**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION NO.205 OF 2014**

ZakiaAshanJafri …Petitioner

Vs.

Special Investigation Team and Anr. …Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER**

1. The Petitioner states that the present application is preferred under section 397 read with sections 401 & 482 of the Code of Criminal Procedure 1973, against the judgment and order dated 26.12.2013 passed by the Learned Magistrate pertaining to the Final/Closure Report submitted by sit and protest petition in connection to the complaint dated 08.06.2008 of ZakiaAhsanJafri. It is the Petitioner's contention that the impugned order is riddled with deficiencies in law and on facts and the Petitioner is filing these written submissions highlight the said infirmities in the impugned order. Further the Petitioner states that followingsubmission are in addition and supplement the Petitioner's written submissions submitted before the Learned Magistrate which are part of the records of the present Application (Annexure F, Page No.2949-3053)

2. The Petitioner submits that the Learned Magistrate has erred in law by limiting the scope of the case before him. When theClosure Report submitted by the Respondent SIT, under Section 173 (as has been categorically stated in the Supreme Court order dated 12.09.2011 in Criminal Appeal No.1765 of 2011, Annexure 'B', Page No.707) came up for

perusal before the Learned Magistrate and the same was contested by the Petitioner by filing a Protest Petition,the Learned Magistrate was open to choose any one of the following:

a. The Learned Magistrate when dealing with the Closure Report submitted by the Respondent SIT, under Section 173, is convinced after considering the “Closure/Final Report” and the Protest Petition that no case is made out for trial, he could have accepted the final report and closed the proceedings.

b. The Learned Magistrate could have formed an opinion that the facts, set out in the closure report, constitute an offence, pursuant to which he could have proceededto take cognizance of the offence, under Section 190(1)(b) or 190(1)(c) of the Code of Criminal Procedure, notwithstanding the contrary opinion of the Respondent SIT, expressed in the Closure Report.

c. The Learned Magistrate may have taken the view, on a consideration of the Closure Report, that the opinion formed by the Respondent SIT is not based on a full and complete investigation or that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, in which case, the Learned Magistrate would have had jurisdiction to give directions to the police, to conduct further investigation. Hence the Learned Magistrate could have declined to accept the final report and direct the police to make further investigation as per the provisions of the Code of Criminal Procedure. (AbhinandanJha Vs. Dinesh Mishra, (1967) 3 SCR 668, Paragraph No. 15 and 21)

d. The Learned Magistrate could have treated the Protest Petition as a complaint and proceed to deal therewith in terms of Chapter XV of the Code of Criminal Procedure. (Popular Muthiah Vs. State (2006) 7 SCC 296, Paragraph No.21 and 54)

It is submitted that the Learned Magistrate in the impugned order dated 26.12.2013 errs in holding that it was not within his powers to direct further investigation or to treat the Protest Petition as a complaint (Page No.61-63 of the impugned order). The Learned Magistrate's reliance on Paragraph No.8 and 9 of the Hon'bleSupreme Court order dated 12.09.2011 in Criminal Appeal No.1765 of 2011 to exclude the option or of further investigation by treating the Protest Petition as a complaint is completely misplaced, as the said paragraphs merely state thatthe Hon'ble Supreme Court having overseen the investigation in order to ensure proper and honest performance of the investigative agency and the Final Report of the Respondent SIT should be placed before the Magistrate as required under section 173(2) of the Code of Criminal Procedure.Theimpugned order is further flawed in holding that it was not open to the Learned Magistrate to order further investigation under section 173(8) of the Code of Criminal Procedure because the Supreme Court had already included the report of the SIT within the purview of section 173(8). In fact, Paragraph No.9 of the said order categorically states that "*The said court will deal with the matter in accordance with law relating to the trial of the accused, named in thereport/charge-sheet, including matters falling within the ambit and scope of section 173(8) of the Code*."Thus, the impugned order dated 26.12.2013 shows that the Proceedings before the Hon'ble Supreme Court and the Orders passed by the Hon'ble Supreme Court particularly orders dated 12.09.2011 and

07.02.2013 were not only not understood properly but were misread. It is submitted that the impugned order is perverse to the extent that the Learned Magistrate refuses to exercise his statutory powers and limits the scope of the proceedings before him whether to accept the closure report of the Respondent SIT or to take cognizance based on the facts brought on record by the Closure Report. Thus, the impugned order is bad in law and liable to be set aside.

3. The Petitioner further states that the Learned Magistrate has erred by going into the veracity, truthfulness or otherwise of the material on record, which stage comes later during the trial. It is submitted that the Learned Magistrate was legally required to prima facie examine the material on record to find out whether case of reasonable suspicion to take cognizance against the accused was made out. (S K Sinha Vs. State (2008) 2 SCC 492, Paragraph No.22)

4. Further, it is the Petitioner's contention that the impugned order dated 13.12.2013 apart from the aforesaid legal deficiencies is also plagued by major factual lacunae that necessitate the said order be set aside in the interest of justice and the detailed Protest Petition along with exhaustive documentary evidence be taken as a complaint and further investigation be ordered with the issues raised therein. The said observations can broadly be covered under the following six heads:

    a. Conspiracy

    b. Abetment

    c. Hate Speech

    d. Lack of fair investigation and need of further investigation

e. Statements and evidence of Sreekumar and Rahul Sharma

f. Role of Amicus Curiae

5. **<u>Conspiracy</u>**: It is the Petitioner's case that the incidents of violence across the State of Gujarat that followed after the unfortunate burning of the Sabarmati Express at Godhra were encouraged and condoned and overtly supported by the Political party and the actions and omissions on part of the Government of Gujarat and the Law and Order machinery at the instance of the elected officials amounts to conspiracy.The conspirators can be classified in to four groups i.e. Political Establishment, Bureaucrats, Police officers and Private organizations/individuals. Further it is the Petitioner's case that the conspiracy was executed at four levels:

   a. **Prelude and Build Up Before 27.2.2002.**To generate and allow to be generated and deepen feeling of hatred towards a particular community prior to the train incident (State IB Messages @ Annexure-'G', Page No.3061-3072 and Tehelka Sting Operation @ Annexure-'G' Page No. 3132-3370)& Paragraph No.245-260 at Pages 245-260 of Annexure "E" Colly, Volume I, Protest petition of the CRA 205/2014 Record

      Protest Petition:

      Paras 32 – 59 (Pages 30-41) of Volume I, Protest Petition; Paras 459-463 at Pages 205-207 of Volume I of the Protest Petition

      Build Up/Prelude from Newspaper reports etcParas 239-240 at Pages 1212-1213 of Annexure "E" Colly, Volume I, Protest petition of the CRA 205/2014 Record;

Build Up/Prelude from Documentary Evidence: Paras 426-438 at Pages 1273-1277 of Annexure "E" Colly, Volume I, Protest petition of the CRA 205/2014 Record

Three Different Sources in Investigation Record:

(i) Annexure III, File II D-21 Appendixes to First Affidavit (July 2002 of RB Sreekumar)

(ii) Annexure III, File XXXIV, Page 2 (DGP to SIT, Jan 2010)

(iii) SIB Messages on Prelude from RB Sreekumar's First Affidavit (D-21 in SIT Papers)

(iv) Annexure III, File XIV, D-54 (English Translation) & D-194 (Annexure to then DGP Mahapatra's Affidavit in D-54 and D-139 of the SIT Records)

(v) Ashok Narayan's Statement Dated 12/13.12.2009 before SIT (Annexure I Volume I Serial Nos 62-63 of SIT Papers)

(vi) Tehelka Tapes Transcripts (Pages 120-124 of the Volume I Protest Petition—Paras 245-252) discussed on 3 & 4.7.2013

(vii) Analysis of Godhra Phone Records

Annexure "G"

(viii) Annexure Spiral "G", Pages 3057-3060 is a List oDates/Chronology on the Prelude to Violence Before 27.2.2002

(ix) Annexure "G" to CRA 205/2014 has LOD, SIB Messages with Page Marking on the Spirals; Messages at Annexure Spiral "G" at Pages 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3071, 3072

(x) Annexure "G" also has the Transcripts of the Tehelka Operation Kalank (Haresh Bhatt, Dhaval Patel and Anil Patel) on the

Bomb Making and Arms Importation into Gujarat before 27.2.2002 as also their SIT Statements;

(xi) Statement of AshishKhetan, then of Tehelka before the SIT.

(xii) Excerpts of the NarodaPatiya Judgement of the Special Sessions Court dated 29.08.2012 Validating the Sting Operation by Tehelka (Annexure Spiral "G" at Pages 3142-3165)

Annexure "J"

(xiii) Annexure "J" to CRA 205/2014 has Messages that had been annexed to then ADGP RB Sreekumar's Affidavit. These are at Pages 3969-3977 of the CRA 205/2014 Record. These are from Annexure III, File II, D-21 and Annexure III, File XXXIV of the SIT Investigation Papers.

**Crucial Ones are:**

(xiii) Page 3973 of Annexure "J" contains a message from the Gujarat State Intelligence that records a message received from the IG (Intelligence Dept) Lucknow, record a statement by Praveen Togadia (an accused arraigned in the ZakiaJafri Complaint, A-20). The message requires information **of whether any weapons, including lathis to be carried by the travelers.**

(xiv) Page 3975 of Annexure "J" Contains a Detailed SIB Message sent by Westpol, Baroda in response to the Information sought by UP State Intelligence on the Movements of the karsevaks and dangers posed to law and order. This message clearly gives information of the train that travelled to Faizabad/Ayodhya on 24.2.2002 (and returned on 27.2.2002) and mentions that a prominent Bajrang Dal leader Prahladbhai J Patel would be

travelling. The message says that 'they will carry trishuls with them'.

