

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

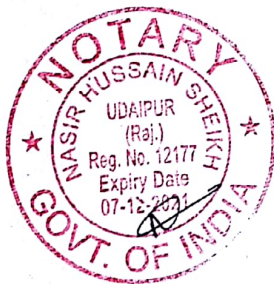
CRIMINAL WRIT PETITION NO. OF 2018

In the matter of a Petition under Article 226
of the Constitution of India praying for
issuance of a writ in the nature of
Mandamus seeking

SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

Rajendra Khan



the deposition of the Petitioner in a free and fair manner in the Sessions Case No. Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 pending before the Sessions Court for Greater Bombay, at Mumbai .

AND

In the matter of protection to the Petitioner for deposing before the court.

SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

AND

A handwritten signature in blue ink, appearing to be "Bhaskar", written over a horizontal line.

In the matter of examining all the relevant witnesses before the trial court in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 pending before the Sessions Court for Greater Bombay, at Mumbai.

1. RIZWANA KHAN)

w/o Mohd. Azam Khan)

Aged about 36 years)

Resident of)

9, Chudi Gharoka Mohalla)

Udaipur, Rajasthan)

.... Petitioner

Versus

1. THE STATE OF MAHARASHTRA)

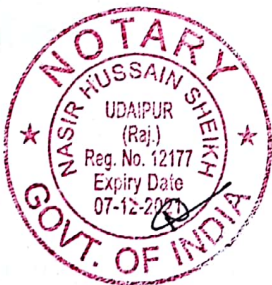
Home Department)

Mantralaya, Mumbai-32)

2. THE CENTRAL BUREAU OF INVESTIGATION)

BKC, Mumbai.)

... Respondents



SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

[Signature]

TO,

THE HON'BLE CHIEF JUSTICE AND THE OTHER PUISNE JUDGES
OF THE HIGH COURT OF JUDICATURE AT BOMBAY

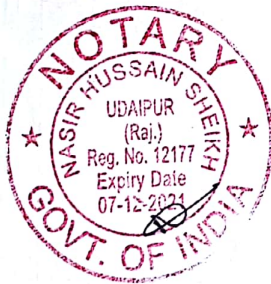
**HUMBLE PETITION OF
THE PETITIONER
ABOVENAMED**

MOST RESPECTFULLY SHOWETH:

1. Petitioner is herself a witness in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 pending before the Ld. Additional Sessions Judge (CR 49) but she is filing the present Petition to bring to light the facts regarding the deposition of her husband (hereinafter referred to as Azam Khan) who was examined as PW No. 207 in the instant case who is unable to move a Petition on his own as he is in judicial custody in Udaipur and has not received permission to sign and attest a writ petition to be filed before this Hon'ble Court.

2. The Respondent No.1 is the State of Maharashtra and the Respondent No.2 is the investigating and the prosecuting agency who is responsible for the conduct of the prosecution in the Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014.

3. Petitioner is approaching this Hon'ble Court as the testimony of Azam Khan was incomplete, he was brought to the Court after facing almost twenty days of unrelenting torture at the hands of Udaipur Police



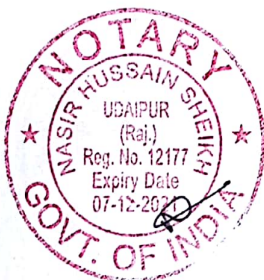
SIGN./MARKS/PHOTO/THUMB

ATTESTED

**NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)**

[Handwritten Signature]

personnel. Even on the morning of the deposition, he was threatened by one of the accused, Abdul Rehman in the presence of Udaipur police personnel who had brought him under custody to Mumbai. During his deposition and despite his having requested for the same, he was not shown his statements under Section 164 CrPC and the same have not even been exhibited. Azam Khan's testimony remains incomplete and yet he continues to face threats to his life. Petitioner has already approached the Hon'ble Rajasthan High Court in S.B. Criminal Writ No. 416/2018 which is currently pending praying for protection for the Azam Khan while in custody and for protection for their family as well. The fact of threats to Azam Khan's life and tortures inflicted upon him that prevented him from completing his testimony were also mentioned in Petitioner's Petition dated 15 November, 2018 before the Hon'ble Rajasthan High Court. A true copy of the Petition in S.B. Criminal Writ No. 416/2018 before the Hon'ble Rajasthan High Court is annexed herewith as **Annexure P –**



