

IN THE SUPREME COURT OF INDIA
(ORIGINAL CRIMINAL WRIT JURISDICTION)
CRL.M.P. NO. OF 2008
IN
WRIT PETITION (CRIMINAL) NO. _____ 2007

IN THE MATTER OF:

JAVED AKHTAR & ANR.

.....PETITIONERS

VERSUS

STATE OF GUJARAT & ORS.

.....RESPONDENTS

AND IN THE MATTER OF:

1. Smt. Sumitra Chandra Jadhav,
Galli No. 5, Siddhivinayak Chawl,
Boushikpada, Abhay Nagar,
Nalasopara East, dist ThaneApplicant No. 1
2. Citizens for Justice and peace
Through its Secretary
"Nirant" Juhu Tara Road,
Santacruz (West)
Mumbai, MaharashtraApplicant No. 2

AN APPLICATION FOR IMPLEADMENT

To,

Hon'ble The Chief Justice of India and
his companion justices of the Supreme Court of India

The Humble Application of the
Applicants named hereinabove

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition was filed under Article 32 of the Constitution of India in public interest. The Petitioners by way of the petition brought to the notice of this Hon'ble Court the cold blooded killing of Late Sameer Khan by the Crime Branch of Gujarat police in a fake encounter and its subsequent cover up by the Gujarat government. The facts about the fake encounter of Sameer Khan and its cover have come out in a sting operation done by Tehelka Magazine on two senior police

officers who were involved in the investigation of the killing of Sameer Khan at one time or other, by recording their conversations with its journalist on camera. The petition also brought to the notice of this Hon'ble Court that the killing of Sameer Khan by the Gujarat Police in a fake encounter is not an isolated incident. That the same team of the Gujarat police has been found to have carried out the fake encounter of one Sobrabuddin and thereafter raped and killed his wife as well as a witness who could have testified against the police in that case. There are other media reports also of killing innocent persons in fake encounters by the same team of the Gujarat Police. The It appears from all the incidents of fake encounters, a pattern has emerged of killing innocent people, particularly Muslims, on the pretext of they being members of the dreaded terrorist group like Jaish-e-Mohammed and there being a conspiracy to kill the Chief Minister of the State. It is submitted that such encounter killings are cold blooded murders by the police and therefore the most serious offence that can be committed. From the facts disclosed in the Sameer Khan case and the Sohrabuddin case, it also appears that there has been an attempt at the highest level of the Gujarat government not only to cover up but to even abet these cold blooded murders which appear to have been systematically used to glorify the Chief Minister of Gujarat and demonise Muslims as being terrorists. The act of the Gujarat Police in killing people in fake encounters is a serious crime and a gross violation of rule of law and the fundamental rights of citizens under Articles 14 and 21 of the Constitution.

2. The prayers made by the petitioners in the writ petition are as under:

- a) order an independent enquiry by Special Investigation Team into the fake encounter of Sameer Khan and its subsequent cover up; and
- b) direct Respondents to submit before this Hon'ble Court the copy of the inquiry report prepared by Respondent No. 2 into the killing of Sameer Khan;"

This Hon'ble Court has issued notice to the respondents in the writ petition and the same is pending disposal before this Hon'ble Court.

3. By the present application the applicants herein seeks to bring to the notice of this Hon'ble Court another incident of encounter killings by the Gujarat Police of the son of the applicant no. 1, who has become a victim of fake encounter killing. The applicant no. 2, Citizens for Justice and Peace is a legal rights citizens group struggling for justice against the politics of violence, intimidation and mass crime since 2002. For a decade and a half previously, the individual members of CJP were at the forefront of battling the communal politics of hate during the Bombay pogrom of 1992-1993. The applicant no. 2 has supported the fight of the applicant no. 1 and has been assisting the applicant no. 1 in her search for justice.

4. The brief facts of the incident which the applicant herein begs to bring before this Hon'ble Court is as under:

a) This application concerns the incident which had taken place next to Canara Bank near Panchkuva police chowky on 23 June, 2003 in which 2 persons were reported to have been killed in what were described as 'encounters' between the "terrorists" and the local police. On 22 June, 2003, the Gujarat police had received information from 'a reliable source that two sharp shooters fitting the description of the abovementioned deceased persons were due to arrive at Ahmedabad and were in the illegal possession of arms/ammunition with an intention to kill the law minister Shri Ashokbhai Bhatt of Gujarat and Shri Bharatbhai Barot, M.L.A of Ahmedabad's Daria-Kazipur Constituency' at the occasion of the forthcoming Rath yatra.

b) At around 0230 hours on 23 June, 2003 on the basis of the aforementioned information received by the police, they exercised its unusual

powers given under the POTA Act to deal with terrorism. The police party was successful in surprising the “terrorists” at Panchkuva. There was exchange of fire resulting in the death of the “terrorists”.