(xv) Page 3976 of Annexure "J" has a message from UP State Intelligence on the movement of these persons. Page 3977 of Annexure "J" has another such SIB message dated 20.2.2002.

(xvi) Read Ashok Narayan's Statement Dated 12/13.12.2009 before SIT. He is a senior Bureaucrat in the Home Department and admits to the Prelude and Build Up of Violence Before 27.2.2002 (KarSevaks carrying Trishuls) as also the confirmation of receipt of Fax from Jayanti Ravi, DM, Godhra

(xvii) Annexure Spiral "I", Page 3600 from Annexure I Volume I Serial Nos 62-63 of SIT Papers (former ACS Home, Ashok Narayan's Statement Dated 12/13.12.2009 before SIT

Other Important Evidence/References that should have been assessed by SIT while looking at the Build-Up/ Prelude to Violence from the CRA 205/2014 Record

(xviii) Pages 3932-3933 of Annexure "J" has an Excerpt from the Gujarat Police Manual (Chapter X) on Special Organisations, State Intelligence.

(xix) Pages 764-781 of Annexure "J" has an Excerpt from the Gujarat Police Manual (Chapter II) on the Maintenance of Order where at Page 770 there is a Section on 'Preventive Measures In Case of Threatened Communal Riots"

(xx) Page 813 of Annexure "J" is the Relevant Page from the Gujarat Government Rules of Business, 1990 that deals with the Responsibilities of the State Government Home Department

(xxi) Page 870 Onwards is the Gujarat Government's 'Booklet on Communal Riots" (1997) which was not followed. It s from Annexure III, File XL, D-192 of the SIT Papers.

b. The second component of the conspiracy involves the actions of the accused between the train burning incident and eruption of full-fledged violence on 28.02.2002.

b.i. Telephonic conversation between the Chief Minister and VHP leader Jaideep Patel (who then proceeds to Godhra) (Paragraph No. 181-187 of Protest Petition; Annexure E-II, Page No.1188-1190)

b.ii. Analyses of A-1 (Residential and Office) Phone Call records tell a strange tale not investigated. From the seven landlines available to the chief minister at his office and residence, only a handful (barely six to seven calls are received on the February 27 & 28, 2002, one is from VHP strongman Jaideep Patel, also a co-accused. How could a political head of state records such few phone calls?

Page References on Phone Call Records

- CMO to Jaideep Patel : Evidence from Phone Call records- CMO Calls Made to Accused Jaideep Patel: Ref: Para 185-187 @ Pages 94-95, Protest Petition Vol I
- Annexed to the Protest Petition at Annexure Volume IV, Pages 93-100; Para 106 @ Pages 61-62 of Protest Petition Volume I, Annexure Spiral "E Colly-Part I" of CRA HC Record

- Strange Story behind A-1 Mr Modi's Call Records (27.2.2002, 28.2.2002): Ref: Para 181 @ Page 93 , Protest Petition Volume I, Annexure Spiral "E Colly-Part I" of CRA HC Record
- "No Calls" A-1Modi: Ref: Para 183-184 @ Page 94, Protest petition, Vol I, Annexure Spiral "E Colly-Part I" of CRA HC Record
- Spiral Annexure "G" in HC Record @ page 3073 is AP Patel's Phone record from Annexure C Colly @ Annexure IV, File VI in SIT Papers
- Co-Conspirators In touch with each other: Ref: Para 188- 189 @ Pages 95-96, Protest Petition Vol I, Annexure Spiral "E Colly-Part I" of CRA HC Record
- Co-Conspirators, Powerful persons at Naroda&Meghaninagar: Ref: Para 196-198 @ Pages 98-99, Protest Petition Vol I, Annexure Spiral "E Colly – Part I" of CRA HC Record
- Phone Call Contact: Ref: Para 203- 204 @ Pages 101-102, Protest Petition Vol I
- Command Responsibility Needs to Be Examined through Evidence of Phone Call Records: Paras 828-910 @Pages 373-401, Protest Petition, Volume II, Annexure Spiral "E Colly"-Part II

Reference Spiral Annexure "T" from HC Record that contains:

1) Call Records of CMO Deliberately Ignored by SIT supplied by Petitioner in SC
2) Call Records of OP Mathur, GC Raigar and Sanjiv Bhatt
3) Call Records of NarendraModi, CM of Gujarat

4) Location Call Records Analysis that Showed how Top Cops Deserted Gulberg Society

5) Location of Powerful Accused at Naroda and Meghaninagar where Gulberg Society is located on 27.2.2002 and 28.2.2002

c. Provocative Sloganeering by KarSevaks pre and post Godhra on 27. 2. 2002 Concealed from the Public

(i) The Fax message of the incident was sent by DM Smt. Jayanti Ravi to the CMO, Home Department and Revenue Department, which was received at 9 a.m. of 27.2.2002. In the said message, it was clearly mentioned that the karsevaks were shouting provocative, anti-Muslim slogans.

Annexure "G" Page 3071 in HC record is the Message

(ii) In addition, Sanjiv Bhatt, State Intelligence had also sent a message to the CS, HS,CM, MOS Home and DGP Gandhinagar confirming the fact that karsevaks were shouting provocative slogans

Spiral Annexure "G" Page 3072 in HC record is the FAX

(Both messages are available in the SIT Records @ .Annexure III, File XLI at Serial Nos 1 and Annexure IV, File IX, Serial Nos 241)

d. Statements issued in the Assembly by Senior Government functionaries concealed information of powerful sloganeering by karsevaks.: **A-1,Modi,** Minister of State for Home, GordhanZadaphiya (A-5), Ashok Narayan, ACS Home, (A-28),K Chakaravarthi DGP, Gujarat (A-25) PC Pande, CP Ahmedabad (A-29), and K. Nityanandam, Home Secretary, (A-34) and other members of the Chief Minister's Secretariat. This Note (for the State Assembly) was prepared at the meeting to suppress the fact that anti-Muslim

slogan shouting by karsevaks was a provocation which led to the incident. A-5, Zadaphiya read out this statement in the assembly. The background of Zadaphiya is that he was also a VHP member. His statement to the SIT.

i) Annexure "I-1" of the HC Record at Pages 3798-3801, relevant portion at Page 3799 (VHP activist Ashwinbhai Patel who was on the train had informed Zadaphiya of the incident at 7.30 a.m. This is in fact even before the time of the actual train burning.

ii) In the Assembly, a motion moved by PunjabbhaiVansh who was absent was actually addressed by A-16, then MLA, Maya Kodnani (Page 3086 of Annexure Spiral "G" of HC Record)

iii)At 1 p.m. on 27.2.2002, as mentioned above, the correct facts were not put before the State Assembly. MayabehnKodnani, (A-16), MLA read out the Note that was prepared at the residence of A-1, suppressing the fact of provocative slogan shouting by the karsevaks. Even the State Legislature/VidhanSabha was not informed about the fax message of the Collector and only the note prepared in the meeting at the residence of A-1 was read out in the VidhanSabha at 1 p.m. by GordhanZadaphiya (A-5).

(iv) Annexure "G" in CRA 205/2014 of HC Record @ page 3086 is the Note from Annexure III, File XLI, Sr No 5 from the SIT papers

v) Annexure " H" in CRA 205/2014 of HC Record @ Pages 3411-3412 relevant portions of A-2 Ashok Bhatt statements to SIT; Pages 3418-3425 is A-5 GordhanZadaphiya's Statement & Pages 3426-3428 is A-21 Jaideep Patel's statement

e. Conspiratorial Mindset: A direct statement under section 161 CrPC, given by Sureshbhai Mehta, then Minister for Industries (dated 15.8.2009). Mr Mehta

categorically said to the SIT, “I was sitting by the side of NarendraModi, chief minister who remarked that Hindus should wake up now.” (Annexure “G” in HC Record @ page 3088 is Statement of Suresh Mehta before the SIT from Annexure F @ Annexure I Serial Nos 13 of the SIT Papers)

f. Post-mortems conducted in the open.(Paragraph No. 473-477 of Protest Petition; Annexure E-II, Page No.1306-1308) (Annexure ‘G’, Page No. 3127 - Godhra Trial Court Judgment) (Annexure H, 3470-3471 Excerpts of Gujarat Police Manual)

(i) Phone records and other evidence detailed in the Protest Petition show that Doctors from Districts outside Godhra (Panchmahal) were summoned by Accused No 2-Ashok Bhatt now deceased

Ref: ParagraphNo. 472-476 of Protest Petition Annexure E-I

g. Provovcative Speeches and Slogneering at the Godhra Railway Yard in presence of Powerful Govt Functionaries: The Operation Kalank (Sting Operation by Tehelka) telecast in October 2007 is part of the SIT Investigation Papers. The Tehelka transcripts have been relied upon by NarodaPatiya Special Court Sessions on 29.8.2012 as strong corroborative evidence.

