

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT:

AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.622 OF 2004.

Mrs. Shamima Kausar Mohd. Shamim Raza Applicant

V E R S U S

Union of India & Others

...Respondent.

INDEX

Sr. Nos. No.	Annex.	Particulars	Page
1.	-	Symposium	
2.	-	Memo. Of the Petition	1 to 31
3.	A	Ishrat's Marksheet of F.Y. B.Sc.	32
4.	B	List showing name of Trust with Whom Ishrat associated	33
5.	C	P.M. Report P.M. Certificate and Application for P.M.	34- 36
6.	D	Receipt of Kabrasthan (Grave Yard)	37
7.	E	Death certificate issued by Mahanagar Palika	38
8.	F	News Report dated 23 rd June, 2004	39
9.	G	News Report dt. 24 th June 2004	40

10. H Letter written by accused of
Akshardham attack case to court 41 to
58
11. I FIR registered by DCB Ahmedabad
In this matter 59 to
70

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DIST. AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.822 OF 2004

Mrs. Shamima Kausar Mohd. Shamim

Raza ... Applicant

Vs.

Union of India & Ors. ...

Respondents

LIST OF EVENTS

- Petitioner is widow her husband was died on 9-6-2002 living behind wife, five daughters and two sons.
- After the death of husband 2nd daughter namely Isharat was maintaining family by doing tuition work and business as sales girl with one Javed.

- On 11-06-2004 Isharat left the house with Javed for their routine work but never returned back.
- Respondent No.3 killed the daughter of petitioner by acting irresponsibility.
- Hence this petition for compensation and other relief.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DIST. AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.822 OF 2004.

In the matter under Articles 14, 21,
22(1) & 226 of the Constitution of
India;

AND

In the matter under Chapters I and II
of the Bombay Police Manual;

AND

In the matter of the Delhi Special
Police Establishment Act, 1946;

AND

In the matter of the guidelines issued
by the Honourable Supreme Court
of India in the case D.K. Basu Vs.
State of West Bengal, reported in AIR
1997 SC 610;

AND

In the matter between:

Mrs. Shamima Kausar
Wd/o Mohammed Shamim Raza
Residing at 12, Hashmat Partk,
C-Wing, 1st Floor, Rashid
Compound,
Kausa-Mumbra,
District Thane, Maharashtra

VERSUS

1. Union of India
Notice to be served through
The Secretary
Ministry of Home Affairs
New Delhi = 110011
2. State of Gujarat
Notice to be served through
The Secretary
Home Department
Sachivalaya
Gandhinagar
3. Additional Commissioner of Police
(Crime)
Having his office at
Gaekwad Haveli, Raikhad,
Ahmedabad
4. Professor
Head of the Department
Forensic Medicine
B.J. Medical College
Civil Hospital, Ahmedabad

...Respondents

To the Hon'ble the Chief Justice and

Other Companion judges of

The Hon'ble Gujarat High Court

HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED
MOST RESPECTFULLY SHEWETH THAT

1. The petitioner is national and citizen of India. She is entitled to the rights guaranteed in the Constitution of India. The petitioner is a widow-housewife. She originally hails from Patna, Bihar, residing at the above said address since 1992. Since her young daughter, named Israt Jahan has been killed in an encounter by respondent No.3 herein the petitioner begs to file this petition under Article 226 of the Constitution of India seeking a writ of mandamus for ensuring rule of law democratic functioning of all the organs of the State, particularly to see that the Police authorities discharge their duties in accordance with the Constitutional mandate and also praying for an independent investigation by the Central Bureau of Investigation in the case in question as well as seeking compensation.

2. Short facts giving rise to the present petition are as under:

That the petitioner originally belongs to Patna, Bihar, married to one, Mr. Mohammed Shamim Raza, who migrated to Maharashtra in 1992 and lived in a rented house. The petitioner's family consisted of five daughters and two sons, namely,

Daughters:

- (i) Zeenat Jehan, aged about 20 years,
- (ii) Ishrat Jehan (deceased) aged 19 years,
- (iii) Musarrat Jehan, aged 17 years,
- (iv) Nuzhrat Jehan, aged 14 years,
- (v) Nusrat Jehan, aged 12 years

Sons:

- (i) Anwar Iqbal, aged 16 years, and
- (ii) Amanullah, aged 8 years.