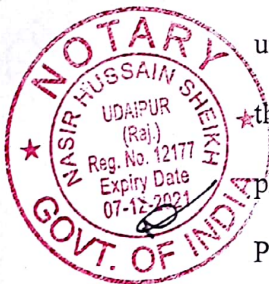
- 1.
2. Azam Khan is a material witness in the *Sohrabuddin Sheikh* and *Tulsiram Prajapati* fake encounter case. He has already testified that the Sohrabuddin Sheikh encounter was fake and that Tulsiram Prajapati who was a witness to that fake encounter was subsequently killed in a fake encounter himself. While he was able to name one retired IPS officer, he was scared to name other IPS officers and politicians after he was threatened by accused Abdul Rehman on the morning of the deposition. He had been taken in custody from Udaipur to Mumbai where he was kept at a hotel having the word 'Silver' in its name at Syed Kazistreet in Mumbai. There the accused

SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

[Signature]

Abdul Rehman came in a black SUV and the accompanying police personnel from Udaipur Police made him sit in that car with him for about half an hour. Abdul Rehman threatened him that if he did not depose as per the wishes of the accused, he would be implicated in more false cases and that he would suffer other consequences. This was subsequent to the torture that he faced in the previous twenty days while he was in custody.

3. The Petitioner's husband, and their family have been facing a growing number of threats in the past few months. The current phase of intimidation began on 7 June 2018 when Azam Khan, his two brothers and his uncle were picked up by the Udaipur police. Thereafter, Petitioner's mother-in-law was threatened by Udaipur police officials that Azam Khan's two brothers and his uncle would not be let off unless Azam Khan testified as per their wishes. Within four days of these threats, Petitioner's mother-in-law filed an application for prosecution of the errant police officials under Section 342, Indian Penal Code, 1860, after which Azam Khan's two brothers and his uncle were let off by the police. The truth that Azam Khan's two brothers and his uncle revealed to the family members, on their return home, was that they had been illegally detained by the Udaipur police officials for about seven days, threatened and tortured, and then left on the roadside after about seven days. Following this, the police made Azam Khan's brothers and his uncle sign on concocted statements prepared by the police officials, stating that Petitioner's husband's two brothers and his uncle had gone to Ajmer Sharif without informing their family, immediately after having been questioned by the Udaipur police officials for a couple of hours on 7 June 2018. Udaipur police



SIGN./MARKS/PHOTO/THUMB

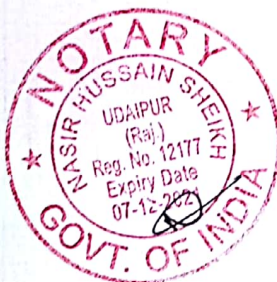
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

officials got these concocted statements signed by Petitioner's husband's two brothers and his uncle under the threat that they should not reveal the incidents of the past seven days, and that they should prevail over Azam Khan to give his witness statement in court in the said Sohrabuddin case according to the wishes of the police officials, or else other criminal cases would be concocted against them.

4. That when Petitioner appeared before the Additional Sessions CBI Court No. 49, Greater Mumbai as a witness for the said Sohrabuddin case on 26 September 2018, she was threatened by an unknown person inside the court room at around 11 am, who said to her, "Tell Azam to give his statement as we have told him to." Despite being shaken, Petitioner proceeded to give her witness statement before the Learned Court. She also submitted a handwritten letter from her husband addressing the said Learned Court, stating that her husband wanted to give his witness statement before the Addl. Sessions CBI Court No. 49, Greater Mumbai but being fearful for his life, he prayed that he be allowed to appear before the Court for his witness statement on any date of his choice, so that his appearance before the Court remains unpredictable and unscheduled in public, and therefore poses less of a threat to his life and appearance before the Court. The Learned Court accepted her husband's note and directed her to furnish any contact details for her husband so that the Learned Court could call her husband for his deposition on any date, henceforth. Petitioner also verbally prayed before the Learned Court for protection for her husband and his family but no protection was provided.

5. That on the evening of 1 October 2018, Petitioner was leaving her home when she was stopped by three unknown persons on black Pulsar

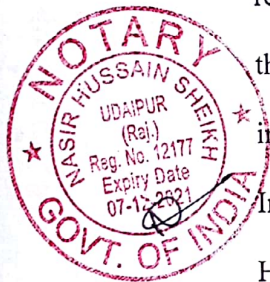


SIGN./MARKS/PHOTO/THUMB
ATTESTED
Nasir Hussain Sheikh
NOTARY, UDAIPUR (RAJ.)