(i) Comprehensive List of Dates on the Tehelka Sting Operation dated may be read at Annexure “G” Spiral Pages of the CRA 205/2014 Record at Pages 3132-3134

ii) Annexure “E” Colly, Volume I, Protest petition References to Tehelka Sting: @ Paras 111-125@ Pages 66-70, Volume I, Protest Petition & Pages 120-126, Volume I, Protest Petition, Volume I

iii) Annexure “G” at Pages 3167-3197: Haresh Bhatt who says it was a planned conspiracy to import large ammunition into the state of

Gujarat; Page 3198-3230 is Haresh Bhatt Statement before SIT is at Page 3231-3233.

iv)Annexure “G” Spiral at Pages 3167-3197 of CRA 205/2014 Record: Important References is at Page 3259-3262 of Annexure Spiral “G” Ramesh Dave Transcript at Page 3278-3292 and Statement before SIT at Pages 3293-3298

v)Annexure “G” at Pages 3167-3197: Important Reference at Annexure “G” Spiral in HC Record at Pages 3245-3252 (Transcript of Sting) and Pages 3253-3259 is SIT Statement ofRajendraVyas(VHP’s Ahmedabad city president) statements to the Tehelka Sting.

vi)Annexure “G” at Pages 3167-3197: Important Reference at Annexure Spiral “G” is Dhawal Patel TehelkaTranscipt at Pages 3259-3264 and Dhawal Patel Statement before SIT at Pages 3265-3268

vii)Annexure “G” at Pages 3167-3197: Imp References to Dhimant Bhatt (chief account officer of the MS University)Tehelka Transcript ay Annexure Spiral “G” Pages 3269-3274 and SIT Statements at Pages 3275-3277

viii) Annexure “G” at Pages 3167-3197: Important References to former Govt Pleader ArvindPandya in Tehelka Transcript at Annexure Spiral “G” at Pages 3308-3345 and SIT Statement at Pages Pages 3346-3347

ix) Annexure “G” at Pages 3167-3197: Important References to Suresh Richard Chara (Accused Convicted in NarodaPatiya) on Modi’s Role in Tehelka Transcripts at Annexure “G” at Pages 3299-3306 and Statement to SIT at Pages 3307

x)Annexure “G” at Pages 3167-3197: Judgement Quashing FIR Against AAJ TAK Correspondent, DhimantPuroht, in Gujarat HC at Annexure Spiral “G”, Pages 3348-3373.

h. Handing over the bodies of the victim to the aforesaid VHP leader. (Paragraph No.673 of Protest Petition; Annexure E-II, Page No.1396-1397) (Annexure J, Page No.4013-4026 Statement of the Mamlatdar)( second statement before SIT dated 3.4.2011 which is at 40011 of Annexure “J”)

(Contradictions in DM Ravi’s statements at Page 299 of Protest Petition, Volume I which is Annexure “E-Colly” Volume 1 of the CRA 205/2014 Record

(Jayanti Ravi’s second statement at Pages 4101 of Annexure Spiral “J” of CRA 205/2014 HC Record)

(Fax proving despatch of bodies from Godhra Annexure III, File IV, D-43, Page 13 of the SIT Records)

f. Provocative Behaviour of KarSevaks Continues En Route to Ahmedabad: After the S-6 Bogey had been detached from the rest of the train and the train reached Vadodara after leaving Godhra at 1-1.30 p.m. where karsevaks had assaulted three persons, one of them being Abdul Rashid who died. From Vadodara the train reached Anand around 2.20 p.m. where again violence took place and karsevaks indulged in violence, killing of one person and causing injury to two persons.—they were all Muslims. From Anand the train finally reached Ahmedabad railway station around 3 p.m. where the karsevaks were shouting bloodthirsty slogans (*“KhoonkabadlaKhoon*”) threatening revenge against all Muslims. At

Ahmedabad railway station, stabbing, stone pelting incidents etc. also took place. No preventive actions were taken at the highest levels of the state's political, administrative or police hierarchy and the communal temperature was deliberately allowed to escalate all over the state, especially Ahmedabad, on 27.2.2002.

(b.ii.i) Paras 574-587 @ Pages 254-260, Volume I Protest Petition, Annexure "E" Colly, Volume I, Protest petition of the CRA 205/2014 Record

(b.ii.ii) Attacks on Minorities from 27.02 Onwards

Page 190, Para 45 of the Protest Petition, Volume I Protest Petition, Annexure "E" Colly, Volume I

( SIB and PCR Messages Showing Attacks on Minorities from 27.2.2002 Onwards related to which No Preventive Action was Taken)

(Reference: Spiral Annexure "H" Pages 3520-3549)

g. Parading of bodies from Godhra to Ahmedabad.(Paragraph No.560-573 of Protest Petition; Annexure E-I, Page No.1342-1349) (Annexure J, Page No.4103-4105)

h. Bandh called for by the VHP, supported by the BJP (the Political Party in power).(Paragraph No.494-510 of Protest Petition; Annexure E-I, Page No.1314-1321)(Annexure H, Page No.3411 Rajendra Singh Rana's statement)

i. Law and Order meeting at the Chief Minister's residence on the night of 27.02.2002. The police machinery ordered to let the Hindus vent their anger.

a. No preventive actions were taken and Bandh call was supported by the ruling party. Further, no preventive arrests were made and the implementation of curfew in Ahmedabad was consciously delayed till late on 28.02.2002, after major incidents of massacre had already concluded. Neither the Closure Report nor the impugned order deal with this aspect. (Page No.342 Annexure B 'Complaint')(Para No.49 and 79, Annexure E1-Page No. 1130-1131 and 1145)

(i) The first message available in the SIT records (**Annexure III, File XLI, SrNos 15 SIT Papers/Records)** is a message dated 28.2.2002 of 2215 hours instructing round-up and arrests. This is referred to in the SIT report but SIT has ben ignored.

(ii) Another message in the same file (Original at **Annexure III, File XLI, SrNos 14 SIT Papers/Records)** has been clearly tampered with (this aspect has been ignored by the SIT and will be dealt with separately.

b. Only two Preventive Arrests in Ahmedabad on 27.2.2002 that two of persons belonging to the Minority Community;

( Originals in Annexure III, File I, D-2, Pages 254-255, SIT

Record/Papers)

c. A total of 193 serious criminal cases against women and children were registered between February-May 2002; that the intra-Parliamentary Committee of Women had recommended special steps that were not taken;

(Annexure Spiral "S" of CRA 205/2014 at Page 6104)

d. Conspiracy is also apparent from the acts and omissions of the police officers and elected officials

d.i. Episodes of firing, targeting the minority community. (Paragraph No.283-284 of Protest Petition, Annexure E-I Page No. 1229)(Annexure H, Page No.3520-3549 - PCR and SIB Messages)

d.ii. Officers on duty failed to respond to distress calls from victims, fire brigade response as recorded in PCR messages.(Paragraph No.607-610; 818-827 of Protest Petition, Annexure E-I Page No. 1363-1364; Annexure E-II Page No.1464-1471) (Annexure 'P' Page No.5624-5693)

d.iii. Phone call record show polices officers were in constant contact with elected officials and private organisations/individual who have subsequently been convicted.(Paragraph No.869-896 of Protest Petition, Annexure E-II Page No.1488-1495)

For example, then CP PC Pande's Phone Call Records detailed in the Protest petition and Annexures to it show that of the 309 calls made and received by him on 28.2.2002, he had dialed 39 numbers from his Mobile Phone: Crucially 15 calls Received by him on 28.2.2002 and at least 10 of these between about 11 am and 1530 pm from the Chief Minister's Office (CMO) while the NarodaPatiya area and the Gulberg Society are Under Attack.

(Protest Petition Volume I which is at Annexure "E Colly" at Pages 1363, 1476-1483, 1484-1486, 1487-1491, 1493-1494, 1494-1495)

(Annexure “E-4” to Protest Petition atPages 2496-2570 Contains detailed Charts and Analysis of the Phone Records)

(Annexure “E-5” to Protest Petition at Pages 2571-2907 Contains detailed Charts and Analysis of the Phone Records)

d.iv. Ministers were placed in the control rooms. (Para No.649, 815-816 of Protest Petition; , Annexure E-I Page No. 1130-1131 and 1145; Magistrate’s Order Page 142-143)

d.v. Curfew is not declared despite numerous incidents being reported on 27-02-2002. Order to Act (Preventive Detention) issued for the first time only at 2215 Hrs on 28-02-2002. (Complaint - Annexure B - Page 505, 506, 518, 531 and 542) (i) Protest Petition Annexure E1 Page No.1106, 1327, 1331, 1338-39 and 1359; 1383-1388; No reference to delayed curfew in either the Closure Report or the impugned order;

(i) Chart of Curfew at Annexure E Colly, Page No.1383-1388

(ii) Annexure S,Page No.6124-6156 Charts of Curfew all over Gujarat from 27.2.2002 to Mid-March 2002 Curfew in Godhra was declared in the City only at 10:55am only on 27.2.2002)

(iii) Annexure H, Page No.3395, 3388-3393: DM, GodhraJayanti Ravi & SP, GodhraRajuBhargava Statements before SIT and Deposition before Nanavati Commission on Curfew Declaration.

d.vi. Calling the Armed forces delayed and deployed after further delay. (Complaint, Annexure B, Page 498; Protest Petition Annexure E-I Page No.1359, 1379-1380, 1388-1395, 1471-1514; Annexure H, Page No.3399 admission of delay in Army deployment to Godhra; Annexure S has details of district wise deployment of Army in Gujarat; Closure Report Page No.138; Magistrate's Order Page No.232)

e. The fourth component that is encompassed within the ambit of Conspiracy is the deliberate and calculated subversion of law after major acts of violence had occurred. The political establishment and the law enforcement officers colluded to ensure that people involved in acts of violence were shielded. The following are the aspects of systemic subversion:

e.i. Non-filing of FIRs and False FIRs were filed.Names of Powerful accused named by Victim Complainants dropped. ('Complaint' Annexure B, Page No. 542)

e.ii. No relief camps set up, hardly no rehabilitation efforts for the victims.