The petitioner respectfully states that the husband of the petitioner was working in a private concern in the year 1992. Then after in 1994, he went to Saudi Arabia. Since he could not do well there, he returned to India and started doing the business of building construction. As he suffered heavy losses in the said

business, he could not overcome from the shock. Ultimately on 09.06.2002, the petitioner's husband had died leaving behind the above said family. The responsibility of looking after the family fell upon the daughter, Israt Jehan (deceased) who was the only clever and responsible member in the family, and she started looking after the family.

The petitioner respectfully states that Israt was born in Patna and she studied upto standard 11 there. Then after when the petitioner's family shifted to maharashtra, Israt got admitted into Standard III in a Municipal Primary School at Kosa. Then after in 1995 she got admitted in a High School, namely, Abdullah Patel High School at Mumbra, which is an adjacent area, where Israt had studied upto Standard VIII when her father died. Following the death of the husband of the petitioner the children including Israt could not continue their respective studies. Then after Israt took admission in Gurunanak Khalsa College of Arts, Science and Commerce. She was lastly in Second Year B.Sc. A copy of the Memorandum of Marks of the First Year B. Sc. Is annexed hereto and marked ANNEXURE 'A' to the petition.

The petitioner respectfully states that as stated above after the death of the husband of the petitioner the responsibility of maintaining the family fell on the deceased, Israt. She was performing well in her studies. Studies were here passion. She had an ambition to reach higher echelons as desired by her father. Israt was playing dual role. With a view to achieve her goal she was doing hard labour in her studies. Besides, as part of maintaining the family she was doing tuition work in some charitable trusts as well as private tuitions at home. She was applied to some charitable trust. Just two days prior to her leaving her house, she visited the Haji Ali Trust and applied for a job. A copy of application showing the nature of trust she applied for job is hereby annexed and marked ANNEXURE-B to the petition.

The petitioner respectfully states that there was no complaint against Israt either from any of the trustees or from the persons, where she did private tuitions. She was very regular, punctual and hard working. She was discharging her duties very sincerely and diligently. As for her schedule, she was giving private tuition from 07.00 AM to 10.30 AM Then after she used to attend her College to pursue

her own studies. In the evening she used to attend tuition work at a Charitable Trust, namely, Tanzim-e-Validan (Organisation of Parents) from 04.00 PM to 06.00 PM, where she was conducting tuition classes of 15 students. She received a remuneration of Rs.700/- per month. Next she used to take private tuitions from 07.00 to 09.00 PM. Such was her schedule. Her elder sister, named, Zeenat Jehan used to attend household work.

The petitioner respectfully states that since the petitioner was having seven children, the family is living in extreme economic conditions. Since Israt was in search of some good employment to see that both the ends are met. After the death of the petitioner's husband, one common friend, namely, Rashid Ansari, whose mother was a friend of the petitioner, and whose daughters studied with the children of the present petitioner came up with an offer that a gentleman named, (Javed) was looking for a placement for his business of perfume and toiletry. Therefore said Javed was in search of a sale/purchase girl. After this offer, said friend, Rashid had arranged a meeting of the petitioner with Javed at her residence who in clear terms stated to

the petitioner that she will be treating Israt as her daughter, but as part of duties, there are all possibilities of Israt going on outstation tours to any part of the country. It came to the knowledge of the petitioner that he was doing the work as electrician when her husband was doing the business of building construction. It was agreed that he will be giving Rs.3500/-per month to Israt. Not only this, buthe will see that Israt's studies were not affected and her academic pursuits will continue as ever.

The petitioner respectfully states that after joining the service as above said, Israt went out of station twice with Javed and she returned in time. Whenever she was on tour she used to make phone calls informing her whereabouts to her mother. Hwever, when she left last time i.e. early hours on 11th June 2004, she made phone call to the petitioner from Nashik informing that she was in Nashik. Then after the petitioner did not receive any phone call from her. Thus, the petitioner was perturbed. But still she was feeling that Javed is a good man and that he will be taking care of Israt.