[Signature]

bikes without number plates, and forcibly taken to meet two people, in addition to the driver, sitting in a white luxury car parked on the roadside. The three unknown persons who had forcibly taken her to the car introduced her as Azam's wife to the person in white clothes in the back seat of the car. This person proceeded to threaten her, saying that if her husband did not give his witness statement according to their wishes, what had happened to Kausarbi (wife of Sohrabuddin Sheikh who was also murdered) would happen to her, and Azam Khan would meet a fate worse than that of Sohrabuddin and Tulsiram. After they left, Petitioner returned home in terror and related the incident to her family members, who asked her not to further disclose this incident to anyone, due to the past history of harassment against the family in relation to the said Sohrabuddin case. Yet, still terrified for her life and that of her husband, she sent a letter on 6 October 2018, narrating this incident of kidnap and intimidation to the Hon'ble Chief Justice of India, the Hon'ble Chief Justice of the High Court of Rajasthan, the Hon'ble Chief Justice of the Bombay High Court and other authorities, including the police, the National Human Rights Commission, and the National Commission for Women. Within a week following this letter, her husband was arrested by Udaipur police on 12 October 2018. A true copy of letter dated 6 October, 2018 addressed to the Hon'ble Chief Justice of India and other recipients sent by the Petitioner is annexed herewith as **Annexure P – 2**.

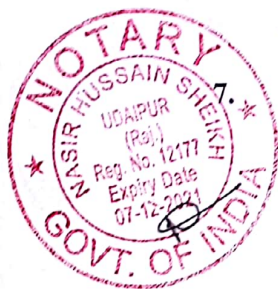
6. That on 12 October 2018, Petitioner's husband was arrested in Delhi by a Special Team of Udaipur Police, which was accompanied by one Harinder Singh Soda, in-charge of Bhupalpura Police Station, Udaipur and brought to Udaipur, but Petitioner was not informed of the same.



SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

[Signature]

On the morning of 13 October 2018, Petitioner went from pillar to post in search of her husband, including several Police Stations of Udaipur. When she finally reached Bhupalpura Police Station, asking after her husband and begging to speak to him once, the police personnel present did not let her speak to her husband. Rather, Harinder Singh Soda, in-charge of Bhupalpura Police Station, beat her up, grabbed her by the hair and dragged her to a lock-up, which was right next to the lock-up where her husband was. Her phone was also taken from her and she was detained there for four-five hours, from about 11 am to 4 pm. If her phone's GPS location for the said date and time is checked, her said location will be confirmed. Petitioner was then booked under Sections 107 r/w 151 of the Criminal Procedure Code, 1973, for breach of peace.



That, from 13 October 2018 to 18 October 2018, Petitioner's husband, remained in police custody at Bhupalpura Police Station and was repeatedly assaulted in custody during this period. During the same period of police custody, on or around 17 October 2018, Harinder Singh Soda of the Bhupalpura Police Station forced him to sit in front of the Hanuman temple inside the compound of the Bhupalpura Police Station and ordered each one of the fifty-plus police personnel of the Bhupalpura Police Station to unfailingly kick and punch him. The said fifty-plus police personnel thus proceeded to mercilessly assault him physically, kicking and punching him without rhyme or reason. One Special Team member at the Bhupalpura Police Station noticed this torture on arriving at the premises after a while, and put a stop to it, putting her husband back in the lock-up at the Bhupalpura Police

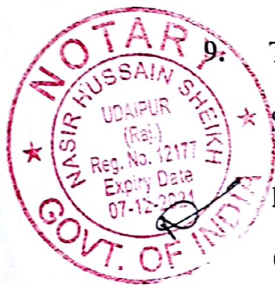
SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH

[Handwritten Signature]

Petitioner when she met him on 18 October 2018, after verbally obtaining permission from the Learned Magistrate's Court where he was being produced, which was pleased to orally grant the Petitioner permission to meet him for 10 minutes inside the court room. He also showed Petitioner the injuries on his body, including on his hands, legs, his chest, and the soles of his feet, and he even had blood stains on his shirt.

8. That on 18 October 2018, the Bhupalpura Police Station prayed for and was granted two more days of police custody for Petitioner's husband. Petitioner's husband was again tortured in custody for this period. On 20 October 2018, Petitioner's husband was produced before the Learned Magistrate's Court, and was transferred to judicial custody.