e.iii. Public Prosecutors of certain ideological bend appointed, who proceeded to sabotage the riot related cases.('Complaint' Annexure B, Page No. 542; Paragraph No.1052-1062 of Protest Petition, Annexure E-II Page No.1576-1581)

e.iv. Illegal instructions given by the Politicians to the Police and Bureaucrats.

e.v. Rewards to police officer complicit in perpetuation of violence; Officers who acted against the rioters punished.A copy of the

chart showing rewards to various complicit police officers and victimisation of officers who fulfilled their statutory duties are annexed hereto and marked as **Exhibit 'A and B'**.(Para 1053-1055 of Protest Petition, Annexure E-II Page No.1576-1577)

e.vi. False reporting and misleading constitutional and statutory authorities (Election Commission Report, Page No.4339-4378;Women's Parliamentary Committee Report, Page No. 4389-4407; NHRC Report, Page No. 4234-4338)

f. **Magistrate's order:** The Learned Magistrate in the impugned order refuses to go in to the question of larger conspiracy as averred by the Petitioner in her complaint and Protest Petition. (Page No. 276)

g. **Petitioner's Submission**: The Learned Magistrate has erred by refusing to go in to the larger questions of conspiracy and confining the scope of this case to the Gulberg Society Case. Further the Learned Magistrate contrary to settled position of law failed to appreciate the additional evidence and documents that the Petitioner brought on record in the Protest Petition. It is the Petitioner's submission that the aforesaid evidence with respect to the various allegations in the Petitioner's complaint dated 06.08.2006 and the Protest Petition, should have been considered holistically rather than in isolation as has been done in the impugned order, and if the same is done there is more than ample prima facie evidence on record to commit the case to trial for offences punishable under Section 302 read with Section 120B as also under Section 193 read with Sections 114, 186 & 153A, 186, 187 of the Indian Penal Code.

h. Case laws relied on with relevant paragraphs:

h.i. BimbadharPradhan vs. State of Orissa AIR 1956 SC 469 (para 13-14)

h.ii. Leo Roy Frey vs. Supdtt. District Jail AIR 1958 SC 119 (para 4)

h.iii. Major E. G. Barsay vs. State of Bombay AIR 1962 SC 1762 (para 31)

h.iv. BhagwanSwaruplalBishanLal and Ors. Vs. State of Maharashtra AIR 1965 SC 682 (para 8)

h.v. LennartSchussler and Anr. Vs. Enforcement Directorate (1970) 1 SCC 152 (para 9-10)

h.vi. Yash Pal Mittal Vs. State of Punjab (1977) 4 SCC 540 (para 9)

h.vii. V. C. Shukla Vs. State (1988) 3 SCC 665 (para 8)

h.viii. Kehar Singh Vs. State (1988) 3 SCC 609 (para 271-280)

h.ix. State of Tamil Nadu Vs. Nalini and Ors. (1999) 5 SCC 253 (para 656-662)

h.x. FirozuddinBasheeruddin Vs. State of Kerala (2001) 7 SCC 596 (para 23-28)

h.xi. Mohd. Khalid Vs. State of W. B. (2002) 7 SCC 334 (para 19-21)

h.xii. State (NCT of Delhi) Vs. NavjotSandhu (2005) 11 SCC 600 (para 89)

h.xiii. State of Maharashtra Vs. SomNathThapa (1996) 4 SCC 659 (para 24)

j. **Abetment**: It is submitted that illegal actions of the aforesaid conspirators and the wilful omission of their constitutional and statutory duties apart from

abdication of their lawful duties the said elected representatives and law enforcement officials' actions fulfil all the ingredients of Abetment under Section 107 of the Indian Penal Code.

a. It is submitted that various actions of the Government of Gujarat and the police force like handing over dead bodies to private person of Hindu extremist organization, failure to respond to distress calls, failure to take necessary preventive measures, instigating violence through hate speeches, aiding illegal acts through actions and omissions mentioned in the aforesaid and succeeding paragraphs with the intention to perpetuate violence against minority community fulfilthe necessary ingredients of Abetment. The abetment is at the following two levels:

    a.i. Abettors who were actively part of the conspiracy and abated by perpetuating the violence through their actions and

    a.ii. Abettors who abated by omissions of their constitutional and statutory duties.

b. Further in various judgments of the Hon'ble Supreme Court, Hon'ble Gujarat High Court, Hon'ble Bombay High Court and various Sessions Courts there have been strong findings of subversive tactics employed by the State of Gujarat. A copy of a chart showing various findings against the State of Gujarat by theHon'ble Supreme Court, Hon'ble Gujarat High Court, Hon'ble Bombay High Court and various Sessions Courts is annexed hereto and marked as **Exhibit 'C'**.

    The Hon'ble Supreme Court took such a serious view of not just the outbreak of violence but the subsequent subversions that the DGP (Chakravarthi) and then Chief Secretary (PK Laheri) were cross

examined in open Court (Annexure B, Page No.566-571) on 19.09.2003. On 12.07.2004, sharp observations were made by the Hon'ble SC on the Gujarat Govt misleading the SC on question of selective bail applications by PPs; on 17.08.2004, the Re-Opening of 2,000 cases was ordered by the Hon'ble Supreme Court.

c. Case laws relied on with relevant paragraphs:

c.i. Jamuna Singh Vs. State of Bihar AIR 1967 SC 553 (para 567)

c.ii. Sri Ram Vs. State of U. P. (1975) 3 SCC 495 (para 6)

c.iii. Kartar Singh Vs. State of Punjab (1994) 3 SCC 569 (para 102-109)

c.iv. Ramesh Kumar Vs. State of Chhatisgarh (2001) 9 SCC 618 (para 20)

c.v. Chittrash Kumar Vs. State (2009) 16 SCC 605 (para 11-20; 26)

c.vi. PramathNath Vs. SarojRanjan AIR 1962 SC 876 (para 16)

c.vii. Ranganayaki Vs. State (2004) 12 SCC 521 (para 11)

k. **Bandh**: After the Godhra incident VHP called for Gujarat Bandh on 28-02-2002. Several messages from various district police units record the inherent dangers with the VHP-called and ruling party-supported Bandh on 28.2.2002. SIB Messages sent warn of violent repercussions due to the Bandh call (Paragraph No.442 of Protest Petition, Annexure E-I Page No.1277) (Violent repercussions of Bandh SIB message Annexure-G – Page No.3087)(VHP Bandh Press Release Annexure-H – Page No.3431; SIB Messages Annexure H – Page No.3439-3469)

a. Instruction to deal with Communal Riots (Strategy and Approach)' issued by Mr. KV Joseph, the then DGP in 1997, had not been complied with. Only two arrests made on February 27 were those of Mr. Mohammed Ismail Jalaluddin and Mr.Fateh Mohammed, who were picked up at Astodia that night, for shouting slogans.

b. Standard Operational Procedure not followed. Curfew is not declared despite numerous incidents being reported on 27-02-2002. Order to Act (Preventive Detention) issued for the first time only at 2215 Hrs on 28-02-2002. (Annexure S, Page No.6104)

c. Rajendra Singh Rana, President, BJP said that BJP supported the bandh (Annexure-H Page No. 3426-3428)

d. The Closure Report states Kerala High Court ruling is applicable to whole of' the Country unless overruled by the Supreme Court of India. But this by itself does not make the State Govt. a co-conspirator to the riots. In view of this though this allegation is proved to be correct, yet it cannot be construed as evidence to bring, Home, a charge of conspiracy. (Page No.133)

e. **Magistrate's order**: Based on the statements of Sanjay Bhavsar and Mr.Badheka it is out of question to consider the support of BJP in 'Bandh Call' is to be construed as the support of the Government. The Government also did considerable work to maintain law and order and relief work, thus the court agrees with the finding of the SIT. (Page No.226 of the Impugned Order)

Government did not endorse the Bandh or placed any prohibition against the said declaration, but arranged for special 'Bandobast'. It is

proved that the Government was negligent in not prohibiting the Bandh. (Page No.280-281 of the Impugned Order)

f. **Petitioner's Submission**: Supporting the Bandh, not declaring curfew as the situation demanded, not undertaking preventive arrest or hauling up communal goondas, allowing incendiary processions all over Ahmedabad, all of them together ensured that the orgy of violence, right from the attack on the high court judges to the innocent residents of NarodaPatia, Gulberg society, Kalupur etc.

g. Case laws relied on:

g.i. Communist Party of India (M) Vs. Bharat Kumar and Ors. (1998) 1 SCC 201

g.ii. Destruction of Public and Pvt. Properties in Re. Vs. State of Andhra Pradesh and Ors. (2009) 5 SCC 212

l. **Law and Order Meeting dated 27.02.2002**: The Learned Magistrate has given a perverse finding with respect to the meeting of 27.02.2002, the Supreme Court Judgment in the case of Sanjiv Bhatt (2016) 1 SCC 1 has categorically held that it is not going in to the issue of his presence at the said meeting. While Sanjiv Bhatt's statement has been contradicted by few of the persons present the law and order meeting, some of the others have claimed they have no recollection of his presence. Amicus Curie has himself has felt that this issue needs to be dealt with at the trail stage, apart from Sanjiv Bhatt, Late HarenPandya stated before the Citizens' Tribunal (Consisting of two retired judges i.e. Justice P. B. Sawant and Justice Suresh Hosbet) that Mr.Modi at the said meeting did utter the statement which are

attributed to Mr.Modi. Statement of both retired judges were recorded by SIT and they stand by what HarenPandya had told them, even VithalbhaiPandya father of Late HarenPandya had made a statement before the SIT categorically stating that his son had attended the said meeting at NarendraModi's residence and the alleged statements were made. Therefore it is submitted that there is sufficient ground to proceed for trial.

