

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRL.) NO.109 OF 2003

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

[With appln(s) for directions filed by A.C., stay, intervention, direction and a note dt.27.02.2004 submitted by A.C. and directions]

T.P.(CrI.)No.194-202 & 326-329/2003

[With Appln.(s) for stay; exemption; impleading party; permission to submit additional document(s); permission to place addl. documents on record and office report]

S.L.P.(CrI.)No.5309/2003

[With Appln.(s) for c/delay in filing SLP; exemption from filing C/C of the impugned judgment exemption from filing O.T. and office report]

T.P.(CRL) NO. 66-72 of 2004

[With Appln.(s) for permission to file T.P.; stay; directions; taking additional document on record and permission to submit additional document(s)]

T.P.(CrI.)Nos.233-234/2004

[With Appln.(s) for stay and office report]

W.P (CrI.) NO. 37-52 of 2002

[With Appln.(s) for permission to submit additional document(s); exemption from filing O.T.; interim directions; permission to place addl. documents on record and Office Report]

CrI.M.P.No.4485/2006 in S.L.P.(CRL.)No.3770/2003

**WRITTEN SUBMISSIONS/SUGGESTIONS AS PER THE DIRECTIONS OF
THIS HON'BLE COURT ON BEHALF OF THE CITIZENS FOR JUSTICE AND
PEACE (PETITIONERS & APPLICANTS)**

MOST RESPECTFULLY SHOWETH:

1. That the aforesaid matters arise out of various incidents relating to the communal riots which took place in various parts of Gujarat starting February 2002.
2. That on March 26, 2008, this Hon'ble Court was pleased to appoint a Special Investigation Team (SIT) which has submitted its report on the of March 3, 2009.

3. That the copy of the report has been made available to the State of Gujarat and the learned Amicus Curiae.

4. The matter was listed for the 13th of April 2009 for comments from the Amicus and the State of Gujarat. The State of Gujarat filed its brief affidavit wherein it accepted the report of the SIT but made reference to certain portions of the report casting aspersions on Ms. Teesta Setalvad and Advocate Mr. Tirmizi on the ground that they had directed certain witnesses. Since the matter is now reserved for orders, it is most respectfully prayed that these remarks may be expunged as they take the attention away from the main thrust of the matter of providing justice to victims of a violent carnage and also due to the fact that it appears that the quotation from the report is totally out of context with malafide intentions to diminish the efforts made by members of the civil society. This Hon'ble Court may consider giving an opportunity to respond to the maliciously selective leaks being flashed in the media of the SIT report.

5. That while making the suggestions below as directed by this Hon'ble Court, the Citizens of Justice and Peace would like to reiterate that given the malafide actions mentioned above, the pressures on the conduct of the criminal trials are likely to remain given the state of Gujarat's hostile and unreasonable attitude. Transfer of these trials remains the best remedy under the circumstances. Hence only if the prayer in the NHRC petition for transfer out of the State of Gujarat is not being granted, Special steps including Day to Day Observation by independent Observers in each of the trials appointed directly by this Hon'ble Court, would be required to ensure, that the trials having reached this stage are not subverted.

SUGGESTIONS

DESIGNATED COURTS

1. A special designated court presided by judges being handpicked by a collegium of three senior most judges of the High Court of Gujarat with further direction to appoint Special Prosecutors as needed with further direction to adopt procedures for the conduct of the trial/proceedings in such manner that the traumatized condition of many of the victims, particularly women and children, is not aggravated and they are protected from the trauma or threat/intimidation.

2. To ensure the sanctity of due process and free trial, it is imperative that this Hon'ble Court directs SIT to record statements of all witnesses under Section 164 of the Cr.P.C. It is also desirable that this process be conducted with discretion and protecting the safety of the survivors and witnesses. This Hon'ble Court may direct for specific steps to be taken to assure the above.

PROSECUTORS

1. It is submitted that it has been noticed in the past that public prosecutors appointed by the State in many of the cases relating to the violence of 2002 were actually in collusion with the accused. Even an advocate appointed to assist in the proceedings before this Hon'ble Court was an advocate for the accused in one of the riots cases. In view of the above, most witnesses do not have any confidence in the prosecutors appointed by the State of Gujarat.