The petitioner respectfully states that to the utter shock and surprise of the petitioner on 16th June

2004 when the petitioner with her family members after having lunch was relaxing, all of a sudden some journalists started coming to the petitioner's home asking very strange questions about Israt. For a while the petitioner could not understand the developments. When Police officials came and started making inquiries and conducting search of the house, the petitioner learned that Israt is Killed in an encounter at Ahmedabad by respondent No.3 and had collapsed. The petitioner respectfully states that the petitioner was not in a position to reply either to the journalists or the Police authorities. She was only having the fact of her daughter, Israt in her mind. During this period the Police officials searched the house of the petitioner, but could not find anything.

The petitioner respectfully states that this development created panic among the local residents. Gloom descended on the surroundings and neighborhood of the petitioner. The local residents were moved by the swift developments.

The petitioner respectfully states that the petitioner was not able to overcome the bereavement. The petitioner respectfully states that her daughter was not associated with any anti national or anti social

activity. She had never discussed any political or religious matter with any one. She was a shy girl, mild in nature. She was having only one ambition – to become something worthwhile in her life and support her family. But unfortunately, due to the unconstitutional and illegal act on the part of respondent No.3 the petitioner's daughter, Israt lost her life at a premature stage. In her death the entire family of hers is rendered without shelter and there is non in the family who can earn livelihood.

The petitioner respectfully states that having controlled her grief the petitioner started taking steps to collect the body of Israt and to perform her last rites. For this purpose with the assistance of some local residents, she came to Ahmedabad on 18th June 2004. But surprisingly the petitioner was harassed to all manners, was shown no sympathy by respondent No.3 She was subjected hostile treatment and mental torture. She was put untoward questions. Not only that she was denied to hand over the dead body of the girl, Ultimately, the concerned officials have shown some mercy to her and the dead body of Israt was handed over to the petitioner, but without any Postmortem report. The petitioner was apprehending

that the Postmortem report will be concocted. Therefore, she immediately demanded the Postmortem report, This was not given to her but she was persuaded to give an application addressed to the Professor and Head of the Department, Forensic Medicine, B.J. Medical College, Civil Hospital, Ahmedabad. At this juncture, the petitioner also gave an application to respondent No.3 to issue an NOC (No Objection Certificate) so that the petitioner can have Postmortem report of her daughter, but in spite of her two applications, the Postmortem report was not given to the petitioner. She was only given a certificate which is also issued in wrong name showing that the Postmortem is carried out in connection with DCB Crime Police Station and it was carried out by Dr. D.S. Patel, Dr. B.A. Silajia, Dr. S.S. Thavare, Dr. G.G. Kothari, Dr. D.J. Parmar, Dr. H.T. Khachchar. A copy of each of the above two applications along with the said certificate are annexed hereto and marked ANNEXURE 'C' to the petition.

The petitioner respectfully states that after bring the dead body to Mumbra-Kosa, the petitioner's daughter was ladi to rest and was buried in the grave

yard at Kosa, District Thane, Maharashtra. A receipt to that issued by Kosa Masjid Trust of Kosa Sunni Kabrastan (Kosa Sunni Grave Yard) is annexed hereto and marked ANNEXURE 'D' to the petition.

The petitioner respectfully states that then after the petitioner had got registered the death of her daughter, Israt with the concerned authority, namely Mahanagar Palika, Thane. A certificate issued by Mahanagar Palika vide No.009892 dated 09.07.2004 is annexed hereto and marked ANNEXURE 'E' to the petition.

The petitioner respectfully states that the petitioner's daughter has been killed in mysterious circumstances and respondent No.3 has so far not proved that the deceased Israt was anti national or anti social. Therefore, the act on the part of respondent No.3 is highly unconstitutional, illegal and is not recognized by law. Hence the high handed action of respondent No.3 violates the rules, regulations and is in breach of all democratic norms. But still respondent No.3 is sticking to the investigation. In these circumstances there is all likelihood of injustice being caused to the petitioner by respondent No.3 inasmuch as respondent No.3 is

conducting the investigation with the sole objective of branding the deceased. Israt as a terrorist and fabricating evidence in the said direction. Therefore, there will be no scope for impartial investigation in the present case. Therefore, the petitioner has no alternative remedy but to approach this Honourable Court by way of this writ petition on the following amongst other grounds that may be urged and argued at the time of hearing.

