

Ode

Case no. 45/08

1) Evidence Recorded :- 137 witnesses were examined

Nexus Between Defence Lawyers and State of Gujarat SIT SILENT SPECTATOR

Defence Lawyers in ALL EIGHT POST GODHRA TRIALS appointed as Special PPs by the Gujarat State in Other Cases / Bomba Blasts Cases at special rates of Rs 12,000-15,000 per day with a Specially Amended Rule of the Gujarat Government's Legal Department saying that even for Days of Adjournment Fees will be Paid
C.K. Patel

Bharat J. Joshi

Ashwin H. Dhagad

NDTV India 29.3.2010

Tabular Presentation by Teesta Setalvad, Secretary *Citizens for Justice and Peace* before the Special Investigation Team (SIT) appointed by the Hon'ble Supreme Court through its Order dated 26.3.2008 following Part I, II and III Statements submitted at Gandhinagar on May 9, 2008

Date of Tabular Presentation May 29, 2008

ODH(e) MASSACRE

Subject	Investigation	Sections	Cross Referencing to TS Statement and Annexures Submitted on 9.5.2002
<p>Odh(e): Faulty Investigation from the Recording of the Crime, i.e. the Deliberate Wrongful recording of FIRs; An FIR into a Murder not recorded deliberately; and thereafter in four years deliberate subversion of evidence by superior officers and unlawful supervision of the investigators in this case.</p> <p>Ode(h) : Statements of Witnesses are Recorded with Scant Regard to Thoroughness and Detail and hence are not substantive. SIT should compare earlier Police Statements with Statements Recorded Now and List and Enumerate Crucial Details Deliberately Omitted Earlier as also record motive behind protection of officers of the law who had committed unlawful and criminal acts.</p> <p>Twenty-seven persons were killed over three separate incidents, one in which 23 + 2 + 1 were burnt alive on 1-3-2002 and one more was torched on the street the next day, i.e. 2-3-2002.</p> <p>The First FIR 23/2002 and the second FIR 27/2002 relates to the incidents of the first day. In between a police officer also filed an FIR 25/2002.</p> <p>No FIR has been lodged related to the offence of torching alive of Ghulam Rasool Miya on 2-3-2002 the next day despite repeated complaints to police and the Trial Court.</p> <p>No Investigation Therefore At all</p>	<p>SIT should Inquire why No Investigation Therefore At all into the Murder by Torching alive of Ghulam Rasool Saiyed despite repeated requests by the Victim Survivors in 2002 itself</p> <p>As a result accused have been accused only once when they have been guilty of two crimes.</p> <p>Investigating Officer (23/2002)</p> <p>Interrogation of P.I. K.R. Bhuwa, Pathak Khambholaj P. St. Assistant Investigating Officer P.S.I. R.G. Patel Khambholaj P. St. should be questioned.</p> <p>IOs: KR Buva (2002 PI Khambolaj Police Station) Assistant IO-- RG Patel (2002 PSI Khambolaj Police Station) ML Rathod (2002 PSI Bijapur in 2006 he was thereafter posted to Karanj Police station Ahmedabad)</p> <p>Some of the Officers are likely to be guilty of subverting and</p>	<p>Violation of 154 CrPC (procedure of registration of FIR) and worse the Suppression and Destruction of Evidence. This includes the fabricating of documents and causing disappearance of evidence immediately after the registration of the case and the continued the illegal act of causing disappearance of evidence till the dead bodies were buried. Further protecting the names of influential accused and arraigning wrong accused also amounts to a crime.</p> <p>Sections 120-B r/w 143, 147, 148, 149, 302, 376 (2) (e) and</p>	<p>(see Annexure Gi and its annexures on internally numbered pages 20 onwards)</p> <p>--(see Annexure Gi to Part I of TS statement and its annexures on internally numbered pages 20 onwards)</p> <p>-(see Note on Odh Chargesheet Annexure N)</p>

<p>into the Murder by Torching alive of Ghulam Rasool Saiyed despite repeated requests by the Victim Survivors in 2002 itself</p>	<p>suppressing and destroying evidence</p>	<p>(g), 201, 217 and 218 IPC and substantive offences u/s 143, 147, 148, 149, 302, 376 (2) (e) and (g) and 201, 217, 218 IPC are attracted in the commission of all these offences.</p>	
<p>Complaints regarding Clubbing of FIRs Victims' Complaints about registration of FIR for the incident of 2-3-2002. These include a) On 5-3-2002 Complaint to DSP; b) on 9-7-2002 Complaint to S.P. Anand; c) On 24-7-2002 Complaint to P.I., Police Station, MDSP, Anand, Home Minister, Chairman of Minorities Commission; d) Response of SP Anand District to Victim/survivors complaints about clubbing SP, Anand sent letters dated 9-9-2002 and 26-9-2002 acknowledging the complaints made; e) witness/survivor complaint to Nadiad Court about clubbing of FIR Witness No. 26 Rafik Mohammad Ghulam Rasool Saiyed dated 25-9-2002 about FIR being clubbed and records not rectified.</p>	<p>SIT needs to Interrogate considered officials who received these complaints and come to a conclusion about how repeated requests, in time, at the time, were simply not heeded by the authorities in Gujarat. Did higher Range In Charge IG's ask for reports on the Investigation? Were any internal reports made or observations supplied? Why not?</p>	<p>Ibid. (Ditto as above)</p>	<p>Please see Para 6, Int. numbered page 4 and 5 Annexure A and B Colly to Annexure Gi. Related to complaints filed by witnesses about Investigation Para 7, Internally Numbered page 5 with Annexure C Colly to Teesta Setalvad's affidavit post Judge Mehta's Report dated 21-9-2006.)</p> <p>State of Gujarat fist in SC makes irresponsible statements that there are <i>no</i> missing persons. (10) State of Gujarat admits that PP did not oppose Anticipatory Bail (Annexure K Colly to Part 1 of TS Statement)</p>
<p>Missing Persons Complaint lodged by victims was back on 14.03.2002 onwards that show that victims have been diligently following up with the police about factual errors vis a vis the missing persons related to the Ode Massacre.</p> <p>Application to Ode (Umreth) Sessions Court on 26.2.2008 for Digging of Bodies refused; Please look at Annexure M Colly</p>	<p>SIT should examine why the Issue of Missing Persons was not looked at seriously; and also examine/question then DySP Bavang Zamir who had filed a Missing Persons Report. SIT should Interrogate why no bone remains</p>		<p>(Please See Annexure Gi--Details of Annexure C Colly Internally numbered pages 25- 54 Internally numbered Pages 51-52 to Teesta Setalvad's affidavit post Judge Mehta's Report dated 21-9-2006.</p>