2. This Hon'ble court in the case of Zahira Sheikh and another versus State of Gujarat and Others [2004 4 SCC 158] had directed that the prosecutors be appointed in consultation with the victims. It is most respectfully prayed that this Hon'ble Court may grant that liberty to the victims and the civil society groups supporting them to hand over the list of those names to the SIT who may appoint them. A list of Prosecutors who may be considered for appointment as prosecutors are annexed hereto as **Annexure A**. In view of the past conduct and the apprehensions which the victims and others have a list of prosecutors and judges who have been involved in these cases and who may not be currently associated are also annexed hereto as **Annexure B**.
3. In the amendment to the Code of Criminal Procedure notified on January 7, 2009, the victims have a right to appoint their advocate to participate in the trials and represent the victims. According to the Code of Criminal Procedure (Amendment) Act, 2006 – amendment to section 24 (8) of the principal Act that says, “Provided that the Court may permit the victim to engage an advocate of his choice to co-ordinate with the prosecution in consultation with the Central Government or the State Government, as the case may be, under this sub-section.”. The Hon'ble Court may direct that this legal remedy be allowed to all the victims in this case to ensure the due course of justice.
4. That if this Hon'ble Court orders that the trials continue in the state of Gujarat it orders that as far as the serious offences within Ahmedabad are concerned (Gulberg Society, Mehganinagar & Naroda Patiya and Gam are concerned). Specially Designated

Courts be created at Mirzapur and Bhadra for the trials; that as far as the two offences in Mehsana are concerned the Court be designated at Himmatnagar, Sabarkantha and as far as the Odh crimes are concerned the Court be designated at Anand.

VICTIM PROTECTION

1. The legality of the victim protection is not being submitted in detail herein in view of the written submissions filed by other parties.
2. It is submitted that it is important that the SIT in co-operation with the Central para military forces, not the Gujarat state police, provide secure transport to all the witnesses from their residence to the Court on all the dates they are required to remain present and continue to provide protection to them in the court premises.
3. In order to ensure that persons supporting the accused conduct themselves in the Court, it is prayed that the premises where the trials are conducted be secured with electronic monitoring devices both inside the court rooms and in the waiting areas which would act as a deterrent for any violent behaviour.
4. That on 21.4.2004, this Hon'ble Court had ordered that protection be provided to Ms.Teesta Setalvad and all the witnesses by the Central paramilitary forces. It is also submitted that Mr. Suhel Tirmizi, Advocate was also directed to be provided protection. It is humbly prayed that the protection granted in terms of that order be continued till such time the trials are concluded. A true copy of the

order dated 21.4.2004 is annexed hereto and is marked as **Annexure C.**

5. Victim protection to be given to ensure that summons reach the victim on time without any intimidation. Victims are able to reach the court without any physical restraint, restrict the number of supporters who will remain present in the court with option given to victims to take 2-3 support persons with them, ensure separate, secure transport and access for the victims to reach the court and provide protection to the victims till the final outcome of the trial. Protection to be provided from CISF and CRPF security to be made available in the court during the process of the trial.

MONITORING THE TRIALS

1. In the case of Paramjit Singh , this Hon'ble Court had directed that the trials be monitored by the National Human Rights Commission. It is humbly prayed that even these trials be monitored by a committee comprising of retired judges. The Monitoring Committee would also be in a position to receive complaints of any misbehaviour from the prosecutors or the police during the pendency of the trials to ensure that the trials are conducted in a free and fair manner. This Hon'ble Court may consider appointing one observer per trial to monitor the entire trial. A list of Hon'ble retired judges are annexed hereto for consideration by this Hon'ble Court for appointment as observer(s) as **Annexure D.**

2. This Hon'ble Court may also consider monitoring the progress of the trials on a broader aspect and lay down a time frame for the trials to be completed.