GROUND

(A) Because even if the story of respondent No.3 is believed that respondent No.3 had received some intelligence input from agencies like intelligence Bureau (I.B.) and Border Security Force (BSF) but still it is highly doubtful as to whether these two agencies have disclosed the name of the petitioner. No such proof is adduced so far by respondent No.3 Apart from this, even if it is believed that there is intelligence input then it

is the story advanced by respondent No.3 that respondent No.3 party was chasing the so called terrorists from 110 KMs and then they started firing on them. Therefore, surprisingly, from there onwards they cannot justify as to how the persons were killed without having been identified, what was the reason for firing on the car without confirming the identify of the persons, how the persons sitting inside the car could be identified or recognized. Therefore, a highly improbable and concocted story is advanced with a view to justify the killing of innocent persons in firing as the investigation remains with respondent No.3 the petitioner cannot get justice.

(B) Because even after killing respondent No.3 did not hand over the belongings and the custody of the car to the Forensic Science Laboratory for a considerably long period, it does create doubt as to whether there was any

genuine occasion or it was done with a view to destroy evidence. It is respectfully submitted that because whatever evidence claimed to have been produced as reported in media, has been collected after the encounter. Therefore admittedly the fact remains is that when the encounter was done there was nothing with respondent No.3 against the inmates of the said card, including the daughter of the petitioner, who have been killed without any provocation or warning. It is respectfully submitted that the petitioner is concerned with her deceased daughter. The person, known as Javen who was also not having any nexus. The other two persons who were portrayed as accused, it may be that they were detained by respondent no.3 with a view to give a twist to the story. Thus, these two persons were also killed along with the daughter of the petitioner.

(C) It is respectfully submitted that even after a week of the Home Ministry demanded a solid proof from respondent No.3 the information as to the petitioner's daughter is based on the news report which was published in the Time of India, issue of Wednesday, the 23rd June 2004 (at page 3). For kind perusal of this Honourable Court a copy of the said news reported dated 23rd June 2004 is annexed hereto and marked ANNEXURE 'F' to the petition.

(D) It is respectfully submitted that not only this but respondent no.3 had shot dead the persons including the daughter of the present petitioner stated to have been acted upon the intelligence inputs received from the BSF. However, surprisingly the BSF has denied the said claim of the Gujarat Police thorough media statement. The said news statement issued by the BSF is published in the

Times of India in the issue of 24th June 2004 on first page. A copy of the said news report is annexed hereto and marked ANNEXURE 'G' to the petition.

(E) It is respectfully submitted that even if it is believed that respondent No.3 had received any such intelligence inputs still it is not the case of the present respondent No.3 that they were equipped with the photographs of the so called terrorists. But surprisingly, in absence of identity such a harsh action is taken by respondent No.3 where innocent persons like the daughter of the present petitioner has lost their lives. Respondent No.3 is not able to justify the said action till date.

(F) It is respectfully submitted that when it is the case of respondent No.3 that where the terrorists came out from the care and fired at them and that they were also firing on the car in a very haphazard manner, then surprisingly the primary report released by

respondent No.3 himself says something else, wherein it is stated that all the three persons (the so called terrorists) including the daughter of the present petitioner received single bullet injury. This also goes beyond the prudence and reasonable presumptions. But it seems that the daughter of the petitioner among the other persons was killed and then after a fake story is put forward.

(G) It is respectfully submitted that in the above said facts and circumstances of the case the petitioner begs to prefer this writ petition with the prayer that it would be in fitness of things if the investigation is carried out by an independent agency rather than respondent No.3 herein. Because for the following reasons this encounter is a fake one which requires a thorough probe.

REASONS:

- (i) diary with them and will take note of their day to day proceedings only to be made available for the benefit of the investigating agency.
- (ii) it cannot be presumed that a person who comes to execute some terrorist related works uses his own car with its correct number plate and genuine registration.
- (iii) Surprisingly, like the earlier encounter the present encounter too had happened at the early hours, i.e. at 04.30 AM. Surprisingly like the earlier encounters the place selected in this encounter too is the same i.e. Kotarpur, near Air Port. At this juncture, it is respectfully submitted that one accused of Akshardham case was mercilessly tortured by respondent No.3 who was also taken to the same place. This story is narrated in the letter. The certified copy of the said letter is annexed hereto and marked ANNEXURE 'H' to the petition. That the same is on the record of the Honourable Special POTA Court.