<p>(Ode(h) Mass graves application to Part I of TS Statement before SIT dated 9.5.2008 for Exhuming Bodies filed by Victim Survivors on February 26, 2008 that was turned down;)</p>	<p>were returned to families for last rites; why to date no FSLR/DNA Report has been made available; Where should Victim Survivors Go for Efficacious Remedy?</p>		<p>& Affidavits Filed by Witnesses/Victims</p> <p>Annexure F Colly Volume 'B'; pages 270-337 Majeed Miya Murad Malek</p> <p>Annexure F Colly Page 279-283, Paperbook 'B' Rafik Mohd Abdullah Khalifa who is Complainant in FIR 23/2002.</p> <p>Annexure F Colly Page304/305, Paperbook 'B' Rehana Yusuf Vohra, Complainant, names accused</p> <p>Annexure F Colly Page 301, Paperbook 'B' Mehmoodabibi Majeed Malek Victim Survivor</p> <p>Annexure F Colly Pages 306-310, Paperbook 'B'. Rashid Khan Matbar Khan Pathan a Victim survivor</p> <p>Annexure F Colly Page 311-314, Paperbook 'B' Hasan Khan Hassukhan Pathan, Witness and Victim Survivor o the incident</p> <p>Annexure F Colly Page 315- 317, Paperbook 'B' Mohammad Khan Akbar Khan Pathan a Victim survivor who lost seven family members</p> <p>Annexure F Colly Page 318- 322, Paperbook 'B' Rafik Mohd Ghulam Rasool Syed, a Victim survivor who's father was torched alive on 2-3-2002.</p>
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		<p>For this offence an FIR has still not been registered despite repeated pleas by this witness</p> <p>Annexure F Colly Page 323- 329 of Paperbook 'B', see pages 324 & 326 Anwarmiya Akbarmiya Malek describes the preplanning behind Ode attack</p> <p>Annexure F Colly Page 330-333, Paperbook 'B', see pages 331 & 332 Shafi Miya Mohd Miya Malek, Victim Survivor</p> <p>Annexure F Colly Page 334-337, Paperbook 'B' Police Not Recording FIR</p> <p>Annexure F Colly Page 323 at 324, paras 1-2, Paperbook 'B' Amicus Note dated 6-9-2004 pointing out Discrepancies in Investigation related to Ode Massacre</p> <p>Annexure F Colly Paperbook 'B'; Pages 271-274; Rejoinder Affidavit of Teesta Setalvad, Citizens for Justice and Peace Points out that substantive allegations made by eyewitnesses and victim survivors on affidavit are not effectively countered including those related to direct state complicity and the fact that names of influential persons were <i>deliberately</i> left out</p>
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		<p>as accused by the police. Allegations of sexual violence and rape have also been deliberately obscured by the police according to eyewitnesses</p> <p>Annexure F Colly -Paperbook 'C' pages 612-622, see table at pages 612-619.</p> <p>Amicus Note 7 dated 6th September 2004</p> <p>pointing out discrepancies in relation to the Ode Massacre</p> <p>Annexure F Colly Pages 271-274 of Paperbook 'B'</p> <p>Influential persons not allowing recording of FIR</p> <p>Annexure F Colly Pages 325-326 at para 6, Paperbook 'B'</p> <p><u>Mehta (ASJ) Report (which is Annexure I to Part of TS Statement before SIT dated 9.5.2008)</u></p> <p>Judge Mehta summarizes contentions of malafide investigation, intimidation of witnesses, complicity of police etc. Contentions of witness survivors through affidavits are summarized along with state response. No conclusions are drawn</p>
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			<p>Annexure I- Page 42-51 of Mehta Report which is Annexure I to Part of TS Statement before SIT dated 9.5.2008</p> <p>State shockingly admits survivor complaints about remains being sent to FSL for DNA testing <i>but is silent completely about what was the outcome of these investigations.</i></p> <p>Annexure I Page 46 and Page 49 of Mehta Report which is Annexure I to TS Statement Part I before SIT dated 9.5.2008</p>
<p>Collusion of Politicians/Administrators/Police and Fire Brigade & Motives Behind Inaction/Negligence//Complicity</p> <p>No Firefighters came in time to Ode Village.</p>	<p>SIT should Interrogate why No Fire Fighters came in time to Ode(h) village though attack took place in broad daylight.</p> <p>SIT should Interrogate Fire Officers On Duty for this Jurisdiction on That Day and Also Examine all Log Entries: Were they called? By whom at what time?</p> <p>Why did they not go in response to the summons?</p> <p>What do Police Records Say?</p> <p>Station Diaries, Case Diaried, Control room records, Hospital records, Post Morten records.</p> <p>Already we see below how Panchnamas have been Doctored</p>	<p>Sections of Criminal Conspiracy, Negligency, Conspiracy get drawn in apart from Outright Mass Murder in the Conduct of the Police Officers on Duty, the Higher Range Officers in Charge and Also the Fire Brigade Personnel</p>	<p>(Annexure K Colly to Part I of TS Statement Discrepancies in States Stand at Page 7)</p>