m. **Hate Speech**: The Protest Petition before the Learned Magistrate had highlighted certain instances of hate speeches by NarendraModi and other prominent members of the SanghParivar and how the State Government's Home Department under NarendraModi turned a blind eye towards various SIB reports for prosecuting certain VHP office bearers and publishing houses for propagating an incendiary rhetoric. (Complaint dated 06.06.2008 at Page No. 512 and 519 of Annexure B)

    a. Hate Speech in the present case falls under the following five heads:

        a.i. Statements of Mr.NarendraModi on 27.02.2002

        a.ii. Subsequent statements of Mr.NarendraModi to print and electronic media.

        a.iii. Mr.NarendraModi's speech at Becharaji

        a.iv. Vernacular Press

        a.v. Pamphlets issued by Right wing organisations

    b. The hate speech has been investigated as an independent head by the SIT and has been summarily brushed off in the Closure Report.(Print Media @ Page No.147 of Closure Report; Becharaji Page No.272 of Closure Report)

c. The glaring deficiencies of the SIT investigation with respect to Hate Speech have been highlighted in the Protest Petition. (Paragraph No.126-153 @ Annexure E1 Page No.1165; Paragraph No.233-238 and Paragraph No.588-590; Paragraph No.1029 @ Annexure E-II Page No. 1563-1564)

d. The official press release of the Gujarat Government and Speech of Mr.Modi on 27-28/02/2002 on Doordarshan's Gujarati channel concerning the Godhra incident. (Paragraph no.126-129 Annexure E-I Page No.1165)

e. March 1, 2002 interview of the Chief Minister on Zee television wherein he openly speaks of the "Action-Reaction" theory, to a substantive extent justifying the post-Godhra Violence.

f. Rahul Sharma, then SP, Bhavnagar had sought permission to register a criminal case against the *Sandesh* under the provisions of Rule 53(10) of the Gujarat Police Manual Volume III.(Annexure-M1 Page No.4799; Letter @ Annexure M, Page No.4503-4504)(Article at Annexure-V Page No.6688)

g. Pertinent to note that the Police wished to prosecute these newspapers and request for the same had been forwarded to the Home Ministry. But, NarendraModi who was also the Home Minister did not give the necessary permission for starting criminal proceedings against the said newspapers.

h. Instead of taking action against the said newspaper, Editor's Guild Report of 2002(Page No.27) reveals that the CMO wrote congratulatory letters to *Sandesh* and other newspapers for certain kind of inflammatory writing. Editor's Guild Report of 2002(Page

No.27) reveals that the CMO wrote congratulatory letters to Sandesh and other newspapers for certain kind of inflammatory writing. (Rahul Sharma's letter for permission file a criminal case against Sandesh, Annexure M- Page No.4503-4504)(Sandesh as part of conspiracy Annexure E1-Page No.1207-1210 Protest Petition) (Congratulatory Letter by CMO @ Annexure N-Page No.5368)

i. 16-04-2002 Sreekumar wrote a letter to DGP (Copy to ACS- Home) to take legal action against VHP office bearers for publishing pamphlets containing elements of communal instigation. (Annexure-M1 Page No.4820) (Letter at Annexure-M Page No.4503)

j. Sreekumar's register shows that the DGP advised against taking any action against vernacular media.(Annexure M - 4586)

k. NarendraModi's interview to Star News dated 10-03-2002. (Paragraph No.132-134 of the Protest Petition Annexure E-I Page No.1168-1170)

l. NarendraModi, at Becharaji (Mehsana district of Gujarat State) on 9.9.2002. Where he proceeded to make highly communal statements like,

*"What brother, should we run relief camps? (referring to relief camps for riot affected Muslims). Should I start children producing centres there, i.e., relief camps? We want to achieve progress by pursuing the policy of family planning with determination. We are 5 and ours are 25!!! (Amepanch, Amara panch, referring to the claim that every Muslim family produces five children)."*

(English Translation reproduced Paragraph No.136 of Protest Petition Annexure E-I Page No.1170-1174)(Annexure-M Page No.4571-4580).

m. The field officers of the SIB notings on the speech clearly find it can incite hatred and transcript, similar views were held by Amicus Curiae and Malhotra SIT Report. Modi told the SIT his speech did not refer to any community; it was a political speech in which he highlighted the increasing population of India. (Modi's justification Annexure-M1 –Page No.5003)

n. Other instances of hate speech which have been completely ignored by the SIT. (Paragraph No.150-179 of Protest Petition; Annexure E-I Page No.1179-1188)

o. The statement of Ashok Narayan before the SIT that NarendraModi was non-commital in acting regarding proposed action against hate speech (Ashok Narayan's statement; Annexure-M1 –Page No.4905)

p. **Magistrate Order**: Chief Minister's statement in the interview with Editor's Guild prima facie do not have any ingredients or essential elements of any crime under the Indian Penal Code (Page No.225)

q. **Petitioner's Submission**: The impugned order does not deal with the various hate speeches mentioned in the Protest Petition. Exonerates Mr.Modi by saying that he regular appealed for peace and order. The Petitioner states that the SIT investigation also fails to consider the aforesaid aspects of Hate Speech. The impugned judgment fails to deal with Becharaji Speech altogether. This shows total non-application of mind and failure to exercise jurisdiction, as on the face of it the speech at Becharaji (which is not disputed) is hate speech. It is the Petitioner's case

that the aforesaid instances of hate speech clear fulfil the ingredients of hate speech as laid down,at this prima facie stage, are offences inter alia under Sections 153A (1) (a) & (b), 153B (1) (c), 166 and 505 (2) of the Indian Penal Code.

r. Case laws relied on:

r.i. BabuRao Patel Vs. State (Delhi Administration) (1980) 2 SCC 402

r.ii. State of Karnataka and Anr. Vs. Dr. Praveen BhaiThogadia (2004) 4 SCC 684

n. **Lack of Fair Investigation and need for Further Investigation**: It is the Petitioner's case thatthe SIT has failed to investigate the following issues which point towards a lack of unbiased and fair investigation and the same necessitate further investigation with respect to the said issues in theinterest of justice. It is humbly submitted that the Learned Magistrate has erred by ignoring these pertinent issues which warrant further investigation.

a. Failure to look at the communal build up along with arms gathering and mobilisation by RSS/VHP/Bajrang Dal prior to the incidents of 27.02.2002 as pointed out by SIB reports to the Home Ministry, headed by NarendraModi, the then Chief Minister of Gujarat. (Paragraph No.239-260 of Protest Petition; Annexure E-I Page No.1212-1221)

b. Failure to investigate the telephonic conversation on 27.02.2002 between NarendraModi and Jaideep Patel in light of the subsequent facts (Jaideep Patel goes to Godhra, attends high level meeting in the collector's office and is handed over dead bodies of the kar-sevaks).

Paragraph No. 181-187 of Protest Petition; Annexure E-II, Page No.1188-1190)

c. Statements recorded selectively, AP Patel, the Chief Minister's personal assistant not called to depose. Calls were made from AP Patel's phone to Jaideep Patel on 27.02.2002.

d. Collusion between VHP and BJP in calling for a Bandh and supporting it respectively.

e. Failure of the SIT to investigate the PCR messages. These documents made available to the SIT after 15.03.2011 by PC Pande former CP, Ahmedabad.

f. Failure to record statements of Senior Jurisdictional Officers of Ahmedabad even after their names are reflected in the complaint and aspects from the complaint which are deliberately ignored. (Paragraph No. 925-945 of Protest Petition Annexure E-II, Page No.1522-1538)

g. SIT fails to investigate the illegal post-mortems held in the public view at the Godhra Railway Yard. (Para 472-493 of Protest Petition, Annexure E-I, Page No.1305-1314)

h. SIT Ignores Completely the Outbreak of Violence of 27.2.2002. Fourteen FIRs registered by different police stations where minorities are under attack on 27.2.2002 itself

(h.i.i) Paragraph No.793 of the Protest Petition,Annexure E-II, Page No. 1451-1452

(h.i.ii) Details of Attacks on Minorities on 27.2.2002 tabulated in Annexure "E-1",Page No.1798-1799

(h.i.iii) Table at Paragraph No.813 of the Protest Petition, Annexure-E-II, Page No.1460-1461

h. SIT Ignores the Partisan BehaviorBehind Arrests by Ahmedabad Police: Instead of arresting the Mobs the Ahmedabad Police Arrested Two Muslims only (Astodia) on 27.2.2002

(i) Paragraph No.794 Annexure E-II, Page No. 1451-1452

(ii) On 28.2.2002 of the 40 persons shot dead by the Ahmedabad police in Ahmedabad City, 36 were Muslims

i. SIT Ignored the Warnings from Several Gujarat Districts of the Violence Build up on 27.2.2002

i) (Paragraph No.504-510 of Protest Petition, Annexure E-I, Page No.1318-1321)

ii) SIT Ignored Lawlessness Spreading on 27.2.2002.(Paragraph No.596-598 of Protest Petition, Annexure E-I, Page No.1358-1359)

iii) SIT Ignored the Attacks on Minorities that Began from the afternoon of 27.2.2002 itself. (Paragraph No.810-813 of Protest Petition, Annexure E-II, Page No.1458-1460) (Annexure G, Page No.3090, 3091, 3092, 3093, 3094 from Annexure III, File XXXIV, D-176 of the SIT Record)(Another Message from SIB at 12.30 on 27.2.2002 warning of Violent Repercussions of Bandh at Annexure G, Page No.3087)

SIT Ignores SIB Messages that are Evidence of Hate/ Inciteful speech from Many districts from night of 27.2.2002 onwards (Annexure E-I, Page No.1402-1405)

jFailure to investigate the absence of application of standard operational procedure, minutes of the meetings not maintained, lack of preventive action etc.No significance is attributed by SIT to the fact that Minutes of Meeting.