(iv) Surprisingly, it was the story of respondent No.3 that they have received a solid information from the intelligence sources that some terrorists will come to target the Chief Minister, but still no red alert was declared, rather the entire episode was over in the darkness.

(v) It is strange that the so called terrorists were bare footed since they came to carry out a big task that too without any preparation.

(vi) That all these things create suspicion. Therefore, in fitness of things respondent No.3 may be restrained from carrying out investigation of the present case. Otherwise, injustice would be meted out to the present petitioner.

4. In the fact and circumstances narrated above the present petitioner begs to rely upon the following legal authorities.

That the Honourable Supreme Court of India with a view to protect the life, liberty and property of the citizens has categorically issued guidelines

to the Police authorities by way of a decision in the case of **D.K. Basu vs. State of West Bengal** report in A.I.R. 1997 SC 610 The relevant part thereof is reproduced hereunder for ready reference of this Honourable Court:

Custodial death is perhaps one of the worst crimes in a civilized society governed by the Rules of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. Court cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrest him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human

rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law”.

4. It is respectfully stated that in spite of the above clear legal provisions enunciated by the Honourable Apexd Court, the same are not implemented by the law enforcing agencies in its proper perspective. Therefore, the Honourable the Supreme Court was pleased to issue further directions time and again with a view to see that the guidelines issued in the above judgement are strictly complied with. Further observations of the Honourable Supreme Court in a series of subsequent decisions are as under:

(a) **Dilip K. Basu Vs. State of W.B. and Others** reported in (1997) 6 SCC 642.

The relevant part of the judgement is reproduced hereunder for ready reference:

“Constitution of India – Articles 21, 22 and 32 – Custodial violence – Direction in the shape of requirements issued by the Supreme Court in D.K. Basu case for compliance by the police personnel while arresting or detaining any person – such requirements were directed to be circulated to all police stations and disseminated through the mass media – directions issued to the Director General of Police and Home Secretary of the State/ Union Territory concerned to report to the Supreme Court regarding compliance of the said directions – Report shall also be obtained from the Directors of all India Radio and Doordarshan regarding broadcasts made.

(b) Dilip Kumar Basu Vs. State of W.B. and others reported in (1998) 6 SCC 380.

The relevant part of the judgement is reproduced hereunder for ready reference.

“Constitution of India Articles 21 and 32 – Custodial deaths – compliance by States/ Union Territories

with directions issued in D.K. Basu case (1997) I SCC 416 – Report submitted showing that affidavits furnished by various States/Union Territories deficient and not furnishing full and complete information upto date. Hence, directions issued to the States concerned to file affidavits through their Home Secretaries, indicating the status of all those inquiries and wherever reports have been received to furnish copies of those reports together with such details as are possible regarding compliance of the directions given in Basu Case – Matter refixed for later date”

(c) **Dilip K. Basu vs. State of W.B. and others**
reported in (1998) 9 SCC 437.

The relevant part of the judgment is reproduced hereunder for ready reference:

“Constitution of India – Articles 21, 22 and 32 – Custodial violence – Direction earlier issued by Supreme Court to send it report regarding compliance of its directions concerning the arrestees – Directions not fully complied with by all the States – Time granted for sending full reports.”

6. In the above facts and circumstances of the case, it is clear that respondent no.3 has conveniently ignored the directions of the Honourable Supreme Court and has failed to comply with the same. Thereby respondent No.3 has committed contempt of Court. Therefore, necessary action be taken against respondent No.3

7. The Honourable Supreme Court in the case of **Joginder Kumar vs. State of U.P. and other,** reported in (1994) 4 SCC 260 while dealing with an identical case, has been pleased to lay down a ratio in para 12, which reads as under:

“12. The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued

detention in jail of the persons so arrested has also meant avoidable expenditure in the connected jails was over prisoners only who in the ultimate analysis need not have been arrested at all.”

As on today, arrest with or without warrant depending upon the circumstances of a particular case is governed by the Code of Criminal Procedure.”

The Honourable Supreme Court Further went on saying in para 18 of the judgment in the case of Joginder Kumar (Supra):

“It is worth quoting the following passage from Police Powers and Accountability by John L. Lambert, p. 93:

“More recently, the Royal Commission on Criminal Procedure recognized that ‘there is a critically important relationship between the police and the public in the (Not readable) and investigation of crime and suggested that (Not readable) confidence in police powers required that these confer to three principle fairness, openness and workability.”

