

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: AHMEDABAD

Special Criminal Application. NO. 822 OF 2004.

Shamima kausar

... Petitioner

VERSUS

Union of India & others

... Respondents

AFFIDVIT IN REPLY

ON BEHALF OF THE RESPONDENT NO.1

I, R.V.S. Mani, Son of Shri K.R. Ramaswamy, aged about 49 years working as Under Secretary, internal Security-VI) in the ministry of home Affairs, north Block, New Delhi – 110001, in reply to the above-mentioned petition, do hereby solemnly affirm as under :-

1. It is submitted and stated that I am holding the post of under Secretary in the Ministry of Home Affairs, North Block, New Delhi – 110001, and am authorized to affirm this affidavit.
2. It is submitted and stated that the present petition has arisen due to the action of crime Branch, Ahmedabad

Sheikh @ Pranesh Kumar Pillai and Ishrat Jahan d/o the petitioner were killed in a police action at Ahmedabad, on 15.06.2004, while they were traveling in Blue Colour Indica car No. MH 02 JA 4786. It is submitted that I have gone through the relevant records and I am familiar with the facts of this case. The petitioner in the instant cases the mother of Ishrat Jehan one of the persons killed in Ahmedabad Police action. The petitioner has alleged that the action of Ahmedabad Police in killing her daughter was unjustified, excessive and malafide and hence prayer for an independent enquiry by the CBI in the case.

3. It is submitted that M.R. Gopinatha Pillai had filed a petition WR (CR) No. 63/2007, M.R. Gopinatha Pillai Vs State of Gujarat (Copy Annex-IA), in the Hon'ble Supreme Court of India, praying for similar action on the same subject. The petitioner is the father of Javed Ghulam Mohammed Sheikh @ Pransh Kumar Pillai, Another person killed in the same incident. The Hon'ble Supreme Court, declined to entertain the same in view of SCA No. 822/2004 pending in the Hon'ble Gujarat High Court. The petitioner Gopinathan Pillai was given the liberty of approaching Hon'ble Gujarat High Court,

Hon'ble Court against respondent No. 3 and has consequently prayed for transfer of investigation as prayed in paragraph no. 18(B) of the petition. The petitioner has also prayed for providing adequate compensation by respondent No. 1 and 2 for the alleged incident and on the premises of pleading raised in the petition. Accordingly, I am filing this affidavit-in reply for the limited purpose of opposing the admission in response to the notice issued by this Hon'ble Court.

5. At the outset, it is submitted on behalf of the Respondents No. 1 that the Union of Indian in 2004 had received specific inputs to suggest that Lashker-e-Toiba had been planning to carry out the terrorist activities in various parts of the country including the State of Gujarat. The answering Respondent No. 1- Union of India was also aware of the inputs that Lashkar-e-Toiba was planning to carry out assassination of some top-level national and state leaders and L-e-t in this regard had tasked its India based cadres to monitor their movements. Union of India and its agencies, were and are regularly sharing such inputs with the concerned State Government (s) including the inputs mentioned in this paragraph. In this regard, Respondent No 1 further

was in regular touch with Let operatives, particularly, Muzammil to carry out terrorist actions in Gujarat.

6. With regard to contents of Paragraph Nos. 1 to 2.4, it is submitted that since the content of these paragraphs are a mere statement of facts the answering respondent has no comment to offer.

7. Before commenting on Para 2.5 and 2.6, it is submitted that to fully appreciate the whole matter particularly killing of Ishrat Jehan and Javed Ghulam Mohammed Sheikh, in the impugned police action, it is essential to look at the background and linkages of Javed Ghulam Mohammed Sheikh with Ishrat Jahan. Being a complex matter, the attention of Hon'ble Court is drawn to certain basic facts about Javed Ghulam Mohammed Sheikh.