	<p>Role of Fire Brigade: Was it summoned and when? Fire Brigade register and Notings need to be examined by SIT Who were the Officers? All need to be examined. Did they reach the spot on time or at all? When did they reach? Why did they reach so late?</p> <p>SIT needs to look at this as part of the Collusion and Complicity allegations against the State Government and Administrative Machinery in Gujarat.</p>		
<p>Discrepancies in Chargesheet A and B: Chargesheet Details Chargesheet A filed on 31/05/2002 against 33 accused. Charge sheet B filed on 31/05/2002 Both the Panchnamas and Other Police Statements Including DNA Sampling Reports mention three/four different locales where bone remains were found. (Akbar Moyan Malek's house, the heap of vehicles on which Ghulam Rasool's remains were found and the spot at M Bhagaol where Rehana states that remains were found? How Come the Chargesheet does not reflect this at all? The chargesheet despite statements of witnesses and panchnamas showing recovery of bone remains continues to treat the dead persons as missing.</p>	<p>1. Who are the Local Level and Higher Level Officers of the Gujarat police Responsible for this Level of Discrepancy that despite being pointed out is not rectified? 2. What are the notings/reports of Supervisory Officers on the Issue? Has any politician/Minister Interfered with the Investigations in this Case? Why else would the Local Police simply not want to investigate the obvious especially when their own Chargesheet and Panchnamas indicate issues that are thereafter left hanging?</p> <p>Following Senior IAS/IPS Officers Need to be Questioned by the</p>		<p>Annexure L to Part 1 of TS Statement and Annexure 2 and 2a to Tabular Presentation dated May 29, 2008.</p> <p>This Analysis Prepare by Us Shows: 1. Despite belongings/bones of two dead persons Sikandarmiya Usmanmiya Malek and Guddi Munni Sikandarmiya Malek they have been (deliberately) shown as Missing; 2. Despite witness seeing the killing of Ghulam Rasool Saiyed he has been (deliberately) shown as missing. Bones of this person have also been taken and recovered and sent for FSL examination and yet this slip. Is it a slip?</p>

	<p>highest echelons of SIT on the issues of Failure to Investigate and Punish the Guilty and thereby Obstruct the Deliverance of Justice</p> <p>SIT Must Interrogate Shri Kuldeep Sharma (IPS, 1970) he was IG Range In Charge of Anand where Ode(h) village is). He needs to be questioned on Ode(h). Incidentally he has not filed any affidavit before the Nanavati Shah now Nanavati Akshay Mehta Commission; Shri K Chakravarthi at the crucial moments in 2002 the DGP Gujarat needs to be Questioned by SIT; Shri K Nityananandam (IPS, 1977) who was Home Secretary from 2001-2005 needs also to be questioned; DR P.K. Mishra (IAS, 1972) then PS to the Chief Minister needs to be Questioned on the Overall Supervision of the Violence and Steps Taken (or Not) to Contain It; SIT needs to Question also Shri Subha Rao (IAS, 1965) then Chief secretary on the same issues; Shri Ashok Narayanan (IAS, 1966) Batch who was in 2002 ACS home also needs to be questioned on these Critical Issues</p>		
<p>Bail Pattern. Eighteen accused members politically influential were given anticipatory</p>	<p>Accused are wealthy NRIs 18 of whom were given Anticipatory Bail. (Details of Bail)(39</p>	<p>PPs who did not oppose bail?</p>	<p>Annexure B Colly to Part I of TS Statement before SIT Bail Orders and Bail Tables</p>