(Legally the Chief Minister's secretariat is bound under Standard Operating Procedure to maintain minutes of meetings though the burden under Section 106 of Evidence Act would be on those who were required to maintain them)

(Sections 461 and 462 of the Gujarat Police Manual (handed over to the Court) outline the duties of the State Intelligence Bureau, the Complainant Counsel has argued that such a meeting, if indeed it was a Law and Order meeting, should have the presence of an official of the IB)

(Sanjiv Bhatt's past record is examined in detail by SIT to discredit him &Prakash Shah's, (joint secretary) presence in the meeting is confirmed without any verification though no one says he was present)

i) SIT surprisingly states in it's Closure Report dated 8.2.2012 that even if Accused No.1 had made such a statement it does not amount to an offence by ignoring the fact that if the statement had been made it amounted to offences under Sections 107, 120 B, 153 A, 153 B and 166 of the Indian Penal Code.

ii) SIT ignores the fact that none present at the meeting could have said that such a statement was made since it would amount to participating in offences above mentioned.

k. Failure to Investigate the Gradations of Violence: how Violence Broke and lasted in some districts and was curtailed in a few others

l. SIT Ignores the Statutory Duties and Responsibilities of Constitutional Functionaries, Chief Minister, Cabinet Minister and Senior Bureaucrats laid down in the Gujarat Govt's Business Rules

m. SIT Ignores Amicus CuraieRajuRamachandran's Findings on Meeting

between Jaideep Patel and NarendraModi (Annexure “B” at Pages 720)

o. SIT Ignores Evidence of Violence Along the Way as Cavalcade Nears Ahmedabad from Godhra between 3-5 a.m. on 28.2.2002; Outbreak of Violence in 14 of the 25 Districts of the Sate.

i) Colour Map Route with details of PCR Messages showing proximity of areas affected by Violence Annexed to Volume II of the Protest Petition. “E-Colly” Part II

ii) B & W Diagrams of the Same showing distances between Sola Civil Hospital and High Court, Ramol, HatkeshwarCrematorim at Pages 4103-4105 at Annexure “J’ Colly

o. SIT Ignores Evidence of Violence Generated by Motor Cavalcade En Route from Godhra to Ahmedabad

(Paragraph 75-80 of Protest Petition, of Annexure E-I, Page No.1144-1145)

p. PCR messages belie the findings of the SIT with respect to funeral processions of kar-sevaks being peaceful. (Paragraph No.353 of Protest Petition, Annexure E-I, Page No.1248)

(Motor Cavalcade: Paragraph 551-560 of Protest Petition, Annexure E-I, Page No.1335-1342)(Originals from Page No. 5794, Annexure IV, File XIV of the SIT Investigation Papers)

Another message 20 minutes later at 7:14 hours informs the Police Control Room that is under the charge of Accused No. 29 (Commissioner of Police) that a large mob has gathered (Originals from Page 5796 of Annexure IV, File XIV of the SIT Investigation Papers.**)**

Again another message three minutes later at 7:17 hours

(**Originals from Page 5797 of Annexure IV, File XIV of the SIT documents** says that another mob of 500 was holding up the traffic.

This message is received by Control and passed on to Sola 1. An hour later, at 8:10 hours, a message records that three SRP platoons were sent from Police Control to Sola Hospital for bandobast.

Thereafter, through the day wireless messages record that there are aggressive and tense crowds at the Hospital, en route and both locations of the cremations.

(Originals from Page 5826 of Annexure IV, File XIV of the SIT Investigation Papers**)**

[***Note:*** Incidentally these documents were made available to the SIT only after 15.3.2011, when former Ahmedabad CP, PC Pande, suddenly produced 3,500 pages of scanned messages on CDS that in this instance are described as "Wireless Message Book of Police Control Room, Ahmedabad City Control Room for date 28/2/2002". They had been concealed by him earlier. SIT has not thought to question him for this criminal omission in a matter related to a matter of such grave importance.]

(A letter (April 21, 2011 that may be seen at **Annexure IV, File VII, serial Nos 118 of the SIT Record/Papers and Spiral "J" Colly at Pages 4106-4120 of the CRA 205/2014 HC Record is** to AK Malhotra, IO SIT about the sudden memory returning to A-29 former Commissioner of Police PC Pande when, *only after the Supreme Court orders further investigation on 15.3.2011 does he produced CDs with 3,500 pages of scanned Police Control Room messages of the Ahmedabad City.* Pande's memory lapse for nine years is ignored by the SIT)

q. SIT Ignores Other Evidence of Inflammatory and Inciteful Speech (Hate Speech)AcharyaGiriraj Kishore of VHP was allowed to come to the Sola

Civil Hospital on 28.2.2002 by providing him special escort knowing fully well that it will further inflame the atmosphere and result in violence. He even made provocative statements.

(Paragraph No.561, 564-566 of the Protest Petition, Annexure E-I, Page No.1342, 1344-1345)(Page 2319, Annexure "E-3" of Protest Petition)

r. SIT Ignores Evidence of Inflammatory Statements/Behaviour of Jaideep Patel (A-21) and Kaushik Mehta (A-19) after the Godhra Incident

(Pages 86-88 of Annexure "E-1", Annexure to Protest Petition)

s. Failure to record statements of independent witnesses i.e. NHRC, CEC Lyngdoh, Major Zameeruddin Shah (The In-charge of Deployed Armed Forces in Gujarat) or KPS Gill (Advisor to CM) amongst others. (Annexure-M, Page No.4482)

   a. SIT's failure to investigate the persons in connection to the illegal instructions contained in Sreekumar's conscience register. (Para 298-302 of Protest Petition, Annexure E-I, Page No.1233-1234)

   b. Police and Administrative complicity ignored by the SIT along with the specific aspects that require further investigation (Para 607-639 of Protest Petition, Annexure E-I, Page No.1363-1372)

   c. Evidence of Rahul Sharma ignored and brushed aside (Para 748-792 of Protest Petition, Annexure E-II, Page No.1429-1451)

   d. Chain of command responsibility ignored.(Paragraph No.842 of Protest Petition, Annexure E-II Page No.1476)

   e. Mr.NarendraModi's statement shows the failure of the SIT in questioning Mr.Modi about several pertinent issues. Mr.Modi was

(Para 155-167 of Protest Petition, Annexure E-I Page No.1181-1183)

(Annexure M1,Mr.Modi's statement, Page No. 4992-5009)

f. Inadequate investigation with respect to the 27.02.2002 Meeting at the Chief Minister's residence. Violation of Standard Operating Procedure. HarenPandya's father's statement along with those of Justice P. B. Sawant and Justice Hosbet Suresh ignored. (Annexure I Page No.3581-582 and 3583-3584 ; Annexure 'I-1' Page No.3793-3795)

g. Misleading constitutional and statutory bodies completely ignored. Excerpt relevant portions from various reports filed by statutory bodies are compiled and annexed hereto and marked as **Exhibit 'D'**.

h. **SIT Ignores Completely Order Validating the Tehelka Sting Operation** (Pages 750-791, Chapter II, STING OPERATION, judgement in NarodaPatiya Case excerpts handed over to the Court ) used the Tehelka Tapes authenticated by the CBI has strong and reliable corroboratory evidence. NarodaPatiya judgement delivered on 29.8.2012

(Annexure "G" at Pages 3142-3165of the CRA 205/2014 Record **is** the NarodaPatiya Order relevant portion at Page 3135)

(AshishKhetan Statement at Annexure "G" Spiral of the CRA 205/2014 Record at Pages 3136-3141 **(**AshishKhetan the journalist who recorded the extra judicial confessions, was made a prosecution witness in the NarodaPatiya Case, Gulberg case and NarodaGaam case)

(NHRC Order dated 5.3.2008 Ordering CBI to Authenticate the Tehelka Tapes, Pages 133-136--, Annexure Volume I, Protest Petition was pointed out to the Court). Ignored by SIT and Magistrate)

(Reference from Original SIT Record that has been abstracted for the Court:

Excerpts of Ramesh Dave, RajendraVyas, Haresh Bhatt, Anil Patel, Dhimant Bhatt, Dhawal Patel and ArvindPandya from the Tehelka Transcripts available @ Annexure III, File XIII, D-129 in SIT Records as Also their Statements @ Annexure II, Volume II, SrNos 107 (Ramesh Dave), Annexure II, Volume II, SrNos 108 (RajendraVyas), Annexure I Volume II, SrNos 116 (Haresh Bhatt), Annexure II, Volume II, SrNos 113 (Anil Patel), Annexure II, Volume II, SrNos 98 (Dhimant Bhatt), Annexure II, Volume II, SrNos 114 (Dhawal Patel), Annexure I, Volume I, SrNos 46 (ArvindPandya)

i. Not a whisper about the doctoring, tampering and destruction of records in violation of law under the Gujarat Police Manual five day after the SIT has been appointed. Chief functionary of Home Department has statutory responsibility to ensure that Documents are nt Destroyed(Paragraph No.213-217 and 1030-1034 of Protest Petition Annexure E-I Page No.1202-1204 and Annexure E-II Page No.1564-1568) (Annexure U – Page No. 6613-6614, Page No.6554-6566; Page No. Pages 6567-6571; Page 6575-6578, Page No.6580-6612, Page no.6622-6623, )Government of Gujarat quotes Rule 262 @ Pages 198-199 of the Gujarat Police Manual, 1975 Volume III, which *has no reference at all to any procedure related to destruction.* Is it a coincidence that these records were destroyed even though the

Supreme Court of India had been seized of the Matter? On 3.3.2008 Notice was Issued by SC in ZakiaJafri SLP.