c) Further, on the morning of 24 June, 2003, the deceased's brother, Swapnil heard about the “shoot out” on a news channel, he alongwith the deceased's mother, Smt. Sumitra Chandra Jadhav and three other persons namely, Leela Wankhede, Kapil and sandeep reached the Crime Branch, Ahmedabad to claim his body. On he way to theCrime Branch, when they made enquired about the incident at Panchkuva, they were told by a rickshaw driver told them that a person “fitting the description of deceased was heard screaming the previous night near Canara bank in Panchkuva area, “Majha Aai la bolwa”, and gun shots were heard. On their arrival at the police headquarters all, when they disclosed the purpose of their visit and their identity, all 5 persons were kept confined in a cell for three whole days and repeatedly asked about their relationship with deceased, reason for visit, assets held by deceased's family, vehicles owned etc. The names of few police persons were Barot, DG Vanjara and the rest were in plain clothes not uniform, therefore the identity is unknown. During their confinement the five persons related to deceased were called “desh drohi” and overheard the police persons saying that they too should be met out with the same treatment as the deceased. The deceased's brother, Swapnil threatened the police with dire consequences, thereafter all five persons were released on 27 June, 2003 after deceased's mother's finger prints and photographs were taken. Subsequently, after waiting for another six hours at the Civil Hospital, the deceased's body and post mortem report was handed over to the family. It is again submitted that on the basis of the arbitrary manner in which the

events took place that led to the death of the deceased it can be said that this is a case of deliberate extra judicial killing.

- d) On behalf of the deceased's family, Citizens for Justice And Peace made a representation by submitting that a false case was filed (Pota case No. 1/04) by the Gujarat police to establish a defence against the killing of Mahendra Chandrakant Jadhav and Ganesh Kunte. It is further submitted that appropriate direction be issued (1) to institute a judicial inquiry into the fake encounter by Gujarat police on June 23, 2003 in which two abovenamed persons were deliberately killed, (2) to direct appropriate action to be taken against the erring police officials and (3) to award compensation to the members of the family of the deceased. According to the facts and testimony given by the doctors conducting the port mortem on the deceased, there was in truth no encounter but it was a case where certain the two youth namely, Mahendra Chandrakant Jadhav and Ganesh Kunte were intercepted by the police during the night of June 23, 2003, on the unconfirmed belief that they were involved in terrorist activities and two of them killed there.
- e) On 8 October, 2003, a marathi newspaper "Mumbai Choufir" carried a report of "persons from Mumbra were arrested in Ahmedabad for a conspiracy to murder prominent political leaders in Gujarat. Out of the 8 persons, 2 were women and they all had ties with the ISI, Jaish-e Toiba and underworld. Also recovered were from the arrested persons were several revolvers, pistols and cartridges. Subsequently, a trial (POTA case No. 1/04) was conducted against Fatimabibi, her sons Alam and Amirkhan, Amiruddin, Laxmiben, Omprakash and Rajesh@Nasir and Manoj, in the court of learned Addl POTA judge, Shri A.N Acharya.

- f) During the trial (POTA case No. 1/04), Government of Gujarat denied the allegations of 'fake encounter'. The judgement relied upon depositions made by each of the alleged police men involved in the killings. It was "consistently" stated by each police person that on the basis of a "tip off" given to the Gujarat police of a likely attack on the Chief Minister and the fact that the two deceased were indulging in illegal and terrorist activities and in acts disturbing the public order, it was submitted that there was genuine cross firing between the police and the "terrorists" during which the said two deaths took place. The truth and correctness of these supporting statements/ examinations-in-chief is disputed.
- g) It is pertinent to mention that Mr. I.M Munshi, learned Counsel for the deceased, Ganesh Kunte during his cross examination of the accused persons, submitted a deposition made by Dr. Kiran, who was one of the three doctors who conducted the post mortem on deceased at the Civil Hospital. Dr. Kiran pointed states "***these deceased persons had died during police interrogation. I have written this fact in the column no. 5 on the basis of the police papers which I received.....***"
- h) In view of the fact that the State of Gujarat has been a communally sensitive area, and there appears to be some unrest and activity affecting public order and security of the State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism including vesting of good amount of discretion in the police officers engaged in fighting them. If the version of the police with respect to the incident in question were true, there could have been no question of any interference by court. But the present case appears to be one where two persons were just intercepted from an area in the heart of Ahmedabad city and shot there. This type of activity cannot certainly be

justified even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law.

5. That the applicants herein addressed letters to authorities about the plight of the applicant no. 1 to no avail. The applicants on January 17, 2008 also addressed a letter to the Hon'ble Chief Justice of Gujarat bringing to the notice of the Hon'ble Chief Justice the above mentioned facts. The applicants herein in the said letter requested that the Commissioner of Police, Ahmedabad city/Director General of Police, Gujarat State be directed to conduct a detailed enquiry into the extra judicial killing of Mahendra Chandrakant Jadhav at the hands of Gujarat police and take action against the delinquent police personnel within four weeks. Thereafter, a show cause notice issued to the Chief Secretary, Government of Gujarat to show cause as to why an immediate interim relief not be granted to next of kin of the deceased.
6. That the application is bonafide and made in the interest of justice.

PRAYER:

In the facts and circumstances stated herein above it is Most Respectfully prayed that this Hon'ble Court may be pleased to:

- a) allow the applicant and implead the present applicants as petitioners no. 5 and 6 in the present writ petition;
- b) that this Hon'ble Court consider directing action against officers of the state found responsible for unconstitutional acts;**
- c) that this Hon'ble Court considers directing the State of Gujarat to pay full and final compensation for the life taken and lost;**

b) pass any such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS AS IS DUTY BOUND SHALL EVER PRAY

Filed by:

(Aparna Bhat)
Counsel for the Applicants

Filed on: 21st January 2009
New Delhi