<p>bail for such heinous Crimes. Hasty Bail Ode Massacre Undue haste/bail applications & orders. 1) 15 accused preferred bail vide bail application no. 112/2002 before the Additional Sessions Judge at Anand on 8-3-2002. The Learned prosecutor Shri Patnaik appeared on behalf of the state. Bail granted to 9 out of the 15 accused who had applied for bail. (Para 4 of the order) 2) The other 18 accused preferred and Anticipatory bail being 246 of 2002 u/s 438 Cr.PC. on 15.4.2002. Mr. M.S. Pathak appeared as PP. The Learned Judge, B.M. Modi granted all the accused anticipatory bail by the order dated 20.4.2002. 3) Some of accused preferred Misc. Criminal Application No. 417 of 2002 and 5 other accused preferred Criminal Misc. Application No. 418/02. Both the applications were allowed and bail was granted to the accused. The Public Prosecutor V.G. Parlot did not oppose bail applications and consented to the bail being granted Details of Bail Granted to Accused</p>	<p>Accused arrested and released on bail, 18 on Anticipatory Bail) Pages 2-3-4, SIT should question all the PPs and the Legal Secretary and the IOs briefing PPs on Bail and Anticipatory Bail. Under what Circumstances were 5 of the accused of such a mass murder allowed to even go abroad? Is this a normal practice in Gujarat? What are the implications if accused of such mass crimes roam free?</p>		<p>that reveals the silent complicity of State of Gujarat appointed PP's towards accused who have committed grave crimes. Annexure E Colly to Part One of Statement, Page 293 onwards Paperbook 'B' & Annexure B Colly to Part One of Statement Anticipatory Bail granted in cases of 302 Annexure E Colly to Part I of Statement, Page 294 Paperbook 'B' Complicity of Public Prosecutor in not opposing Bail application Annexure E Colly to Part One of Statement, Page 294 Paperbook 'B' Names List of 24 absconding accused—all prominent wealthy Patels who visit USA regularly and yet Gujarat police and District Court are silent spectators Annexure E Colly to Part I of Statement, Page 294, Paperbook 'B' Amicus Bail Table showing hasty Granting of Bail to Ode Mass Massacre Accused Annexure E Colly to Part I of Statement, Paperbook 'B'</p>
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			<p>Pages 338 -344. Anticipatory bail granted; PP did not oppose Bail Annexure E Colly to Part I of Statement, Page 294, para 7, para 9, Paperbook 'B' PP Conduct in Not Opposing Anticipatory Bail in cases of 302 Annexure E Colly to Part I of Statement, Page 294, Para 7, Paperbook 'B' Page 294, Para 9, Paperbook 'B' Unanswered earlier claims on Anticipatory Bail being granted to accused in Ode carnage Case Annexure Gi to Part One of Statement- Affidavit of Teesta Setalvad dated 21-9-2006 at Para 4 a)-c) Int. numbered Pages 2, Para 5, Internally numbered Page 4</p>
<p>Threats and Intimidation of Witnesses who cannot even today return home</p>	<p>SIT needs to Interrogate Independently deploying the Highest degree of Confidentiality how safe the Victim Survivors feel in the places of their rehabilitation; that, if tomorrow Trials are Conducted within the State of Gujarat will they be able to Depose Free and Fearlessly</p>	<p>Intimidation and Coercion of witnesses is a criminal offence under the IPC and refusal to give adequate protection despite Supreme Court orders amounts to Contempt of the Supreme Court.</p>	<p>Affidavits alleging threats and intimidation Annexure E Colly, Page 287, 297, 304, Paperbook 'B' Yusufbhai Yakubbhai Vora, father of complainant in 27/2002 (Rehana Vora). Lost three family members in attack.</p>

	<p>given the fact that Accused Roam Free on Bail, arte Politically Powerfully Connected and have even obtained Anticipatory Bail and some have gone abroad.</p>	<p>Repeated threats to his daughter, the complainant and himself on the phone. He has given the phone number on which threats come</p> <p>Annexure E Colly, Pages 284-290, Paperbook 'B' at page 287</p> <p>Rehanabehn Yusufbhai Vora is the complainant in 27/2002. Victim Survivors and Witnesses cannot repair their homes and be rehabilitated in the Malao Bhagol mohalla of Ode town simply because they have decided to fight for justice. On oath she names accused Harish Vallabh Patel and Prakash who offered her and her father inducements to withdraw complaint</p> <p>Annexure E Colly, Pages 297- 298 of Paperbook 'B'</p> <p>Annexure E Colly, Pages 291-293, Paperbook 'B'</p> <p>Intimidation of witnesses related to Ode massacre continues; witnesses forced to live in sub-human conditions in the fields; influential accused belonging to Patel community continue to intimidate; Photographs of conditions of destroyed homes submitted to Hon.</p>
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			<p>SC that reveal these pitiable conditions Annexure Gi to Part One of Statement, Affidavit of Teesta Setalvad dated 21-9-2006 at Para 23, Internally numbered page 16 of Affidavit; Para 3, Internally numbered page 2</p> <p>Annexure E Colly, Pages 291-293, Paperbook 'B' Intimidation of witnesses related to Ode massacre continues; witnesses forced to live in sub-human conditions in the fields; influential accused belonging to Patel community continue to intimidate; Photographs of conditions of destroyed homes submitted to Hon. SC that reveal these pitiable conditions Annexure Gi to Part One of Statement, Affidavit of Teesta Setalvad dated 21-9-2006 at Para 23, Internally numbered page 16 of Affidavit; Para 3, Internally numbered page 2</p>
<p>Ode (h) Subversion of the Deliverance of Justice Process through the appointment of Compromised Public</p>			<p>Annexure E Colly to Part One of Statement, Page 11 at page 18,</p>

<p>Prosecutors that continues until this day.</p> <p>In Anand District, (where Ode village at which 27 persons were butchered and then burnt alive, it is public prosecutor P S Dhora's panel of public prosecutors who are handling riot cases in both Anand and Kheda districts. Dhora is a known RSS sympathiser.</p> <p>Affidavits of Victims speaking of Complicity of Prosecutor and his/her Appointment. The allegation is that PP appointed office bearer of political outfit. The state of Gujarat's repeated response (admitting the political allegiances of the PPs) has been that Shri Shah was later removed. The state is silent o the continued complicity of PPs in Gujarat that have completed eroded the faith of the common citizen, especially a victim and eye witness of the 2002 carnage in the administration of justice.</p>			<p>para 27, page 94, para 3,Page 139 at page 142 para 3-4 (this is un-numbered) of Affidavits</p> <p>PP Conduct in Not Opposing Anticipatory Bail in cases of 302 is reflected here related to the Ode Massacre</p> <p>Annexure E Colly to Part One of Statement, Page 294,Paras 7-9, Paperbook 'B'</p> <p>The State does not have significant reply to the allegations that the appointment of public prosecutors was done in a manner inconsistent with the rights of victims under Article 21, and in the breach of the duty cast by the State under the Code of Criminal procedure</p> <p>The appointment of some persons as public prosecutors, one (or many of who have even appeared before the accused</p> <p>Annexure J to Part One, paras 14, 23 and 36 of Amicus Note dated 22-3-2007 and filed before the Supreme Court</p>
<p>Protection of the Politically Powerful</p>	<p>The officers of the investigating agency surreptitiously removed from the array of accused all those offenders who</p>	<p>This amounts to worse than Criminl Conspiracy and Collusion</p>	<p>Annexures to Part I and Part III of TS Statement before SIT dated 9.5.2008</p>