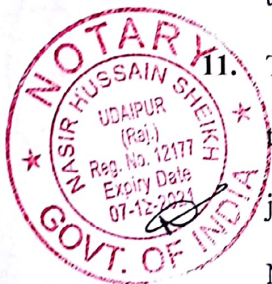
9. That on 22 October 2018, Petitioner appeared before the Additional Sessions CBI Court No. 49, Greater Mumbai, which was pleased to pass an order directing her husband to be produced before it on 30 October 2018 in the presence of tight security. Thus the Udaipur Police and the Udaipur Central Jail Superintendent received the relevant production warrant but failed to produce her husband before the Learned CBI Court in Mumbai on 30 October 2018. The Learned CBI Court in Mumbai then passed directions for Petitioner's husband to be produced before it for his witness statement on 3 November 2018, under tight security.

10. That on 23 October 2018, police personnel from Hatipol Police Station took Petitioner's husband on remand in relation to some other case, and kept him in police custody for two more days. However, instead of being kept at the Hatipol Police Station during that period of police

SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ)

(Signature)

outside Udaipur City, near Sukher Bypass Highway, where one Bhagwat Singh Hingad, the Deputy Superintendent of Police was present. Bhagwat Singh Hingad tortured Petitioner's husband during this period and he was repeatedly told not to implicate police officers from Gujarat and Rajasthan. He related these events to the Petitioner on 25 October 2018, when he was produced before the Learned Magistrate Court and granted judicial custody. He was also threatened that he would, like Tulsiram Prajapati, be killed while being transferred between cities. Petitioner also observed injuries on his hands, legs and ribs. On 26 October 2018, her husband was taken back to Hatipol Police Station on some other case, but once again kept in the aforementioned Mahila Police Station, outside Udaipur City, and he was then granted judicial custody on 27 October 2018.



11. That on or around on 30 October 2018, Petitioner's husband was taken to Amba-Mata Police Station, Udaipur, and he was transferred to judicial custody on 1 November 2018. That on the morning of 2 November 2018, Petitioner received a call from one G. S. Bhati, Special Team in-Charge, Crime Branch, Udaipur, wherein he asked Petitioner for her husband's Aadhar Card, in response of which she queried as to why he required the said document. Petitioner was told that her husband will be taken to Mumbai by flight in the evening of the same day for his deposition before the Learned CBI Court in Mumbai, and hence, his Aadhar Card would be required for identification at the airport. However, when Petitioner met her husband in court the next day, i.e., on 3 November 2018, he told the Petitioner that his Aadhar card was not accepted in the airport and he was not

SIGN./MARKS/PHOTO/THUMB

ATTESTED

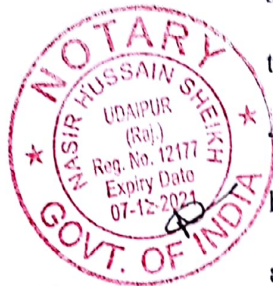
NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

[Signature]

allowed to board the flight to Mumbai as the appropriate permission

for transporting an accused by commercial flights had not been taken by the jail officials. Thus, he was transported from Udaipur to Mumbai by road and put up in a hotel, named something resembling Hotel Silver Moon, at Syed Kazi Street, Mumbai on the night of 2 November 2018.

12. That on 2 November 2018, Petitioner left from Udaipur by bus and reached Mumbai on 3 November 2018, and met her husband in the court room of the said Learned CBI Court in Mumbai, at or around 11:30 am. He then told the Petitioner that before he was brought to court that morning, he was taken to a black SUV parked in front of the hotel where he had been put up. One Abdul Rahman, an accused in the said Sohrabuddin case, was inside the said black SUV, and the police team left the Petitioner's husband inside the car with Rahman for 30-45 minutes. Rahman then threatened Petitioner's husband stating that if he even mentions Rajasthan police personnel or gives any statement against them, during his witness deposition before the Learned CBI Court in Mumbai, more cases would be concocted against him, in addition to the seven false cases already instituted against him. Petitioner's husband who was then brought to court with both his hands cuffed so tightly that he could not even move his arms, then fearfully told Petitioner about the above incidents. He further told her that he had also been threatened on his way from Udaipur to Mumbai by one Salim, Special Team-Constable, Udaipur not to depose against police personnel. Petitioner saw that her husband was visibly shaken and scared, but he proceeded to give his witness statement. One of the accused in the said Sohrabuddin case, unknown to the Petitioner personally, approached the defense counsel who was cross-examining



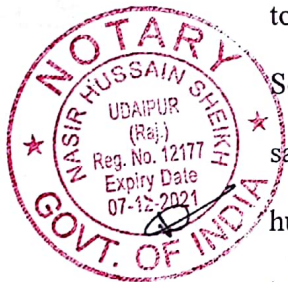
SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY UDAIPUR (RAJ.)