(Annexure "U", Page Nos6615-6621)

There is evidence in the SIT Record of tampering of the CM's Fax Inward Register, the Minutes of the 28.2.2002 meeting, Home Dept Messages; there are several Blank Pages but the SIT has not gone into this at all.

j. SIT Ignored Evidence of Misleading the GOI in 2002: Subversion by the Home Department of the Govt of Gujarat

(Annexure "S" which is a Compilation of parts the SIT Record and part of the CRA 205/2014 record at Pages 6219 and 6190 directly speaks of 'DISCREPANCIES" between Records sent to Government of India from Governor's House and from the Gujarat Govt's Home Department)

k. The further investigation is inherently flawed because witnesses and accused who supported the narrative of the State Government and the accused their statements were recorded multiple times, while others officers and possible witnesses' statement were not recorded even once:

For example, DGP Chakravarti was examined six times by SIT, **on 24.3.2010, 7.5.2010, 5.10.2010, 23.11.2010, 23.3.2011, 14.1.2012,** yet SIT did not feel it imp to examine him on the criticality of the vicious hate speech and bartering of hatred indulged in by the VHP and allowed by the state police and administration, despite consistent recommendations to the contrary from its own Head of Intelligence, ADGP Intelligence (April 2002-September 2002) RB Sreekumar.

ii) Similarly, then CP PC Pande—who is elevated to powerful positions after 2002 and given plum post retirement positings too—is also examined several times but never on how he concealed CDs with PCR messages until the Hon'ble SC Ordered Further investigation in March 2011;

iii) Two of the six bureaucrats/police officers who were admittedly present at the meeting at the then CM's residence --, SvarnakanthaVerma, former ACS (deputing for chief secretary SubhaRao), and Anil Mukhim, OSD to the chief minister had clearly stated in their 161 statements before SIT that cabinet ministers were also present. SIT had not bothered to further investigate this aspect nor recorded their statements again.

iv) the one person from the CMO who's mobile phones were used to call VHP leader Jaideep Patel on 27.2.2002 have not been examined (AP Patel)

l. The SIT Invetsigation is inherently flawed because no Translation of the mammth 24,000 pages of Investigation Papers was ever undertaken to enable the purportedly more Independent 'outside' officers appointed to SIT to clearly and with graviy, assess the evidence: be it the State Intelligence Bureau Messages (SIB), Police Control Room (PCR) records etc. This lacunae is especially glaring given the fact that AK Malhotra had explicity in his Inquiry report dated 12.5.2010 to the Hon'ble Supreme Court communciated the reluctance of the Government of Gujarat to share records and had also observed that 'many documents have been destroyed.'

m. Case laws relied on:

m.i. SidharthaVashishtVs. State (NCT of Delhi) (2010) 6 SCC 1

m.ii. Kari ChoudharyVs. Mst. Sita Devi &Ors. (2010) 1 SCC 714

m.iii. Kashmeri Devi Vs. Delhi Administration and Anr. (1988) Supp SCC 482

m.iv. Khatri&Ors. Vs. State of Bihar &Ors. (1981) 2 SCC 493

t. **Statements and Evidence of R. B. Sreekumar and Rahul Sharma**: The SIT has erred in ignoring and trivialising the statements and evidence brought to the fore by two high ranking IPS officers i.e. R. B. Sreekumar and Rahul Sharma who support the Petitioner's case with regards to dereliction of duty by police officer and illegal interference by the elected officials in order to subvert the law and order machinery and help the rioters of a certain bend.

**Rahul Sharma and R. B. Sreekumar's evidence (Page No. 4799-4853)**

1. Rahul Sharma and R. B. Sreekumar are two IPS Officers who have filed affidavits/given statement before the Nanavati Commission and SIT revealing how the State's Political and Bureaucratic establishment actively and through dereliction of duty helped to perpetuate riot post 27-02-2002.

**Rahul Sharma's Statement dated 02-07-2009**

a. *Sandesh*newspaper published inflammatory reports castigating the populace for not avenging the Godhra carnage. He had sought permission to register a criminal case against the said newspaper under the provisions of Rule 53(10) of the Gujarat Police Manual Volume III.(Annexure-M1 Page No.4799/Page No.4503)(Article at Annexure-V Page No.6688)

Instead of taking action against the said newspaper, Editor's Guild Report of 2002(Page No.27) reveals that the CMO wrote congratulatory letters to *Sandesh* and other newspapers for certain kind of inflammatory writing. (List of *Sandesh*'s inflammatory articles are listed in ParagraphNo.233-238 of Protest Petition; Annexure E-I Page No.1207-1212)

b. GordhanZadaphia contacted Rahul Sharma on 16-03-2002 and said that the ratio of deaths as a result of police firing in the communal riots was not proper. The said statement referred to the more number of Hindu deaths compared to Muslim deaths in police firing.(Paragraph No.775 of ProtestPetition; Annexure E-II Page No.1442-1443)(Annexure-M1 Page No.4801)

c. 26-03-2002 Rahul Sharma was transferred to the post of DCP, Control Room, Ahmedabad City. Thus, while assisting Addl. CP, Crime Branch on riot related cases Rahul Sharma collected data from two mobile phone service providers (Celforce and AT&T). Copies of the said data was provided to the NanavatiCommission, Banerjee Committee and the SIT(Original CD). (Paragraph No.777-778 of Protest Petition; Annexure E-II Page No.1444-1445)(SIT Statement @Annexure-M1 Page No.4802-4805)

d. On 03-06-2002 Rahul Sharma was asked to go through a charge-sheet that was proposed to be filed in the NarodaPatiya case. He strongly objected and disagreed with the contents of the charge-sheet. (Paragraph No.777-780 of Protest Petition; Annexure E-II

Page No.1444-1447)(SIT Statement @Annexure-M1 Page No.4806)

e. Rahul Sharma was again transferred to the post of Commandant, SRPF, Group XI, Vav, DistrictSurat.

2. R. B. Sreekumar was Addl. DGP (Armed Units) between August 2000 and 9-04-2002 and thereafter he was transferred as Addl. DGP (Intelligence) and stayed there between 09-04-2002 to 18-09-2002. Sreekumar's affidavits, statements and conscience register play a central role in exposing the illegal orders disseminated from the CMO; Misguiding the EC; Rewards and Punishment meted out various officers; Failure to take appropriate action against senior officers and print media; Disregarding reports filed by him; Threats received from Mr.Murmu etc.

**R. B. Sreekumar's affidavits, statements and entries in his conscience register**

a. VHP called for 'Gujarat Bandh' on 28-02-2002 as a mark on protest against Godhra killings. Gujarat Government permitted the VHP and SanghParivar to proceed with the Bandh. (Paragraph No.495-509 of Protest Petition; Annexure E-I Page No.1315-1320)(Annexure-M1 Page No.4810)

b. Vernacular media published false reports stating that Hindus were the victims of the riots which intensified and aggravated the situation. (Paragraph No.601 of Protest Petition; Annexure E-I Page No.1360) (Annexure-M1 Page No.4810)

c. K. Chakravarthi the then DGP had told him that on 27-02-2002 the CM had given illegal instructions to let Hindus vent their anger. (Annexure-M1 Page No.4811)

d. I. K. Jadeja was present in the DGP's office on 01-03-2002 and 02-03-2002, Sreekumar had personally seen him using the DGP's official phone on of the days. (Annexure-M1 Page No.4814)

e. During his tenure as Addl. DGP (Intelligence) he had attended several meetings with the CM and no minutes of the meetings were recorded because illegal instructions were given during these meetings. O. P. Mathur agreed to Sreekumar's request to maintain a register to record oral instructions. (Paragraph No.304-307 of Protest Petition; Annexure E-I Page No.1234-1235) (Annexure-M1 Page No.4814; 4815-4816) (Typed Copy of the Register Annexure-M Page No.4581-4601) (Closure Report Page No. 65-71)

f. Mr.NarendraModi in his statement to the SIT does not deny that the illegal instructions recorded in the Register of R. B. Sreekumar were not given even though a specific question is put him regarding the same (Page No.5003 Annexure M-1)

g. 16-04-2002 Sreekumar wrote a letter to DGP (Copy to ACS-Home) to take legal action against VHP office bearers for publishing pamphlets containing elements of communal instigation. (Paragraph No.983 of Protest Petition; Annexure E-II Page No.1547-1548) (Annexure-M1 Page No.4820) (Letter at Annexure-M Page No.4503)