	<p>held official or political positions of influence and whose being implicated would reveal the deep rooted and wide spread involvement of the State's political and executive machinery as prime movers of the riots. In the course of investigation and even after the filing of charge sheets, the police sedulously avoided arresting persons who were members of the political party or of a private army owing allegiance to that political party which held the reins of government in the State. So much so, that the charge sheets conveniently failed to mention those of such persons whose names and roles in the commission of the offences figured in the statements of witnesses recorded under Section 161 Cr.PC.</p>		
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ENDS.

ANTICIPATORY BAIL HASTILY GRANTED TO 18 ACCUSED AD NOT OPPOSED BY SPECIAL PUBLIC PROSECUTOR IN 2002 (ONE OF THE REASONS FOR THE SUPREME COURT STAY)

Presented by Shri C.K. Patel

Advocate 15-4-02

Addl. Sessions court

Camp-Anand

In the court of Dist and sessions court judge of Kheda zilla

?No. 246/02

Applicants

Age

1) Sureshbhai Bhailalbai Patel

elderly

2) Poonambhai Laljibhai Patel

elderly

- 3) Ramanbhai Chhotabhai Patel elderly
- 4) Pareshbhai Ranchhodbhai Patel elderly
- 5) Dharmeshkumar Natubhai Patel elderly
- 6) Arvindbhai Ravjibhai Patel elderly
- 7) Vinubhai Shanabhai Patel elderly
- 8) Hemantbhai Ratabhai Patel elderly
- 9) Kalpeshbhai Haribhai Patel elderly
- 10) Dilipbhai Vinubhai Patel elderly
- 11) Rameshbhai Ranchhodbhai Patel elderly
- 12) Sanatkumar Ranchhodbhai Patel elderly
- 13) Atulkumar Satabhai Patel elderly
- 14) Manubhai Jethabhai Patel elderly
- 15) Hirabhai Bhailalbai Patel elderly
- 16) Pareshkumar Pramodrai Pandya elderly
- 17) Dilipbhai Ranchhodbhai Patel elderly
- 18) Dilipbhai Babubhai Patel elderly

All res. Aud, T.Z.Anand (presently Rakhjel, Anand)

V/s

Opponent: the state

Bail plea as per C.P.code clause no. 439

We hereby request the court that.....

- 1) The above-mentioned applicants are permanent residents of Aud and support their families by either farming or trading.
- 2) On 27-2-02 following the incident that occurred in Godhra, communal riots flared up and persons of the Hindu community gathered in mobs and damaged the houses and religious places of the Muslims and this incident had affected Aud village also. On 1-3-02, a mob of 2000 persons had caused damages. For which the Khambholaj police station had registered a crime under ? no. 23/02 IPC 143,147,148,149,143,302,307,435,436 and BPAAct 135. As there was a possibility of the above-mentioned applicants being arrested for this crime later, we have filed this appeal for anticipatory bail.
- 3) The facts of the said incident are briefly: on 1-3-02 at about 1:30 in the afternoon, in context of the Godhra incident, a crowd of about 2000 persons of the Hindu community collected in Aud village, threw stones at Muslim houses, locked up the complainant and his family in his house and tried to burn them alive by throwing burning torches and spraying kerosene. Also, the houses, shops and mosques of the Muslim community were ransacked and burned down. Some parts of the skeleton of Sikandermiya, Umraomiya Malek have been found and the complainant has filed a complaint in the Khambholaj PS regarding Gulamrasool Jahangirmiya Syed, etc.
- 4) The applicants are completely innocent and ignorant of the said incident which is

prima facie clear from the FIR. In this FIR there is a clear mention of a mob of 2000 persons.

- 5) The applicants do not know anything about the said incident and the applicants have not done anything which they are accused of.
- 6) The FIR of the said incident has been given after three hours and the complaint was sent to the court on 7-3-02 and no reason has been given for this delay of 5 days which prima facie arouses suspicion.
- 7) Regarding the said incident, prima facie there is no mention of what crime the applicants have committed or what part they played in it. In the FIR the names and addresses of the applicants are not mentioned implying that the names were entered later on and it is clear that the applicants have been wrongly implicated.
- 8) The spot where the said incident occurred is in the area where the applicants reside and because they belong to the Hindu community an attempt has been made to implicate them.
- 9) The above-mentioned applicants are leading men of their families and of society-they are involved with the panchayat and other organisations and they take a keen interest in social activity and in work for betterment as responsible citizens. An attempt has been made afterwards to implicate the applicants in the said crime because of prejudice and pressure. If the police arrest them then the reputation and high standing of the applicants will be adversely affected.
- 10) The applicants who support their families by working in various fields or who are farmers and if they are arrested they will be greatly harmed and they will lose face in society.
- 11) The applicants are permanent residents of Aud and who hold moveable and immoveable properties and who are the main earners and caretakers of their families and are not the kind who will abscond.
- 12) They are willing to fully cooperate with the investigation officer so that he can carry out an impartial investigation and in order to assure a fair investigation, they are willing to accept whatever conditions the court places and are willing to give bonds of whatever amount the court decides.

Then, keeping the above reasons, circumstances and facts in mind and taking note of the additional statements during the hearing and in the greater interests of justice please oblige by granting anticipatory bail to the applicants.