[Signature]

Petitioner's husband and told him to not ask too many detailed questions, or else more facts would come out. Azam Khan, had also requested the Public Prosecutor to refresh his memory through earlier Section 164, CrPC statements but this request was denied to him, and later, when he took legal advice he was informed that neither of his Section 164, CrPC statements had even been exhibited before the Court. Petitioner could not talk to her husband after his deposition, and Azam, still visibly shaken, was whisked away from the court.

13. Petitioner states that she met her husband on the next day, i.e., 4 November 2018, at Surajpol Police Station in Udaipur for about 15 minutes. At this time, he told her that he was not able to give his testimony fully on the previous day, due to the constant threats issued to him and his ensuing fear. Abdul Rahman, accused in the said Sohrabuddin case, was also present in Surajpol Police Station at the same time and threatened Azam in front of her. That Petitioner's husband remained in remand at the Surajpol Police Station and was transferred to judicial custody on 6 November 2018. He was then taken to Bhupalpura Police Station on the evening of 7 November 2018 in relation to another case, where he was beaten up by one Harendra Singh Soda, in-charge of Bhupalpura Police Station, one Bhagwat Singh Hingad, Deputy Superintendent of Police, and one Salim, Special Team-Constable, Udaipur. On 8 November 2018, he was transferred to judicial custody, and Petitioner met him in court for 10 minutes with the learned Magistrate's verbal permission. Petitioner saw that he was limping and in visible pain, and he also showed me injury marks on his ribs, legs and arms. Petitioner asked him what had happened and he narrated the incidents of the preceding evening to me, wherein he had

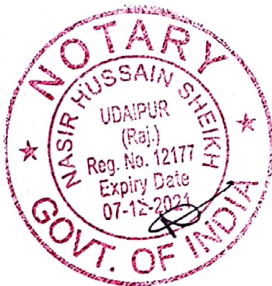


SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

R. W. Khan

been beaten up by Harendra Singh Soda, Bhagwat Singh Hingad and Salim.

14. On 13 November 2018, Petitioner No. 2's husband was taken to Hiranmagri Police Station for yet another case, and he was transferred to judicial custody on 16 November 2018.
15. That owing to the constant atmosphere of intimidation and fear, and realising the urgent need for protection for Petitioner No. 1 and her family, she approached the Hon'ble High Court of Rajasthan on 15 November 2018, vide SB Criminal Writ Petition No. 416/2018, praying for protection for her husband and family, and also for an order to prevent her husband's transfer from Udaipur to Ajmer Ghoghragati Jail. The Hon'ble High Court of Rajasthan was pleased to issue notice, and asked the Public Prosecutor to keep the Hon'ble High Court updated on the proceedings against her husband with reasons. On the next day, 17 November 2018, Petitioner No. 1 was transferred to judicial custody, and taken to Central Jail, Udaipur, where he was informed by Jail Superintendent Surinder Singh that orders had been passed to transfer him to Ghoghragati Jail (high-security) in Ajmer. Petitioner No. 2 was told this by her husband when she went to meet him on 18 November 2018. This was a threat that had already been issued to him many times since October, 2018 by personnel from Bhupalpura Police Station, that he would be transferred to Ghoghragati Jail (high-security) in Ajmer, and thereafter, whenever he was brought from Ajmer to Udaipur for court appearances, any adverse incident could happen with Petitioner No. 1, be it through unknown perpetrators or under the guise of a gang war.



SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

R. W. and his

16. Immediately after the Hon'ble High Court of Rajasthan issued notice, Petitioner's husband was again taken under remand to Bhupalpura Police Station, where he was again physically assaulted in custody, and then transferred to judicial custody, as stated before.
17. That Petitioner received news on 30 November 2018, that her husband was going to be transferred to Ghoghragati Jail in Ajmer, despite the pendency of the Criminal Writ Petition No. 416/2018 before the Hon'ble High Court of Rajasthan. Petitioner's mother-in-law immediately rushed to the Central Jail, Udaipur and submitted an application stating that if Azam Khan was transferred to Ghoghragati Jail in Ajmer, his life would be in grave danger. Petitioner also filed a complaint via email with the multiple authorities, including the National Human Rights Commission and the Director General of Prisons, Rajasthan. Petitioner's husband's transfer to Ghoghragati Jail in Ajmer was thus kept in abeyance, and she was informed that he would not presently be transferred. However, Petitioner's husband was taken to Bhupalpura Police Station on yet another case and was then produced before the Magistrate, on the same day, i.e., 30 November 2018, where officials from Bhupalpura Police Station prayed for four more days of remand, but the Learned Magistrate directed transfer of Petitioner's husband to judicial custody. A true copy of Application dated 30 November, 2018 made by Petitioner's mother-in-law to the jail authorities is annexed herewith as **Annexure P -3**. A true copy of the complaint sent by the Petitioner to the NHRC is annexed herewith as **Annexure P - 4**.
18. Petitioner had informed the court in July, 2018 as well as in