RECORDING OF EVIDENCE

1. In cases where a witness feels intimidated and is unable to depose, she may be allowed to depose through video conferencing on an application made on her behalf. In cases where there are specific threats to witnesses recording of evidence by video-recording be specifically directed in such a way that the location of the witness is not made public.
2. As far as possible, the Courts should direct that cross examination should be conducted by the advocates for the accused in a coordinated manner to ensure that a witness is not harassed by many advocates in one case. The Court should direct the group of lawyers appearing for the accused to agree on a lead counsel who would conduct the detailed cross examination and others would ask specific questions relating to their client.
3. The number of lawyers who would remain present on behalf of the accused should also be restricted to ensure that the witnesses do not get intimidated by a large group of defense lawyers.

GODHRA TRAIN BURNING INCIDENT

[T.P.(CRL) No.194-202 & 326-329/2003 & TP(CRL) NO. 66-72/2003]

1. It is submitted that in the cases of the Godhra train burning incidents and the trial related to this tragedy, the issues are slightly different (POTA has been invoked). This Hon'ble Court may take into consideration the orders passed by this Hon'ble Court in matter relating to the said incident as the same might have a bearing in the trial of the case.
2. On May 16, 2005, the Central POTA Review (CPRC) Committee recommended that POTA could not be applied to the Godhra carnage criminal cases.
3. On February 22, 2007, in Criminal Appeal No. 113 of 2005 this Hon'ble court has given liberty to the undertrials in the Godhra Case to file bail applications before this Hon'ble Court, given the fact that as many as 85 under trial accused have been in jail for over five years at the time (now its over seven years). A true copy of the order is annexed hereto and is marked as **Annexure E**.
4. On February 12, 2009 the Gujarat High Court in Special Criminal Application No. 504 of 2008 confirmed the opinion of the Central POTA Review Committee (CPRC). This Hon'ble Court recognised that the decision of the High Court based on the report of the Central POTA Review Committee (CPRC) amounts to a deemed withdrawal of POTA. Hence, while admitting the appeal of the state of Gujarat against the High Court order, this Hon'ble Court has not

stayed the matter and merely issued notice to the respondents. A copy of the order is annexed hereto and is marked as **Annexure F**.

5. Meanwhile, the Special POTA Court Ahmedabad by its order dated March 6, 2009 has transferred the record and papers (R & P) of all the cases arising out of 1st C.R. No. 09/02, Godhra Railway Police Station to the Sessions Court Panchmahal following the order and directions of this Hon'ble Court dated December 1, 2008. A true copy of the order dated 1.12.2008 in Criminal Appeal No. 1651-1652 of 2008 is annexed hereto and is marked **Annexure G**. It is further stated that the Hon'ble Sessions Court Godhra has already received all Records & Proceedings from the erstwhile POTA court on 8th April 2009. Furthermore, Sessions Case Numbers 69/2009 to 86/2009 have also been assigned to the aforesaid cases and bail applications are about to be heard. Territorial jurisdiction requires that this trial be held at Godhra, Panchmahals.

6. Since these matters have already proceeded following orders of this Hon'ble court, the said court may be continued for these matters. On the basis of the order of this Hon'ble Court dated 21.10.2008 in Criminal Appeal No. 1113 of 2005, The POTA Court has already been disbanded and all records and proceedings have been transferred to the Sessions Judge, Panchmahal, Godhra. The Sessions Case Numbers 69/2009 to

7. 86/2009 have been assigned. Hearing of bail applications are filed and about to begin.

Filed by:

(Aparna Bhat)

New Delhi

Annexure -A

List of Public Prosecutors for consideration by this Hon'ble Court:

Naina Bhat, Ahmedabad

Anoop Pandey, Mumbai

Yakub Sheikh (Kalupur, Ahmedabad),

S M Vora (Khamasa, Ahmedabad),

I M Munshi (Raikhad, Ahmedabad),

R Z Sheikh (Juhapura, Ahmedabad) ,

Afzalkhan Pathan (Ahemdabad),

A A Sheikh (Juhapura, Ahmedabad)

Virendra Parikh (Mumbai)

Jayesh Yagnik (Mumbai)

