Girdhari Mill compound and took shelter there, and thereafter, I alone came in Dariakhan Ghummat Shahibag, where my friend Salim met me, and he stated to me that, your father, two brothers and one sister have been killed in the society.
- 10) After Shri P. C. Pandey left Gulberg society, till 4.30 P.M. at evening till I applicant was there in Gulberg society he did not come back and he had also not sent any police bundobust.
- 11) Thereafter on dated 02.03.2002, policemen brought 17 dead bodies in Kalandari Masjid situated near Dudheshwar road Water tank. A declaration regarding this was made through mike, therefore I went for identification of dead bodies, where I

applicant had identified dead bodies of my father named Gulzar Mohammed Pathan, aged 58 years, mother Mariyambibi aged 48 years, and Firdoshbanu aged 25 years and brothers named Irfan Mohammed aged 21 years and Imran Mohammed Hafiz aged 19 years. Police had handed over those five dead bodies to me, and thereafter, after finishing necessary Islamic procedure, all five dead bodies were buried in Kabrastan of Kalandi mosque. Till today, my younger brother named Arif who was at Juhapura on the day of incident has survived and he is in camp with me.

12) Police came to record my statement in relief camp on dated 05.03.2002, wherein I applicant had given complaint with name wherein I had given names of Girish, Jitu, Pappu Pratapbhai Thakore, Res. Piru Bhatara's Chawl, Near Bal Bharati school, Chamanpura (J. P. Panwala), Ramesh Pandey, Ambesh, Kapil Munnabhai Dharmesh, but in my police statement on dated 05.03.2002, the above names which I stated in those names only reference of name of Ramesh Pandey and Girish was written in my statement and other names like Dilip Chaturbhai, Mangilal, Prabhu Mochi and Kailash Dhobi's names were written by police suo motu. I applicant had not stated these names, because I was not knowing names of these people. Thus police has suo motu after going in police station had deleted some names with their whims from names of accused stated by me in my statement and had added some names.

13) Thus, it is my humble belief that a responsible officer like Police Commissioner, Ahmedabad had, by not sending police force to the above place enabled huge terror and killings to be conducted and continued for hours by a mob Hindus within the Gulberg society, and therefore he has made an abetment in the commission of offence. If Police Commissioner Shri P. C. Pandey would have actually sent police reinforcements and help in time, he could have saved residents of Gulberg society who were killed by mobs of Hindus and who spread terror in this society.

I am enclosing 3 Xerox copies of affidavit and 3 Xerox copies of statement of myself the applicant-deponent, made before investigating officer. I applicant got treatment of my injuries in above relief camp. The papers of treatment are not given to me.

The reason for filing this affidavit is that, CR No.67/2002 was registered with Meghaninagar police station and in that complaint I am witness. In that context police recorded my statement, but now, after examining the charge sheet I have come to know that police has not recorded the written statement as stated by me. To establish this I am required to file this affidavit.

The information mentioned in para 1 to 13 in above affidavit are true and correct.

Today on dated November, 2002 at Ahmedabad.

I have explained contents of above affidavit in Gujarati.

Identified by me

Sd/- Advocate.Sd/- (Firozmohammed Gulzarkhan Pathan)

Solemnly affirmed before me

Sd/- N. A. Sevak,

Notrary, Govt. of India.