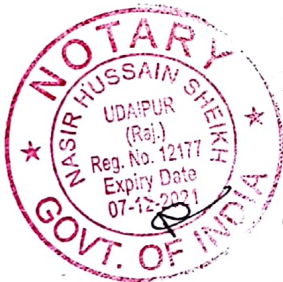
SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

[Signature]

Sessions Judge had also ordered that Azam Khan be brought to court under protection. However, Udaipur Police used the custody to torture and further threaten him as Rajasthan police officers are implicated in this case. Petitioner prays that Azam Khan be brought to the court in the custody of Mumbai Police or the Central Bureau of Investigation so that he can depose fully. A perusal of Azam Khan's deposition before the Court reveals the fact that no statement under Section 164 CrPC has been exhibited. Further details that were left out of his deposition have been mentioned in Paragraph 19 herein below.

19. Azam Khan was not able to depose all the facts during his deposition which are already recorded in his statements under Section 161 CrPC and Section 164 CrPC. Both his statements under Section 164 CrPC have been ignored by the Ld. Prosecutor. IPS officer Abhay Chudasama was using Sohrabuddin Sheikh to run a criminal extortion enterprise as per which 75% of the profit was to go to Abhay Chudasama and 25% was to be retained by Sohrabuddin Sheikh. The incident of firing at the office of the Popular Builders in Ahmedabad was also planned by Abhay Chudasama through Sohrabuddin Sheikh. When Sohrabuddin Sheikh went against the wishes of Abhay Chudasama, D.G. Vanzara and other officers involved with them he was killed in a conspiracy which had the involvement of politicians and police officers from Gujarat and Rajasthan. The reason for Sohrabuddin's killing was political pressure from higher-ups in the Gujarat government as well as then Rajasthan Home Minister Gulab Chand Kataria. While Sohrabuddin was used as part of the extortion racket when he targeted R.K. Marbles and Sangam Textiles in Udaipur against the wishes of the police officers it was decided that he would

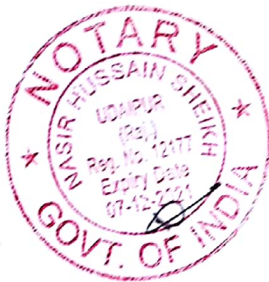


SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

[Handwritten Signature]

be killed off. D.G. Vanzara then an IPS officer had asked Tulsiram Prajapati to give up Sohrabuddin's location but had assured Tulsiram that Sohrabuddin would only be arrested. However, Sohrabuddin was killed. Tulsiram also told Azam Khan that afterwards he was handed over to Rajasthan Police where Rajasthan Police officers Sudhir Joshi and Bhawar Singh Hada had made him consume heroin to calm him down as he was inconsolable about Sohrabuddin and KausarBi's death and also about his betrayal by Gujarat Police. They had then assumed that Tulsiram had gone to sleep but Tulsiram overheard them discussing that D.G. Vanzara had obtained a lot of money from the proprietors of R.K. Marbles. After Tulsiram's arrest, Azam Khan was often produced in court along with Tulsiram where one police officer named Panchal and used to give him money (usually Rupees Five to Ten Thousand) on behalf of Abhay Chudasama. There was also an occasion when Tulsiram was assaulted brutally in Udaipur jail and Azam Khan who tried to save him was assaulted brutally as well. Afterwards, Azam Khan was threatened by Gujarat Police officials and was taken in illegal custody to give a false affidavit in Court stating that the CBI had coerced him into giving false statements. This entire incident is recorded in his second statement under Section 164 of the CrPC. Azam Khan was put up in room no. 201 of Campari Hotel, Relief Road in Ahmedabad. He was specifically told that this was being done on the orders of Abhay Chudasama and was also informed that all this had to be done before 27 September, when they wanted Amit Shah to get bail. Azam Khan taken to a lawyer by the police officers and an affidavit was drawn up. They had also obtained stamp



SIGN./MARKS/PHOTO/THUMB
ATTESTED

WASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

[Handwritten signature]

paper on the way. Their advocate Hatish Kansara did not know that

this affidavit was forced. When the affidavit was presented before the Ld. Magistrate Azam Khan was very scared of the police personnel around him and did not say anything. Azam Khan managed to borrow Hatish Kansara's phone to call his wife (Petitioner herein) who in turn called CBI officer Sh. Vishwas Singh Meena who unfortunately went to the wrong court complex in Ahmedabad. Azam Khan, under the excuse of needing to urinate, ran away. Petitioner has already corroborated this part of the story in her deposition before the Court. Azam Khan was able to obtain a copy of second statement under Section 164 CrPC and the same is annexed herewith as **Annexure P - 5**. A true copy of the deposition of Petitioner's husband in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 dated November 3, 2018 is annexed herewith as **Annexure P - 6**.



