

IN THE CITY SESSIONS COURT AT AHMEDABAD CITY
SESSIONS CASE NO: 152 OF 2002

State of Gujarat... ..

V/s

Kailash Lalchandbhai Dhobi & Others.... ..

**Sub:- Reply on behalf of witnesses to the
application Ex.:1748 filed by the SIT.**

MOST RESPECTFULLY SHOWETH..

1. The present application filed by the 'State of Gujarat' and duly affirmed by Mr. Himanshu Shukla, Deputy Commissioner of Police, Crime Branch, Ahmedabad and Investigating Officer, SIT, Gandhinagar deserves to be rejected mainly on the following grounds:-

(A) The present application exposes the dilatory tactics of the applicant. The trial is sought to be stalled by the applicant herein on flimsy grounds rather than strictly following the judgment of the Supreme Court reported in 2009(2) G.L.R. 1672.

(B) That the report of the amicus curiae Mr. Ramachandran clearly indicts these two police officers namely M. K. Tandon and P. B. Gondia and para 15 observes as under:-

---It may be recalled that I had, in my note dated 20.01.2011, suggested that the material available indicated that the said 2 police officers should be proceeded against for the offence of criminal negligence under Section 304A

IPC. Whereas there are other findings in the Further Investigation Report of the SIT, *inter alia* that no offence of criminal negligence under Section 304 A IPC is made out against Shri M.K. Tandon, the then Joint Commissioner of Police, Ahmedabad and Shri P.B. Gondia, the then Deputy Commissioner of Police, Ahmedabad. However, it was concluded [in paragraph 188 of the Report] that the conduct of these 2 police officers was unprofessional and unbecoming of senior police officers, and would attract departmental proceedings. The observations on findings of SIT with regard to Mr. M. K. Tandon and Mr. P.B. Gondia *visa vis* that of the *amicus curiae* are as under:-

ALLEGATIONS	FINDINGS OF SIT	OBSERVATIONS OF THE AMICUS CURIAE
<p><u>VII.</u> The allegation is that 13 IAS/IPS officers were rewarded for their support during the post Godhara riots.</p>	<p>The finding of the SIT is that there was nothing to indicate that the 13 officers had been rewarded with postings for their support to CM. However, at page 44 to 49, the SIT had concluded that the conduct of Shri M.K. Tandon, the Joint Commissioner of Police, Sector-II, Ahmedabad, was not satisfactory. It is also mentioned that he received calls from Jaydeep Patel and Mayaben Kodnani, who are accused in Naroda case. Similarly, the SIT had concluded that the role played by Shri P.B. Gondia DCP Zone-VI,</p>	<p>1. The major massacres in Ahmedabad City took place in Gulberg Housing Society, in Naroda Patya and Naroda Gam. Hence, the actions of Shri M.K. Tandon, the Jt. Commissioner of Police, Sector-2 and that of P.B. Gondia, the DCP, Zone-VI, cannot be termed as mere failure to discharge their duties as both the officers were not present at any of these places despite the fact that they were fully aware of the possibility of loss of lives. It appears that if these officers had been present at the spot or had taken effective steps in time, the massacres could have been avoided and lives could have been saved. A case of criminal negligence is made out against these 2 officers. Further, they have received calls from accused who are facing trial in Naroda massacre i.e. Mayaben Kodnani and Jaydeep Patel. Therefore, it does not</p>

	<p>was suspicious and he also received calls from Mayaben Kodnani and Jaydeep Patel. In the subsequent report dated 26.11.2010, it has been advised that Departmental action be taken against them.</p>	<p>appear to be a simple case of mere dereliction of duty. Section 304A IPC would be squarely attracted in such a case.</p> <p>2. In so far as promotion of other IAS and IPS officers are concerned, the view taken by SIT seems to acceptable.</p>
--	---	--

The amicus curiae recommended that Shri M.K. Tandon and Shri P.B. Gondia be prosecuted under Section 304A IPC.

It is under these circumstances all the relevant documents are required to be placed on record of this case as per the judgment and order of this Hon'ble Court dtd. 09.11.2011.

(C) The contention raised by the present applicant in para 4 in support of its prayer are not in consonance with law and facts. The applicant wants the Ld. Magistrate to decide on the fate of the 'closure' report, wait till revisions/ appeals etc before deciding the fate of the accused u/s 319 Cr.P.C. This argument is not only absurd but goes to show the concerted efforts of the investigating officer to 'safe guard' the interest of the accused. The evidence before this Hon'ble Court flowing from the depositions of the witnesses has nothing to do with the reaction of the Ld. Magistrate on the closure report. Thus, the present application is required to be dismissed in the interest of justice.