(i) That Javed @ Pranesh Kumar Pillai, s/o Gopinatha Pillai, was born a Hindu who later converted to Islam after marriage to one Sajida and adopted the name of Javed Ghulam Mohammed Sheikh. Four Criminal cases were registered against him in Thane district (Maharashtra) between 1992-1998 when Javed Ghulam Mohammed Sheikh was residing in

Shaikh, s/o Ghulam Mohammed Shaikh issued in June 28, 1994 by RPO, Mumbai. On this passport, he traveled to Dubai and worked there for considerable period. It is suspected that while working in Dubai, he was subverted to the cause of L-e-t. Javed obtained another Passport no. E-6624203 dated September 16, 2003 in the name of Praneshkumar Manaladythekku Gopinathan Pillai, s/o Gopinatha Pillai from RPO cochin. Javed @ Pranesh kumar, though had never lived in Kerala, but suddenly obtained a passport in his previous Hindu name, whereas his earlier passport, obtained in the name of Javed was valid till June 2004.

(iii) Gopinatah Pillai, the petitioner before the Hon'ble Supreme Court, had not mentioned certain very relevant facts about his son such as :-

(a) procuring a Passport in Hindu name by giving petitioner's address in Kerala while not even residing there; and

(b) being a rowdy character with criminal cases registered against him, etc.

These facts point towards Javed being a person with

concealed these crucial and extremely relevant facts before the Hon'ble Supreme Court. He has also concealed the facts that Javed lived in Mumbra (District Thane) for a number of years ' that Javed @ Pranesh had gone to Dubai and worked there for several years and that he undertook visit to Oman just two months before the impugned incident.

8. it is humbly submitted that several Indian newspapers such as, the Times of India, The Hindu, The Indian Express published news item on July 15, 2004 that Lahore based Ghazwa Times, mouthpiece of Lashkar-e-Taiba (Let-) had said that ' the veil of Ishrat Jehan a woman activist of Let, was removed by Indian police and her body was kept with other mujahideens (terrorists) on the ground Ishrat was with her husband, sitting on the front seat of the car." The internet download of these reports as published in Indian and other newspaper are enclosed at Annexure-II, A, B, C and D.
9. The contentions of the petitioner, Gopinatha Pillai, in the Writ Petition filed before the Supreme Court are Contrary and at variance to the averments made by the petitioner, Shamima Kausar in the present petition. The petitioner in the Supreme Court had averred that his

colour to various places. This is contrary to the petitioner's averment in the present case in para 2.6, petitioner, Shamima has stated that "Rashid Ansari, whose mother was the friends of ethe petitioner has came up with an offer that a gentleman named, javed was looking for 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 Ishrat as her daughter, but as part of duties, there are all possibilities of Ishrat going on outstation tours to any part of the country". It is further submitted in this regard that Car No. MH 02 JA 4786 was never registered as a taxi. It is hence, quite clear tat both the petitioners are not stating truthfully and trying to mislead the Hon'ble High Court and Supreme Court respectively. In view of the news reports mentioned in Para 8 of this counter affidavit and facts submitted and stated in the succeeding Paragraph, it is evident that Javed and Ishrat were activists of the terrorist organization, Let.

Ahmedabad, as averred in the petition filed in the Supreme Court vis-à-vis the averments in the present petition. Petitioner Shamima Kausar in Para 2.7 states “that after joining the service as above said Ishrat 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. However, 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 Ishrat. It is submitted that in para 6 of petitioner before the Supreme Court, Gopinath Pillai, the petitioner and the father of Javed Ghulam Mohammed Sheikh, has claimed that “the petitioner’s son returned to Pune driving his own vehicle, he left his family in his sister-in-law’s house and had gone for a long trip with some tourists.”

11. It is further submitted that in the said petition before the Supreme Court , there is no mention about Ishrat’s

giving private tuition from 07.00 AM to 10.30 AM. Then after she used to attend her collage to pursue her own studies. In the evening she used to attend tuition work at a Charitable Trust, namely, Tanzim-e-Validam (Organisation of Parents) from 04.00 PM to 06.00 PM, where she was conducting tuition class of 15 students. She received a remuneration of Rs. 700/- per month. Next she used take private tuitions from 07.00 to 09.00 PM Such was her schedule” The petitioner has recalled in detail the schedule of late Ishrat before she joined the service of Javed as a salesgirl but has not mentioned about the address of the shop/business establishment of Javed where Ishrat was to do the job of the salesgirl, There is no mention of the duty hours of Ishrat, specific commodities of perfume and toiletries being purchased and sold by Javed, the manner & places from where these items were procured by Javed. It is also not clarified in the petition if Ishrat after employment with Javed had discontinued her studies in Guru Nanak Khalsa College or the tuitions, which she was taking prior to her employment with Javed. It is also not clear from the petition whether Ishrat’s employment with Javed was in the nature of regularly attending

accompanying Javed. The above clearly shows lack of clarity and omissions, which appear to be deliberate with the intent of concealing the real nature and activities of Javed and Irshad.