Prior to this by CPA no.112/02 the court has released other accused on conditional bail which please note.

Various signatures and comments

There is a hand-written letter attached which is completely illegible. It appears to be written by the advocate for the applicants and addressed to the court. If you can send me a better copy or maybe scan the original and send it as an attachment, I can try to decipher it and translate. Sorry about this.

In the court of Dist and sessions court judge of Kheda zilla

?No. 418/02

Applicants	Age	Address
1) Sureshbhai Bhailalbai Patel	elderly	Aud, T.Z.Anand
2) Poonambhai Laljibhai Patel	elderly	Aud, T.Z.Anand
3) Ramanbhai Chhotabhai Patel	elderly	Aud, T.Z.Anand
4) Pareshbhai Ranchhodbhai Patel	elderly	Aud, T.Z.Anand
5) Dharmeshkumar Natubhai Patel	elderly	Aud, T.Z.Anand
6) Arvindbhai Ravjibhai Patel	elderly	Aud, T.Z.Anand
7) Vinubhai Shanabhai Patel	elderly	Aud, T.Z.Anand
8) Hemantbhai Ratabhai Patel	elderly	Aud, T.Z.Anand
9) Kalpeshbhai Haribhai Patel	elderly	Aud, T.Z.Anand
10) Dilipbhai Vinubhai Patel	elderly	Aud, T.Z.Anand
11) Rameshbhai Ranchhodbhai Patel	elderly	Aud, T.Z.Anand
12) Sanatkumar Ranchhodbhai Patel	elderly	Aud, T.Z.Anand
13) Atulkumar Satabhai Patel	elderly	Aud, T.Z.Anand
14) Manubhai Jethabhai Patel	elderly	Aud, T.Z.Anand
15) Hirabhai Bhailalbai Patel	elderly	Aud, T.Z.Anand
16) Pareshkumar Pramodrai Pandya	elderly	Aud, T.Z.Anand
17) Dilipbhai Ranchhodbhai Patel	elderly	Aud, T.Z.Anand
18) Dilipbhai Babubhai Patel	elderly	Aud, T.Z.Anand

V/s

Opponent: the state of Gujarat

Advocate for applicant: C. K. Patel

Advocate for government: M. S. Pathak

Order

- 1) This application by the above-mentioned applicants/accused order 23/2002 under IPC clauses 143,147,148,149,302,307,435,436, and BPAct clause 135 and is for anticipatory bail against arrest by Khambholaj PS or the investigating officer, under CPC clause 438.
- 2) The arguments presented by the applicants' advocate and the state advocate, the police papers, the copy of the FIR which was presented in support of the application and the order passed under CPA no.112/2002 have all been considered.
- 3) All the applicants' arguments have been shown by their advocate, C.K.Patel, in detail and he has also informed that in the complaint lodged by Rafikmd. Abdulbhai Khalifa, the names of the applicants have not been mentioned and it is clear from the complaint that the crimes which have been committed have been done by a mob of 2000 persons. According to their statement the complaint was filed by the

complainant after three hours and was sent to court on 7/3/2002 i.e. after five days and no explanation has been given for this. According to their statement, the part played by the applicants in the crime has not been specified nor have the names and addresses of the applicants been mentioned. According to their statement, the applicants are leading members of society and their families and are involved with the village panchayat and other organisations and as responsible citizens are involved in social activities and in work for betterment. Because of prejudice and pressure an attempt could be made to implicate them later. There is reasonable suspicion that for this, the investigating officer might arrest them and that is why the applicants have made this application. According to their statement, in spite of the fact that the applicants are not involved in the crime, if they are arrested, then their reputations will be harmed. So, they have argued that at the time of the arrest of the applicants by the investigation officer or the Khambholaj PS PSI, they should be released on instant bail and for that they have applied for anticipatory bail.

- 4) Against this the advocate for the government, M.S.Pathak, has openly informed that those accused named in the FIR have been refused bail and those that have not been named have been released by this court. According to his statement, the applicants in the present application are not named in the FIR so the government has no objection if the order is given that applicants with appropriate conditions, be released on anticipatory bail.
- 5) After taking the arguments of both the advocates and the police papers into consideration, and also the order of the court 112/2002 into consideration it becomes clear that those accused whose names are not mentioned in the complaint are ordered to be released on ? bail and those accused whose names appear in the FIR their bail application is rejected. The names of the present applicants are not seen in the FIR but it appears that on the basis of the later statements, the police might wish to arrest them. Since the names of the applicants do not appear in the FIR, prima facie they cannot be said to have participated in the crime. Judging the case as per CPC code clauses 438 and 439, there does not appear to be much difference between releasing or not releasing the applicants on bail. The APP has not shown that if the applicants are released on anticipatory bail the investigations into the crime will be prejudiced or that there is any possibility of obstruction of the investigations. Thus, keeping in mind that the applicants be regularly present and using my discretionary powers in their favour, an order to release the applicants on anticipatory bail appears to be reasonable and in the interests of justice. I am passing the following order:

ORDER

The application of the applicants is accepted.

In the event that the accused are arrested by Khambholaj PS under IPC 143,147,148,149,302,307,435,436 and BPAct clause 135 if they give a bail of Rs. 10,000/- each (rupees ten thousand only), and a personal bond of the same amount then the Khambholaj PS PSI or the investigating officer should release the applicants on the following conditions. This order is passed under CPC clause 438.

- 1) The applicants should not threaten, frighten, bribe or coerce the witnesses
- 2) The applicants should report to the Khambholaj PS on the first of every month of the English calendar between 9 and 12 in the morning.
- 3) The applicants must cooperate fully in the police investigations and must be present wherever and whenever the investigation officer calls them in connection

with the investigations of the crime.