(D) That the applicant i.e., the 'State of Gujarat' is well aware of the fact that enough hints have been given by it in para 4 of the application that the final decision on the closure report would take considerably long time as the order of the Ld. Magistrate may be challenged by the aggrieved party by way of the revision or appeal etc. Thus, the trial of the present case would be delayed by few more months.

(E) That an application was filed on behalf of the witnesses being Exh: 1661 dtd. 03.10.2011 seeking production of all the relevant papers of investigation prepared by the SIT pursuant to the order passed in Criminal Appeal No. 1765/2011. The Ld. Special Public Prosecutor made a statement before this Hon'ble Court that he had no objection if the documents are produced before the competent court taking cognizance of the offence. This Hon'ble Court on 09.11.2011 ordered that all the relevant papers produce in the court after the relevant papers are filed in the competent court. Thus by way of this application the present applicant seeks review of the order of this court which is hit by sec. 362 Cr.P.C. This practice of seeking review of the order under the guise of a separate application. The copy of the application at Exh: 1661 Enclosed here with.

Thus, the contentions of the applicant are not in consonance with the provisions of law and therefore the present applicant is required to be dismissed.

SHOULD WE NOT ANNEXE PORTIONS OF THIS?

Written Arguments/Note for Trial Court

6.01.10

On September 7, 2009 this Hon Court ordered further investigation following our application that several critical issues related to police behaviour, complicity, mobile phone records, the Tehelka Investigation etc have not been satisfactorily completed. (Translated copy of order available). Until witnesses made this application, the SIT had not analysed the CD professionally and in detail showing a gross lacunae in its mandate before the apex court. This aspect has been challenged by us through CJP in the apex court and is likely to be heard next week. Whatever the outcome of those criminal miscellaneous petitions praying for the re-constitution of SIT on grounds of lacunae and faulty investigation given the fact that senior police officers favoured by the state of Gujarat are involved in SIT.

On November 14, 2009 witnesses applied to SIT for inclusion of Shri Rahul Sharma as witness in this case.

- Not Done by Special Investigation Team (Witness Application to Make Shri Rahul Sharma, SP Crime Branch in June 2002 Witness in Gulberg Case

- Application dated November 14, 2009 (**Annexure A**)

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. As a detailed analysis conducted by us will show the mere recording of Shri Sharma's statement without **professionally analysing the CD is of no consequence**. Included below is a detailed note on the indicators that have emerged before us on a perusal and analysis of the CD. Included as an annexure below is a detailed listing with graphs of phone call records of junior and senior police officers connected and concerned with the **Gulberg society case. At that stage we had argued that**

- a) the extraordinary circumstances of this case as detailed in the Table of Orders of the Apex court that traces the history of this litigation that led to the appointment of the Special Investigation Team (SIT) **(Annexure B)WE CAN ANNEXE ORDERS**
- b) the absolute, legal imperative (under 311 of the Code and 165 of the Indian Evidence Act to **get to the roots of the crime and alleged criminal conspiracy**

Extraordinary Circumstances of this Case and Related Trials

As a careful reading of the Orders passed by the Hon. Supreme Court in the matters that have culminated in the appointment of SIT has shown, these have involved allegations of complicity of high functionaries of the state. Appalled by the role of the Gujarat state administrative and police hierarchy by its apathy towards lack of convictions and rendering of justice in the original BEST Bakery Trial in Vadodara, the then chief Secretary Gujarat, PK Laheri and DGP K Chakravarthi had been summoned and questioned by the apex court. Thereafter an amicus curiae Shri Salve was appointed who from time to time filed averments and tables before the court. Relevant to the trial underway here is the **Table filed by the Amicus Shri Salve on March 22/23-2007 before the apex court in which he not only recommended a professional examination of the said CD of Rahul Sharma but also transfer of investigation and trial. (Annexure C)**

Compelling Reasons to arraign Policemen in the 319 application as Co Accused (Sections of the Law)

Analytical Note on Importance of Analysing Phone Call Records

Trial Court should Order a Professional Investigation

Eyewitnesses and victim survivors have spoken of the anguished calls made by Shri Ahsan Jafri for help from the highest levels in government that he not others received.