20. There are a number of witnesses who can corroborate various aspects of Azam Khan's testimony or are otherwise material to the case. As far as the Petitioner knows, witnesses like the initial investigating officer Rajnish Rai, the owners of the Popular Builders (Raman and Dashrath Patel) from whom extortion was carried out by Sohrabuddin on the order of senior Gujarat police officials have not been examined by the prosecution. Many witnesses who can depose as to the illegal custody of the Petitioner No. 1 herein at Campari Hotel, Ahmedabad for the purpose of making him file a false affidavit against the CBI as narrated in his statement under Section 164 CrPC have also not been examined.

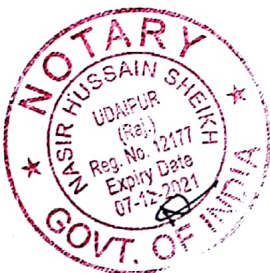
22. It is pertinent to mention that the above is by no means an exhaustive list and these are witnesses who to the Petitioner's knowledge are

SIGN/MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

material to corroborate the testimony of Azam Khan. There are likely to be many more such witnesses if a review of the dropped witnesses is made. Many witnesses have been dropped by the CBI in this case without any reason and not been examined. A perusal of the chargesheet indicates that there were about 500 listed witnesses (even allowing for repetition of witness names across supplementary chargesheets). However, only 210 witnesses have been examined by the CBI. Since the Petitioner does not have the full record of the case she cannot give the exact numbers.

22. Based on media reports, around 92 of the 210 prosecution witnesses have turned hostile. This is an extraordinary number. Going by the experience of the Petitioner herein, witnesses are being systematically threatened in this case. Since the same is going on, a special prosecutor appointed by this Court to review the evidence and to study the testimony of these hostile witnesses is required.



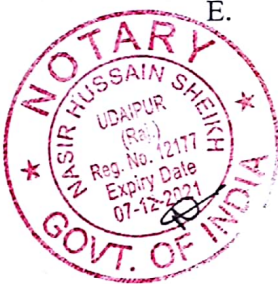
GROUNDS

23. The present writ petition is being presented on the following, amongst other grounds without prejudice to each other:
- A. Petitioner and her husband have themselves been subjected to threats and pressure regarding their depositions. Azam Khan, until the Hon'ble Rajasthan High Court issued notice in the petition for his protection twelve days after his deposition, did not have the courage to state that large parts of his testimony have been left out.

SIGN./MARKS/PHOTO/THUMB
ATTESTED
Nasir Hussain Sheikh
NOTARY, UDAIPUR (RAJ.)

Azam Khan

- B. The fact that Azam Khan's statements under Section 164 CrPC have not even been exhibited show that there is a need for review of the prosecution's evidence and whether it has been sufficiently led.
- C. Non-exhibition of statements under Section 164 CrPC deeply weakens the prosecution case and there is absolutely no reason to not do so. It is respectfully submitted that not exhibiting these statements also amounts to casting an aspersion on the magistrates who have recorded these statements.
- D. The instant case is one where a large number of material witnesses have not even been examined and there is no explanation for the same. The case, as it is, amounts to a mistrial.
- E. The instant case is one which deals with fake encounters and in such cases special care has to be taken to safeguard the witnesses. It was specially entrusted to the CBI by the Hon'ble Supreme Court and the trial was transferred to Mumbai as there were grave apprehensions regarding the fairness of the trial.
- F. Petitioner has been forced to approach this Hon'ble Court as the prosecution evidence has been closed post-haste without examining many material witnesses. In the instant case most material witnesses have not been examined while most material witnesses have turned hostile.
- G. As held by the Hon'ble Supreme Court if witnesses are being dropped by the prosecution the reasons for the same must be stated to the Ld. Court. In fact, the prosecutor should ascertain as to which prosecution



SIGN/MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

Azam Khan

has been held in *Hukam Singh v. State of Rajasthan* (2000) 7 SCC 490 and *Bantiv. State of M.P.* (2004) 1 SCC 414