- 4) If under any circumstances the investing officer thinks it necessary to remand the applicants into police custody they can make the necessary application to the appropriate court and the court will consider the application independent of the order passed by this court.
- 5) The applicants will not leave the limits of Kheda zilla without the permission of this court.
- 6) The applicants if arrested will have to apply for bail within 10 days.

This order has been read out on the 20th day of April in the year 2002 in the open court.

Various signatures and comments

I.A Ode Massacre

Incident took place at Ode village, Taluka:- Umreth, Khambolaj police station, Anand district

Summary

Twenty-seven persons were killed over **three separate incidents, one in which 23 + 2 + 1 were burnt alive on 1-3-2002 and one more was torched on the street the next day, i.e. 2-3-2002.**

The First FIR 23/2002 and the second FIR 27/2002 relates to the incidents of the first day. In between a police officer also filed an FIR 25/2002.

No FIR has been lodged related to the offence of torching alive of Ghulam Rasool Miya on 2-3-2002 the next day *despite repeated complaints to police and the Trial Court.*

No Investigation Therefore At all into the Murder by Torching alive of Ghulam Rasool Saiyed despite repeated requests by the Victim Survivors in 2002 itself

(see Annexure Gi and its annexures on internally numbered pages 20 onwards)

As a result accused have been accused only once when they have been guilty of two crimes

(see Note on Odh Chargesheet-Annexure N)

The complainants say that only four deaths are confirmed and the bodies of the other victims have been disposed of at some unknown location. Two FIRs have been lodged at the Khambolaj police station. The first is C.R.No.23/2002. U/s. 302, 148, 149 etc. and the name of the complainant is Rafiq Mohammed Abdulbhai Khalifa. The second FIR lodged with the Khambolaj police station is C.R.No.27/2002. The complainant's name is Rehanaben Yusufbhai Vohra. 22 accused were arrested in both cases.

Both the complainants of FIR 23/2002 (Rafik Khalifa) and FIR 27/2002 (Rehanabehn Vora) have

filed affidavits before the Supreme Court.

FIR No. 23/2002

Relates to the incident of 1-3-2002 and the FIR 27/2002 relates to the incidents of persons being torched alive in a house. In between a police officer also filed an FIR 25/2002.

Under IPC sections 302, 307, 201, 395, 397, 435, 436, 147, 148, 149, 332, 325, 295, 297, 323, 120(B), 506 (2), Bombay Police Act 135

The police continued the FIR dated 1-3-2002 and clubbed the two offences into one.

Investigating Officer (23/2002) P.I. K.R. Bhuwa, Khambholaj P. St. Assistant Investigating Officer P.S.I. R.G. Patel Khambholaj P. St.

FIR 27/2002 FIR dated 5-3-2002. Khambholaj Police Station, District Anand, Complainant Rehanabehn Yusuf Vora.

Criminal Offences Offences under IPC Sections 302, 307, 395, 397, 143, 147, 148, 149, 324, 323, 295, 297, 201, 120(b), Bombay Police Act 135

Chargesheet Details Chargesheet A filed on 31/05/2002 against 33 accused.

Charge sheet B filed on 31/05/2002

Name of Complainant:- Rafik Mohammad Abdulbhai Khalifa

Section u/s 302, 307, 201, 395, 397, 435, 436, 143, 147, 148, 149, 332, 324, 325, 323, 295, 297, 120 B, 506(2), and 34, Indian Penal Code and 135 of the Bombay Police Act

(i) FIR(s) of Ode Massacre

(please see Para 6, Int. numbered page 4 and 5 Annexure Gi (Citizen for Justice and Peace's affidavit post Judge Mehta's Report dated 21-9-2006) related to Odh.)

(ii) Complaints regarding Clubbing of FIRs

Victims' Complaints about registration of FIR for the incident of 2-3-2002. These include a) On 5-3-2002 Complaint to DSP; b) on 9-7-2002 Complaint to S.P. Anand; c) On 24-7-2002 Complaint to P.I., Police Station, MDSP, Anand, Home Minister, Chairman of Minorities Commission; d) Response of SP Anand District to Victim/survivors complaints about clubbing SP, Anand sent letters dated 9-9-2002 and 26-9-2002 acknowledging the complaints made; e) witness/survivor complaint to Nadiad Court about clubbing of FIR

Witness No. 26 Rafik Mohammad Gulam Rasool Syyed dated 25-9-2002 about FIR being clubbed and records not rectified.

(Please see Para 6, Int. numbered page 4 and 5 Annexure A and B Colly to Annexure Gi. Related to complaints filed by witnesses about Investigation Para 7, Int Numbered page 5

with Annexure C Colly to Teesta Setalvad's affidavit post Judge Mehta's Report dated 21-9-2006.)

(iii) Missing Persons Complaint lodged by victims was back on 14.03.2002 onwards that show that victims have been diligently following up with the police about factual errors vis a vis the missing persons related to the Ode Massacre

Missing Persons report was also filed by then DYSP Bavang Zamir who was thereafter transferred. He is now posted at Patan

(Please See Annexure Gi--Details of Annexure C Colly Internally numbered pages 25- 54 Internally numbered Pages 51-52 to Teesta Setalvad's affidavit post Judge Mehta's Report dated 21-9-2006._

(iv) Victims Missing Persons Complaint From 14-03-2002 onwards, victim survivors have been diligently following up with the police about the factual errors in recording of MISSING PERSONS by the local police. The contention of the witness survivors is that even today bodies are buried in mass graves. This Missing persons Complaint along with statements of victim survivors is dated 14-03-2002.