h. Various reports submitted by Addl. DG (Intelligence) dated 28-03-2002, 01-04-2002, 02-04-2002 and 06-05-2002 highlighted the role of media including electronic media by Sreekumar, but no action had been taken. (Annexure-M1 Page No.4821)

i. On 07-06-2002 P. K. Mishra asked Sreekumar to find out which cabinet minister had met the Private Inquiry Committee. He was asked to get Mr.HarenPandya's call details, as he was suspected to have attended the said inquiry. The same was confirmed by Sreekumar's investigation. (Paragraph No.298 of Protest Petition; Annexure E-I Page No.1233) (Annexure-M1 Page No.4812)

j. 09-08-2002 CEC's Law and Order meeting to prepone elections. False statements were made that normalcy had been restored throughout the state. The CEC passed an order dated 16-08-2002 which records Sreekumar's submissions and issues directions by employing confidence building measures. (Paragraph No.1036-1038, 1043 of Protest Petition; Annexure E-I Page No.1568-1569, 1570) (Annexure-M1 Page No.4822-4824)

k. (Annexure "M-1" at Page Nos 4898-4899 **is another IB Official** Maniram's Crucial Statement corroborating Sreekumar)

l. 10-09-2002 Joint Secretary, National Commission for Minorities, Govt. of India asking for transcript of Becharaji Speech. 16-09-2002, Sreekumar forwarded the transcript of the said speech, even though he had been given illegal oral instructions to not to act on the request. Transcript of the speech were leaked to the media. Thereafter Sreekumar was transferred

due to his CEC Presentation and the Speech Leak. (Paragraph No.141-142, 136 of Protest Petition; Annexure E-I Page No.1176) (Annexure-M1 Page No.4828-4829) (Transcript of Becharaji Speech Annexure-M Page No.4571)

m. Sreekumar sought DGP's advice before filing his affidavit before the Nanavati Commission. He was advised by the DGP to not to go against the Government's interest and asked to contact ArvindPandya, Government Pleader in the Commission. Sreekumar decided to record his conversations with anyone about his deposition before the Commission. On 21-08-2004 Dinesh Kapadia's conversation with Sreekumar was recorded, where Kapadia told him to not go against the Government or SanghParivar. On 25-08-2004, Sreekumar met G. C. Murmu and ArvindPandya who wished to tutor him about his deposition before the Commission. During the meeting he was also informed that the Government had tutored all the witnesses before the Commission. (Annexure-M1 Page No.4830-4838)

n. After additional terms of reference of Nanavati Commission were issued on 20-07-2004 the DGP directed all the officers to file a second affidavit, however DGP orally asked Sreekumar to ignore the written instruction and not file his second affidavit, and if he did the Government would be prejudiced against him. After Sreekumar filed on 06-10-2004, resultant to which Sreekumar was superseded in February 2005 and charge-sheeted and departmental enquiry was constituted.

**Magistrate's order:** The impugned order of the Magistrate is plagued with inconsistent findings, the Magistrate simultaneously finds that the entries in Mr.Sreekumar's register are malafide and that the same are not inspired by bad intentions.His statement against Murmu and Pandya are not corroborated by anyone. Sreekumar has only resorted to making allegations only after he was superseded. (Page No.174-189)

**Petitioner's Submission**:In light of polar opposite findings regarding R. B. Sreekumar's register, it would be ideal to commit the same to trial in order to ascertain which of the two converse prima facie findings are sustained by the test of trial. The finding of the Magistrate are extremely perverse to the extent that the impugned order says that Sreekumar's statement pertaining to Murmu and Pandyado not find any corroboration, in fact his statement find direct corroboration in the Tehelka sting operation. Further, the impugned order completely ignores the statement and evidence brought on record by Rahul Sharma.

**Petitioner's Concluding Submissions:**

After a detailed assessment of the Arguments put forward and documented in the Protest Petition filed on 15.4.2013 with Annexures I, II, III and IV as also the detailed arguments and documents and judgements supplied to the Court of the Ld Magistrate, the Court has to adjudicate upon whether the events after the Godhracarnage. that included mass reprisal attacks where thousands of innocents members of the minority were massacred, raped and killed were

(a) spontaneous outpouring of people's anger;

(b) which could not have been anticipated, prevented or controlled or it is likely that

(a) they were part of a conspiracy which was hatched by certain people in power politically and administratively to create an environment whereby targeted violence was allowed to be unleashed on the minority community; Besides

(b) in carrying out this conspiracy or otherwise certain public servants including Ministers, police, bureaucracy or other individuals aided and abated the events.

The Political head of the state, home ministry and administration were in full knowledge of and allowed the Build Up of Aggressive and Communal sentiments, Violent Mobilisations including carrying of Arms and a general outpouring against the Minority Community before 27.2.2002.

During the course of our arguments from the documents generated by SIT, the Complainant, in its submissions before te Magistrate, has shown that

(a) there was a Conspiracy amongst the persons named or some of them to generate hatred towards the minority community either by an active participation in this generation or by an omission to act against the perpetrators though they were legally bound to do so. In this connection, it has been established, that the persons named are not merely Constitutionally but also legally forbidden from acting or omitting to act in a manner they did;

(b) There was a conspiracy not just to generate hatred towards the minority community but also to commit targeted violence against the person, property and religious places of the minority community and

aiding and abetting this process by acts and omissions of persons liable under law to act otherwise.

(c) We proved that the aiding abetting was being done prior to the Godhra incident of 27.2.2002 in terms of (i) hate speech being generated; (ii) no action being taken against the provocation despite regular intelligence reports of communal mobilization and gathering of arms by the RSS/VHP;

(d) We proved that the conspiracy was generated immediately after the Godhra incident through (i) directly collaborating with the Vishva Hindu Parishad/ RSS/BD (ii) Creating a situation of generating hatred against minority community through

- the manner of dealing with the dead bodies of KarSevaks
- The manner of conducting the post mortems
- Allowing the bodies to be photographed
- Handing over the bodies to a private individuals
- The manner in which bodies were brought to Ahmedabad
- The manner in which funeral processions were taken
- The infamous meeting in the evening of 27.2.2002 where certain instructions were given
- The declaration of Bandh on 28.2.2002 and the support given to it by the ruling party
- The complete lack of preventive arrests
- The deliberate delay in declaring Curfew and Violation of Curfew Orders willfully thereafter
- Speeches of the Chief Minister on 27.2.2002 and 28.2.2002 and speeches of other political figures
- The failure to take measures against hate speech

- Ministers occupying Police Control Rooms
- The manner in which fabricated FIRs were created
- The delay in deploying the army and selective deployment thereafter
- The manner of dealing with internal refugees and their relief camps
- The protection of police officers who participated or aided or abated in the conspiracy and victimization of those who did not so participate

(e) We also established that the failures by the political and administrative machinery were not just departmental lapses but were criminal offences in respect of which each of the accused needs to be criminally prosecuted

(f) We also established that the existing investigation carried out by the SIT is highly inadequate, at times misdirected and is by and large a cover up job.

(g) Above all, we have established that despite this, the documents collected or sent to the SIT even at present make out a case for prosecution.

The Petitioner submits that NHRC, CEC, theHon'bleSupreme Court appointed Amicus Curiae all feel that there is ample evidence to put before a court for trial only the SIT wishes to close the case with no prosecution.

u. **Role of Amicus Curiae**: It has been contented by the Respondent SIT before this Hon'ble Court that in light of the Amicus Curiae's Second Report dated 25.07.2011 the only two allegations regarding which the Learned

Magistrate could have taken cognizance are the 27.02.2002 meeting and the allegations levelled against Mr.Tandon and Mr.Gondia. It is submitted that these grounds apart from being completely devoid of any legal basis are also being raised for the first time, these submissions were never averred or argued before the Learned Magistrate and thus it is not open for the Respondent SIT to bring in new grounds at the stage of revision. The amicus is the friend of the Court and not the substitution, the Supreme Court after receiving the Amicus Report and SIT investigation Any of the person named in the Complaint closure report is to be filed the Petitioner is to be given advance notice. Thus the Supreme Court while remanding the matter to the magistrate did not confine the jurisdiction of the Magistrate to what the Amicus and SIT had stated.

In conclusion, the Petitioner submits that the order of the Learned Magistrate is perverse and is based on a conclusion which is not possible to arrive at, on each of the 32 allegations carved out by the SIT and dealt with by the Learned Magistrate's order the conclusions and findings are grossly erroneous and with respect to some issues like failure to take action against the print media, Conducive situation was not created for rehabilitation of riot victims,meeting was held by ShriKalubhaiHirabhaiMaliwad at village Borwai near Pandawada on 28-02-2002 etc. the Learned Magistrate has failed to express any opinion. Further some of the issues raised in the complaint are not even investigated by the SIT.Hence in criminal revision against the Order of the Learned Magistrate, that we humbly state has erred on law and in assessments of the voluminous facts available in evidence, needs to be allowed; the Order of the Learned Magistrate dated. 26.12.2013 be set aside and cognizance be taken under Section 302 read with Section 120B as also under Section 193 read with Sections 114, 186 & 153A, 186,

187 of the Indian Penal Code. In the alternative Protest Petition be considered as complaint and cognizance be taken of the same and Further Investigation into the Complaint dated 08.06.2006 and the facts laid out in the Protest Petition dated 15.4.2013 be directed.