Annexure-B

List of Judges and Public Prosecutors who have been involved in these cases and who may not be currently associated:

1. D. R. Shah, (Then Addl. Sessions Judge, Mehsana) in CR 46/2002 Vijapur (Sardarpur case);
2. H. M. Shah (Then Addl. Session Judge, Camp – Anand) in CR 23/2002 Odh Anand (Khambolaj Police station);
3. M. R. Patel (Then Joint. District Judge, Fast Track Court, Anand; CR 23/2002 Odh Anand (Khambolaj Police station);
4. B. M. Modi in (Then Addl. Session Judge, Camp – Anand) in CR 23/2002 and CR 27/2002 Odh Anand (Khambolaj Police station);
5. N. N. Thakore (Then Second Joint District Judge & Addl. Sessions Judge, Camp – Anand) CR 23/2002 and CR 27/2002 gave bail Odh Anand (Khambolaj Police station).

List of Public prosecutors :

1. Chetan Shah
2. PP Atre
3. Vinod Gujjar
4. Dilip Trivedi
5. S. C. Shah
6. M. S. Pathak in Odh

ANNEXURE-C

W.P.(Crl.)No. 109 OF 2003

ITEM No. 1,2 and 3

Court No. 1

SECTIONS PIL, XVIA,
X & IIA

S U P R E M E C O U R T O F I N D I A R E C O R D O F P R O C E E D I N G S

Writ Petition(Crl.) No. 109 of 2003

NATIONAL HUMAN RIGHTS COMMISSION
(s)

Petitioner

VERSUS

STATE OF GUJARAT & ORS.
(s)

Respondent

(With appln. for directions, exemption from filing O.T.,
intervention,
and office report)

[With Crl. M.P. Nos. 3740-42 of 2004 For directions]

[With note dated 27.2.2004 submitted by learned Amicus Curiae
with regard to entrusting the Union of India with the responsibility
of providing appropriate protection to all the witnesses involved in
the major trials in the State of Gujarat (including the Bilki's case)
in the manner in which they consider appropriate including wherever
necessary by resort to the central forces]

With

T.P.(Crl.) Nos. 194-202 of 2003 and 326-329 of 2003

(With appln. for stay, exem. from filing copies of F.I.R., permission
to submit additional documents, impleading party and office report)

S.L.P.(Crl.) No. 3770 of 2003

(With application for filing additional facts, documents, directions,
permission to place additional facts, documents on record and office
report)

[Alongwith letter of Mr. Harish N. Salve, Sr.Adv.(A.C.)]

[Crl. M.P. Nos. 8165 and 8198 of 2003]

W.P.(Crl.) Nos. 11-15 of 2003

(With appln. for permission to submit additional document(s),
directions and office report)

[Alongwith the records of W.P.(C) Nos. 530 of 2002 and 221 of 2002]

S.L.P.(Crl.) No. 4409 of 2003

(With appln. for stay and office report)

W.P.(Crl.) No. 216 of 2003

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T.P.(Crl.) Nos. 66-72 of 2004

(With appln. for permission to file T.P., ex-parte stay, directions,
taking additional document on record and amendment of the petition)

W.P.(C) No. 221 of 2002
(With appln. for interim relief and amendment of the petition)

W.P.(Crl.) Nos. 37-52 of 2002
(With appln. for amendment of the petition, permission to submit
additional document(s), exemption from filing O.T., interim
directions
and office report)

W.P.(Crl.) No. 284 of 2003

T.P.(Crl.) No. 43 of 2004
(With appln. for ex-parte stay, exemption from filing O.T.
and office report)

Date : 21/04/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE S.H. KAPADIA

Amicus Curiae Mr. H.N. Salve, Sr.Adv.
Mr. B.V. Desai, Adv.

For Petitioner (s) Mr. Ram Jethmalani, Sr.Adv.
Mr. Mihir Desai, Adv.
Ms. Aparna Bhat, Adv.
Mr. P. Ramesh Kumar, Adv.

Mr. P.P. Rao, Sr.Adv.
Mr. S. Muralidhar, Adv.
Mr. Rajat Khosla, Adv.
Mr. Somiran Sharma, Adv.
Mr. Amit Sharma, Adv.