(Annexed to Teesta Setalvad's affidavit post Judge Mehta's Report dated 21-9-2006 from pages 20 onwards.)

(v) Affidavits Filed by Witnesses/Victims

Annexure F Colly Volume 'B'; pages 270-337

Majeed Miya Murad Malek

Annexure F Colly Page 279-283, Paperbook 'B'

Rafik Mohd Abdullah Khalifa who is Complainant in FIR 23/2002.

Annexure F Colly Page 304/305, Paperbook 'B'

Rehana Yusuf Vohra, Complainant, names accused

Annexure F Colly Page 301, Paperbook 'B'

Mehmoodabibi Majeed Malek Victim Survivor

Annexure F Colly Pages 306-310, Paperbook 'B'.

Rashid Khan Malbar Khan Pathan a Victim survivor

Annexure F Colly Page 311-314, Paperbook 'B'

Hasan Khan Hassukhan Pathan, Witness and Victim Survivor o the incident

Annexure F Colly Page 315- 317, Paperbook 'B'

Mohammad Khan Akbar Khan Pathan a Victim survivor who lost seven family members

Annexure F Colly Page 318- 322, Paperbook ‘B’

Rafik Mohd Ghulam Rasool Syed, a Victim survivor who’s father was torched alive on 2-3-2002.

For this offence an FIR has still not been registered despite repeated pleas by this witness

Annexure F Colly Page 323- 329 of Paperbook ‘B’, see pages 324 & 326

Anwarmiya Akbarmiya Malek describes the preplanning behind Ode attack

Annexure F Colly Page 330-333, Paperbook ‘B’, see pages 331 & 332

Shafi Miya Mohd Miya Malek, Victim Survivor

Annexure F Colly Page 334-337, Paperbook ‘B’

Police Not Recording FIR

Annexure F Colly Page 323 at 324, paras 1-2, Paperbook ‘B’

Amicus Note dated 6-9-2004 pointing out Discrepancies in Investigation related to Ode Massacre

Annexure F Colly Paperbook ‘B’; Pages 271-274

Rejoinder Affidavit of Teesta Setalvad, Citizens for Justice and Peace

Points out that substantive allegations made by eyewitnesses and victim survivors on affidavit are not effectively countered including those related to direct state complicity and the fact that names of influential persons were *deliberately* left out as accused by the police. Allegations of sexual violence and rape have also been deliberately obscured by the police according to eyewitnesses

Annexure F Colly -Paperbook ‘C’; pages 612-622, see table at pgs 612-619.

Amicus Note 7 dated 6th September 2004 pointing out discrepancies in relation to the Ode Massacre

Annexure F Colly Pages 271-274 of Paperbook ‘B’

Influential persons not allowing recording of FIR

Annexure F Colly Pages 325-326 at para 6, Paperbook ‘B’

Mehta (ASJ) Report:

Judge Mehta summarizes contentions of malafide investigation, intimidation of witnesses, complicity of police etc. Contentions of witness survivors through affidavits are summarized along with state response. No conclusions are drawn

Annexure I- Page 42-51 of Mehta Report

Shocking contention by state of Gujarat recorded by Mehta wherein they say *that protection was never demanded by witnesses*. The whole order on witness protection –individual and cluster—was obtained only after intimidation had been the order of the day.

Annexure I - Page 42 of Mehta Report

State shockingly admits survivor complaints about remains being sent to FSL for DNA testing *but is silent completely about what was the outcome of these investigations*.

Annexure I Page 46 and Page 49 of Mehta Report

False statement by the state that witnesses will be protected and that they were sent to safe places.

Annexure I Page 51 of Mehta Report

Only 4 deaths out of 27 in this massacre have been confirmed; bodies of other victims disposed off in undisclosed places.

Annexure Gi- Affidavit of Teesta Setalvad dated 21-9-2006 at Para 2, Internally numbered page 2 summarises these facts:

- (1) Only 4 bodies found
- (2) Missing persons. Refusal of Umreth Court in order dated February 27, 2008 to order the exhuming/digging of bodies (**Annexure Gi** Annexed here)
- (3) Bail Pattern. Accused are wealthy NRIs 18 of whom were given Anticipatory Bail. (Details of Bail) (39 Accused arrested and released on bail, 18 on Anticipatory Bail) Pages 2-3-4
- (4) Application by witnesses complaining of clubbing of FIRs 5/03/2002 to DSP Anand, 9/07/2002 Department Police Office, Anand, 24/07/2002 PI Anand
No Re-investigation on any of these Complaints.
- (5) Missing Persons Complaint dated 14/03/2002 (annexed)
- (6) No Firefighters came in time to Ode Village. (**Annexure K Colly-Discrepancies in States Stand at Page 7**)
- (7) Affidavit details of Witnesses and Victim Survivors filed Before the Supreme Court (Page

9-14)

- (8) State callous on missing persons / DNA sampling ((**Annexure K Colly-Page 8**)

Both the Panchnamas and Other Police Statements Including DNA Sampling Reports mention three/four different loacles where bone remains were found. (Akbar Moyan Malek's house, the heap of vehicles on which Shulam Rasool's remains were found and the spot at M Bhagaol where Rehana states that remains were found? How Come the Chargesheet does not reflect this at all? (Annexure L)

- (9) State of Gujarat makes irresponsible statements that there are *no* missing persons.
- (10) State of Gujarat admits that PP did not oppose Anticipatory Bail (**Annexure K Colly**)
- (11) Photos of Ode Village (**Annexure H Colly**) where Victim Survivors and Witnesses are unable, due to fear and intimidation from powerful accused, not to return