Was this a genuine human lapse or a preplanned conspiracy at the very highest levels to allow people to be raped, molested, burned and killed at the Gulberg society after the attack started around 10 a.m. went on until 5.30- 6 p.m?

1. Combined Analysis of Phone Call Records of Three Senior Most Officers in Ahmedabad City

Analysis of the mobile phone records of the three officers is being done here. **(Detailed Table and Graphs are at Annexure D)** The three officers and their mobile numbers are given below:

- i) Mr. P.C. Pande, the then Commissioner of Police, Ahmedabad City (Mobile Phone Number: 9825048303: Celforce Network)
- ii) Mr. M.K. Tandon, the then Joint Commissioner of Police, Ahmedabad City (Mobile Phone Number: 9825048316: Celforce Network)
- iii) Mr. Shivanand Jha, the then Additional Commissioner of Police, Ahmedabad City (Mobile Phone Number: 9825048308: Celforce Network)

All the three officers have their offices in the same building – the office of the Commissioner of Police, Ahmedabad City.

Analysis of the phone records of the three numbers would show that the officers moved in the morning of 28.02.2002 in the following manner:

i) Mr. P.C. Pande:

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. Pande left his office at around 9:45 am and went towards Gota. This is likely to be his visit to 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.)

The phone call records of the chief of police, PC Pande's need to be collated with wireless communications, control book records, message books and phone records. **This has been studiously avoided by the SIT.**

PC Pande's Phone records need especially to be collated closely with the records of both the Police Inspector in Charge of Meghaninagar police station (**Gulberg massacre**), **KG Erda** and that of Police Inspector of Naroda police station area (**Naroda Patia and Naroda Gam**), **KK Mysorewala**.

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 Patia 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.

Analysis of the Calls Made and Received by KG ERDA IO Meghaninagar (now accused by SIT in its charge sheet dated May 16, 2009) are also significant.

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.

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.

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.

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.

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.

ii) Mr. M.K. Tandon:

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. Pande, his being in

his office till late hours and arriving early suggests that he, too, was aware of the gravity of the situation.

Analysis of the cell phone data shows that Mr. M.K. Tandon was confined to his office till about 11:25 am after which he probably visited the Gulberg Society.

A detailed analysis of Mr. Tandon would be done later.

1.1. Analysis of the Record of Mr. M.K. Tandon

As had been mentioned earlier, Mr. Tandon had visited Gulb3rg society at around 11:25 am on the morning of 28.02.2002. MK Tandon's phone calls records show that he was received many calls from the political bigwigs and some accused. At 00:00:32 on 28.2.2002 he received a call from Govardhan Zadaphiya, MOS Home and later in the day around 5 pm. 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.

At 12:06:57 pm (afternoon), Mr. Tandon received a phone call from Mr. P.C. Pande. Mr. Tandon was at Gulberg Society at that time. They talked for about 75 seconds. What they talked about is not known?

At around 12:10 pm, there is wireless message from the vehicle of Meghaninagar Police Station to the Police Control Room informing that police had resorted to firing at Gulberg Society. Now, someone familiar with police operations would agree that it is not that police fires and rushes to inform the Police Control Room. Police would fire and then would inform the Control Room only when the situation eases a bit. This means that when Mr. Tandon got a call from Mr. Pande, 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. Pande the grave environment prevailing at the Gulberg Society.

After talking to Mr. Pande, Mr. Tandon heads for Naroda Patiya. If this movement was on the instructions of Mr. Pande, it shows that Mr. Pande, 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. Pande 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.

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, PB 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 Patia 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)

LOCATIONS OF POWERFUL PERSONS AND ACCUSED AT NARODA

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 Anik Mukhim, Additional Principal Secretary to the chief minister was also here.(15:33: 40). Mukhim 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 Patia and Gam, IK Jadeja, cabinet minister for urban development was at the Meghaninagar area at 15:56:40. MOS Home, Zadfaphiya was there at 17:02:38

1.1.1. Suggested Course of Action:

The above suspicion would require a sustained, even custodial, interrogation of Mr. Tandon.

(Information has also been received that heavy firing shown to have been done by the police during the riots was all bogus. In reality, police had "adjusted" the fired bullets by firing in dug-up pits on the bank of the Sabarmati river. In actuality very few bullets were actually fired on the mob.)

Ahmedabad
Date: 04/06/12

(M.I.SHAIKH)