12. It is humbly submitted that these contradictions clearly reflect that neither Gopinatha Pilli, father of Javed @ Pranesh nor Shamima Kausar, mother of Ishrat Jehan have chosen to disclose the correct facts relating to occupation, activities and movement of Javed and Ishrat on account of the fact that both, Javed and Ishrat, were involved in such activities disclosure of which would result in reflection of the bonafide of the police action against these four persons including Javed and Ishrat.

13. It is further stated and submitted that, on May 2, 2007 Jama't-ud-Da'wah (another mouth-piece of Lashkar-e-Taiba) published a news item "an apology to Ishrat Jahan's family", just a few days before Gopinatha Pillai filed his petition on the same matter before Hon'ble Supreme Court On May 18, 2007. Claiming that the news item Gazhwa describing Ishrat as female martyr of Lashkar-e-Taiba. Several Indian newspapers including,

above-mentioned news items are enclosed as Annexure IIIA & III-B.

14. It is humbly submitted that it is clear from the above, that Ishrat was actively associated with LeT and apology by LeT mouthpiece is only tactical to discredit Indian security agencies and police and aimed misleading the court.

15. It is submitted that investigations by Pune Police indicate that Amjad Ali@ Babbar was present with Javed at the time of purchase of blue colour Indica Car No. MH 02 JA 4786. The investigation by Gujarat Police also indicate that Ishrat and Javed had stayed together in a hotel in Lucknow and at a private residence in Ibrahimpur (district Faizabad-UP). Both the petitioners have failed to explain the relationship of Javed and Ishrat with two Pakistani nationals. Amjad Ali was a Pakistani LeT terrorist and the company of Ishrat and Javed with him clearly proves that they were working for the common mission of LeT.

16. With Regard averments made in to para 2.8 to 2.10, it is

17. With Regard to contents of Paragraphs nos. 2.11 to 2.13, it is submitted that the answering respondent no. 1 has no comments to offer, as these are matters of record.

18. With regard to the contents of para no. 2.14, it is submitted that Ishrat Jahan, daughter of the petitioner was killed along with three other LeT cadres including Javed Ghulam Mohammed Sheikh @ Pranesh Kumar Pillai, r/o Pune (Maharastara) and two Pk nationals Zeeshan Johar @ Janbaaz@ Adul Ghani, r/o Gujuranwale, Pakistan and Amjad Ali Akbaral Rana@ Salim@ Chandu @ Babbar @ Rajkumar r/o Sargoda, Pakistan in action by Gujarat Police on June 15, 2004.

19. So far as various contentions raised in ground no. 3A of the petition are concerned, it is submitted that the Union of India in 2004 received specific inputs to suggest that Lshkar-e-Toiba had been planning to carry out the terrorist activities in various parts of the country including the State of Gujarat. The answering respondent no. 1 – Union of India was also aware of the inputs that Lahkar-e-Toiba was planning to carry out

inputs with the State Government(s) including the inputs mentioned in this paragraph.

20. With regard to averments made in Para 3, the answering respondent submits that the two of the persons killed in the police encounter on 15.6.2004 were Pakistani nationals and it was known that they were sent by LeT to carry out terrorist actions in Gujarat. One of the killed LeT cadre and Pak national was Amjad Ali @ Babbar @ Salim. J&K Police the Chief operational commander for Central Kashmir, Shahid Mehmud and his Pakistani associate Zahid Ahmed. In their disclosures, the mentioned that Amjad Ali @ Babbar @ Salim had entered India under express instructions from Muzammil for organizing terrorist networks in Gujarat and Maharashtra. Amjad Ali @ Babbar @ Salim was also injured in an encounter with J&K Police and is leant to have been treated for a bullet injury in Delhi in early May 2004. He was in regular touch with Javed @ Pranesh Kumar Pillai. The other killed Pak national and LeT terrorist was Zeeshan Johar @ Janbaaz who also reported to have infiltrated from Pak Occupied Kshmir into J&K. Zeeshan Johar

a resident of village Shikari, Teshil Mahore in the district.