11. As held by the Hon'ble Madras High Court in *R. Murugesan v. State* 2014 SCC OnLine Mad 273 : (2014) 2 MWN (Cri) 290 (DB) : (2014) 5 RCR (Cri) 125 (DB) the procedure when there is a witness who has given a statement under Section 164 CrPC is as follows: "15. A statement recorded under Section 164 Cr.P.C.'73 is a former statement given before an authority, namely a Magistrate who is legally competent to record the statement by virtue of the power conferred upon him by Section 164 Cr.P.C.'73 in order to aid the investigation conducted under Chapter XII of the Code. Section 157 Evidence Act says that the former statement must be proved. Therefore the witness who gave the 164 statement should be made to prove it while marking the statement through him. If the witness admits in his evidence before the Court that he gave a former statement to the Magistrate and the statement shown to him is that, then the 164 statement stands proved. In that case the Magistrate who recorded the 164 statement need not be examined.

If the witness completely denies that he gave a former statement before the Magistrate, then the Prosecutor should dispute it and suggestions should be put to him that he did give a statement and his signature in the statement should be marked. If he denies the signature also, then that also should be disputed and suggestions that the signature found in the 164 statement is that of his should be put to him. Thereafter the Magistrate should be examined and the 164 statement should be marked and proved. The Investigating Officer should also say that on his request the Magistrate recorded the



SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

Rajendra

statement of that witness on such and such date. Only this will complete the circle in a case where the witness denies everything."

- H. That the Petitioner is only seeking an opportunity to give full evidence for the prosecution.
- I. That in a case the basis for which is executive disregard for the law, the threat to witnesses cannot be underestimated.
- J. Any other ground as may be permitted at the time of oral arguments before this Hon'ble Court.

24. The Petition is filed bonafide and in the interest of justice.

25. No other similar petition has been filed by the Petitioner before this court or any other court on similar grounds and seeking similar prayers.

Under the abovementioned circumstances the Petitioner pray

PRAYER

Petitioner as such respectfully pray that this Hon'ble Court may be pleased to:

- a) Issue a writ of mandamus or other direction or order in the nature of mandamus for appointment of Special Public Prosecutor in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 to conduct prosecution in the said cases henceforth and to review the prosecution evidence already presented for the purpose of ensuring complete justice; or in the alternative to
- b) Issue a writ of mandamus or other direction or order in the nature of mandamus to the Director of Prosecution for Respondent No. 2 to

SIGN./MARKS/PHOTO/THUMB
ATTESTED

NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

Review the conduct of the prosecution case in Sessions Cases No. 177

[Handwritten Signature]

of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 and to submit a report to this Hon'ble Court; and

- c) Issue a writ of mandamus or other direction or order in the nature of mandamus to Respondent No. 2 to summon afresh , or recall all material witnesses in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 for effective prosecution of the case; and
- d) Issue a writ of mandamus or other direction or order in the nature of mandamus to ensure that if Petitioner, her husband or any other witnesses, are called or recalled to give evidence they should be brought under the protection of CBI personnel;



Pending the hearing and final disposal of the petition the proceedings in Sessions Cases No. 177 of 2013, 178 of 2013, 577 of 2013, and 312 of 2014 be stayed

- f) Interim and ad-interim reliefs in terms of prayer clause (a), (b), (c), (d) and (e).
- g) Any other reliefs as this court may deem fit and proper in the interest of justice.

Mumbai

Date

Petitioner No. 1

SIGN./MARKS/PHOTO/THUMB
ATTESTED
 NASIR HUSSAIN SHEIKH
 NOTARY, UDAIPUR (RAJ.)

VERIFICATION

I, Rizwana Khan, the Petitioner abovenamed declare that what is stated in paras 1 to 26 are true to my own knowledge and belief and what is stated in

Rizwana Khan

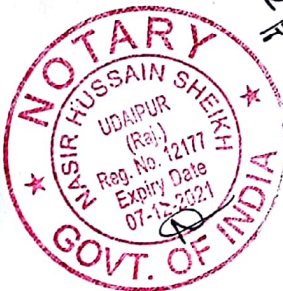
the remaining paras is stated on information and belief and I believe the same to be true.

Signature
Solemnly declared at Udaipur)

This day of December 2018)

Serial No. 239
Date 5/12/18

Identified by



SIGN./MARKS/PHOTO/THUMB
ATTESTED

Signature
NASIR HUSSAIN SHEIKH
NOTARY, UDAIPUR (RAJ.)