8. By laying down the above ratio the Honourable Supreme court suggested precautionary measures which are to be taken at the time or arrest. In the present case such observations were ignored by respondent no.3, to facilitate his high handed action in committing irregularities, illegalities and

dereliction of duty which requires mandate of this Honourable Court in the light of the directions of the Honourable Supreme Court.

9. The petitioner respectfully states that since the petitioner has lost her beloved daughter who was the only earning member of the family Now in her absence the family of the petitioner has no shelter. In that view of the matter respondent no.3 in his dereliction of duties in not following the directions of the Honourable Supreme Court has violated the legal and fundamental rights of the citizens. Not only that the State has failed to protect the life and liberty of the daughter of the petitioner therefore the petitioner is liable to be compensated in appropriate terms.
10. The Honourable Supreme Court in the case of Punjab & Haryana High Court Bar Association Vs. State of Punjab and others, reported in (1996) 4 SCC 742, has categorically laid down a ratio of law that, "It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort

resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental right, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. Thus is what was indicated in Rudul Sah and is the basis of the subsequent decision in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.”

After this decision the Honourable Supreme Court had once again in another judgment in the matter of People Union for Civil Liberties Vs. Union of India and another, reported in (1997) 3 SCC 433, has laid down a further ratio where it was the allegation that the alleged terrorist were killed. The relevant part of the said judgment reads as under:

“Head Note-A Constitution of India – Articles
21 * 32- custodial death – Compensation –

Administrative liquidation – fake encounter – two persons, alleged to be terrorists, seized by police, taken to a distant place and shot at causing their death – Held, such administrative liquidation cannot be permitted – Court’s interference called for – by way of award of compensation available in public law – Accordingly, State Govt of Manipur directed to pay Rs. 1 lakh to families of each of the deceased 0 Writ petitioner also entitled to costs assessed at Rs. 10,000/- payable by the State Govt.”

“8. In Challa Ramkonda Reddy V. State of A.P., a decision of the Division Bench of the Andhra Pradesh High Court, one of us (B.P. Jeevan Reddy, J.) Dealt with the liability of the State where it deprives a citizen of his right to life guaranteed by Article 21. It was held:

“ In our opinion, the right to life and liberty guaranteed by Article 21 is so fundamental and basic that no compromise is possible with this right. It is ‘non-negotiable.

The State has no right to take any action which will deprive a citizen of the enjoyment of this basic right

except in accordance with a law which is reasonable, fair and just.”

The decision also dealt with the question whether the plea of sovereign immunity is available in such a case. The following observations are relevant:

“The question, however, arises whether it is open to the State to deprive a citizen of his life and liberty otherwise than in accordance with the procedure prescribed by law and yet claim an immunity on the ground that the said deprivation of life occurred while the officers of the State were exercising the sovereign power of the State ?

Can the fundamental right to life guaranteed by Article 21 be defeated by pleading the archaic defence of sovereign functions? Does it mean that the said theory clothes the State with the right to violate fundamental right to life and liberty, guaranteed by Article 21? In other words, does the said concept constitute an exception to Article 21? We think not. Article 21 does not recognize any exception, and no such exception can be read into it by reference to clause (1) of Article 300. Where a citizen has been deprived of his life, or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the State were acting in discharge of the sovereign functions of the State.”

11. This Honourable Court (Division Bench) while dealing with an identical case of encounter in the matter of State of Gujarat Vs. Dharmishtaben, reported in 2001 III GLR 2056 has issued directions to the CBI to investigate the case and awarded compensation to the victim.
12. This Honourable in yet another decision reported in 1997 II GLR 1147 has categorically stated that generally the High Court would not interfere with the matter particularly when charge sheet is filed unless there are compelling reasons. The High Court would not be justified in interfering with the investigation, but looking to the high status of the persons, this Honourable Court in the interest of justice directed the CBI to investigate in the matter. In this case the Police officers were involved and shows as accused. This Honourable Court has kept in mind the status of the accused and apprehended that until and unless the case is investigated by an agency of high rank, fair and impartial investigation is no possible. Therefore. Also this Honourable court may exercise its power.
13. The petitioner respectfully submits that the CBI has been constituted under sections\2 of the Delhi Special Police Establishment Act, 1946 and it acts upon the directions of the State Government which is issued under section 6. but the Honourable Supreme

Court has made clear that if a direction is issued by the Court, then section 6 will not come in the way. The ratio laid down by the Honourable Supreme Court in the matter of Central Bureau of Investigation through S.P. Jaipur Vs. State of Rajasthan, reporter in 2001 (1) Supreme 263 is as under where the Honourable Court has reproduced the ratio laid down in the case State of West Bengal & other Vs. Sampal Lal & others, reported in 1985 (1) SCC 317.