21. With regard averments made in the subsequent parts of para 3, the answering respondent, also submits that Pune Police (Maharashtra) recovered from the residence of Javed @ Pranesh Kumar Pillai documents related to the preparation of high explosive devices through commonly available chemicals, electronic circuits for timed detonation, advanced code sheets for communication, and code names assigned to various targets etc, including important political personalities. Javed @ Pranesh Kumar pillai traveled to Dubai on Passport no. S-514800 in the name of Mohamed Javed Ghulam Shaikh, s/o Ghulam Mohamed Sheikh issued on June 28, 1994 by RPO, Mumbai and worked there for several years. It is suspected that while working in Dubai, he was subverted for the cause of LeT. Javed visited Oman (March-April 2004) where he was briefed by muzammil @ Tariq, Senior LeT operative responsible for terrorist actions in hinterland areas of Inda, for targetting VIPs.
22. The answering Respondent further submits and states that it came to the notice of agencies of Union

Passport no. E-6624203 dated September 16, 2003 in his original name Praneshkumar Manaladythekku Gopinathan Pillai, s/o Gopinathan Pillai from RPO Cochin at this father's address on the directions of his LeT handlers to avoid suspicion at any later stage. Attention of Hon'ble Court is once again invited to a very grave contradiction between contention of petitioner about the occupation of Javed and that of his father as brought out in Para 8 as foregoing. Javed was neither in the business of perfume and toiletry, nor running a taxi. As pointed out in the paras above, claimed hiring of Ishrat Jahan, daughter of petitioner, Shamima Kausar by Javed was not for the purpose claimed by the petitioner but appear to be a part of the LeT conspiracy to provide cover to Javed @ Pranesh Kumar of being husband and wife during his movements to various parts of the country including Ahmedabad, Lucknow and Ibrahimpur (Faizabad-UP) for accomplishment of his terrorist mission. Given Javed's background, having worked on menial jobs for most of his life, it would be quite clear to any reasonable and prudent person including the petitioner that the visits of Javed and Ishrat to Lucknow, Faizabad and Ahmedabad were not

23. So far as the contentions raised in ground no. 3(G) are concerned, it is submitted that it has been reported to answering respondent that the Police action of June 15, 2004 has been independently inquired into by the Additional Director General of Police (CID & Intelligence). Gujarat state, who is neither working under Crime branch, Ahmedabad City Police. It is further submitted that the answering respondent has no comments to offer on the contents of remaining parts of paras 3.

24. The contents of paragraph no. 4 and 5 of the petition are a matters of record.

25. The allegations, contentions and submissions made in paragraph no. 6 do not pertain to the answering respondent.

26. The contents of paragraph no. 7 are a matter of record.

27. The averments made in paragraphs no. 8 and 9 do not pertain to answering respondent.

28. The contents of paragraph no. 10 to 13 are a matter of record.

29. The averments made in paragraph no. 14 does not pertain to answering respondent.

30. The contents of paras 15-17 are mere statements and

by the Additional Director General of Police(CID & Intelligence), Gujarat State, which is neither working under Crime Branch nor is he a subordinate to Crime Branch, Ahmedaad City Police and therefore the prayed made in the said paragraph appears to be based on apprehension which can be replied to properly by the State of Gujarat.

32. In regard to para 18 (B), it is submitted in view of the submissions contained above, that no proposal for CBI investigation into the case in under the consideration of the Central Government nor does it consider the present case fit for investigation by CBI.
33. So far as the prayer made for payment of compensation in para 18(C) is concerned, it is humbly submitted that public order and 'police' and law and order are State Subjects.
34. Taking into consideration the averments made by the Respondent No. 1 in the above paragraphs, the petition having no merit therefore deserves to be dismissed.
35. What is state herein above is true to the best of my knowledge, information and belief and I believe the same to be true.

Solemnly affirmed on this 6th August, 2009 at Ahmedabad.

Addl. Central Govt. Standing Counsel

Identified by me.