“In our considered opinion ,Section 6 Delhi Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view, the impugned order of the learned Single Judge and the appellate decision of the Division Bench appointing DIG of CBI to inquire into the matter would not be open to attack for want of sanction under Sections 6 of the Delhi Act.”

14. That respondent No.2 with a view to justify his act registered one F.I.R. on the subject matter which is registered as F.I.R. No. I – 8 of 2004 (registered with DCB Ahmedabad City on 15.06.2004. The petitioner’s Advocate applied for the same on 16.7.2004 and the same is delivered on 29.7.2004.

The same is here by Annexed and Mark as Annexure 'I' to this petition.

15. The petitioner has no alternative and equally efficacious remedy except by way of the present petition under Article 226 of the Constitution of India.
16. The petitioner has not filed any other petition or proceeding on the subject matter of this petitioner in any court of law in India including the Honourable Supreme Court of India.
17. the petitioner craves leave to add, amend or rescind any of the grounds as and when necessary.
18. On the facts in the circumstances narrative above the petitioner most humbly prays that,

THIS HONOURABLE COURT

- (A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, holding that respondent no.3 has committed dereliction of duties in not observing the guidelines issued by the Honourable Supreme Court of India as well as the guidelines prescribed under the Bombay Police Manual, as such violated the fundamental and legal rights of the citizen causing great injury to the petitioner by killing her daughter in a fake encounter, without any justifiable

reason or material; and be pleased to restrain the present respondents from carrying out further investigation in the subject matter of FIR No. CR I – 8 of 2004 dated 15.6.2004 registered with DCB Ahmedabad City, Since the respondent No. 3 is interested party and hence fair and impartial investigation is not possible.

- (B) This Honourable Court be pleased to direct the Central Bureau of Investigation to carry out investigation in the subject matter of FIR No. CR I – 8 of 2004 date 15.6.2004 registered with DCB Ahmedabad City, by registering the case with them.
- (C) This Honourable Court be pleased to direct respondents no. 1 and 2 to provide adequate compensation to the petitioner herein as her young daughter is killed by respondent No. 3 without any justifiable reason who was back-bone for her family and as such petitioner has suffered heavy loss and her family is ruined due to illegal and unconstitutional act on the part of respondent No.3.
- (D) Pending admission hearing and final disposal of the petition this Honourable Court be pleased to restrain the present respondent No. 3 from carrying out further investigation in the matter of FIR No. CR I -8 of 2004 dated 15.6.2004 registered with DCB Ahmedabad City.

- (E) By way of ad interim relief this Honourable Court be pleased to direct respondent no. 4 to supply a copy of the Postmostem Report to the petitioner.
- (F) This Honourable Court be pleased to award cost of the petition.
- (G) This Honourable Court be pleased to grant any other and further relief's as deemed fit and proper by this Honourable Court.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE
PETITIONER SHALL AS IN DUTY BOUND FOR EVER PRAY.

Ahmedabad

(Hashim Qureshi

Dated : 07.2004

Advocate for the

Petitioner

AFFIDAVIT

I, Mrs. Shamina Kausar Wd/o Mohammed Shamim Raza, petitioner herein do hereby solemnly affirm and state that what is stated hereinabove in para nos. 1 to 2.14, 14,15,16 and 17 are based on my personal knowledge and information I believe the same to be true. Para nos. A to G and Para 4 to 13 deal with the legal submissions based on legal advice and Para no. 18 contains prayers clauses, which are also believed to be true and correct and I pray for the same.

All the annexures to the petitioner are true copies of respective origibals.

Solemnly affirmed on this 10th day of August, 2004 at
Mumbai

DEPONENT

Identified by me,

Read over, explained and interpreted

The contents of the memo of petition

To the deponent in Urdu