Mr. Huzefa Ahmadi, Adv.
Mr. Ejaz Maqbool, Adv.
Mr. Nakul Dewan, Adv.
Mr. Abhimeet Sinha, Adv.
Ms. Minakshi Nag, Adv.

Ms. Indira Jaising, Sr.Adv.
Mr. Farheen Syeed Kapia, Adv.
Mr. E.C. Agrawala, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawal, Adv.

Mr. Naveen R. Nath, Adv.

...3/-

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For Respondent (s) Mr. K.N. Raval, SG
Mr. L.N. Rao, ASG
Mr. A. Mariarputham, Adv.
Mr. Prateek Jalan, Adv.
Ms. Sushma Suri, Adv.
Mr. Rajeev Sharma, Adv.
Mr. Amit Mahajan, Adv.
Mr. Saurabh Kirpal, Adv.

Mr. Mukul Rohtagi, ASG
Mr. Kamal Trivedi, Addl. Adv. General, Gujarat
Ms. H. Wahi, Adv.

Mr. C.D. Singh, Adv.

Dr. Nafis A. Siddiqui, Av.

Mr. Imtiaz Ahmed, Adv.
Ms. Nagma Imtiaz, Adv.
Mr. Kamran Malik, Adv.
Mr. V.N. Raghupathy, Adv.

Mr. Niya Ramakrishna, Adv.
Ms. Anitha Shenoy, Adv.
Ms. Shilditya, Adv.

Mr. S.N. Bhat, Adv.

Mr. Sushil Kumar Jain, Sr.Adv.
Mr. Nikhil Goel, Adv.
Mr. V.N. Patel, Adv.
Dr. Kailash Chand, Adv.

Mr. Sushil Kumar, Sr.Adv.
Mr. Adolf Mathew, Adv.
Mr. Sanjay Jain, Adv.

Mr. Sharad Vakil, Adv.
Mr. Nikhil Goel, Adv.
Mr. Rashmikumar Manilal Vithalani, Adv.

Mr. K.T.S. Tulsi, Sr.Adv.
Mr. Sumit Goel, Adv.
Mr. P.H. Parekh, Adv.
Mr. Sanad Ramakrishnan, Adv.
for M/s. P.H. Parekh, Adv.

Mr. R.K. Adsure, Adv.

Ms. Neeru Vaid, Adv.

Mr. Rajan Narain, Adv.

Ms. Sheela Goel, Adv.

Mr. A.D.N. Rao, Adv.

...4/-

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UPON hearing counsel the Court made the following
O R D E R

T.P.(Crl.) Nos. 326-329 of 2003:

Issue notice on these amended petitions.

In addition to normal mode of service, the accused-respondents shall also be served by dasti through the office of the Director General of Police, Gujarat.

Alongwith the notice, a copy of the transfer petitions shall also be served on all the accused and the acknowledgment of receipt of such notice shall be filed alongwith the affidavit of service in this Court.

T.P.(Crl.) Nos. 66-72 of 2004:

The application for amendment is allowed.

Issue notice on the amended petition.

Let the unserved respondents be served dasti in addition to the normal mode service through the office of the Director General of Police, Gujarat within a period of six weeks. The notice shall indicate that the accused who intend to file counter affidavit, may do so within a period of four weeks from the date of receipt of such notice.

...5/-

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T.P.(Crl.) 43 of 2004:

Issue notice.

The petitioner is permitted to amend the transfer petition. In case any such application is filed, notice shall also go to the accused-respondents.

Tag with Transfer Petition (Crl.) Nos. 194-202 of 2003.

In addition to the aforesaid, notice in all the above matters, shall also be published in two daily newspapers consecutively for two days; one 'Sandesh' (in Gujarati) and the other 'The Times of India' (in English). This exercise may also be completed by the State of Gujarat within a period of six weeks.

List these matters on 3rd August, 2004, alongwith T.P.(Crl.) Nos. 194-202 of 2003, before a Bench of Hon'ble Ms. Justice Ruma Pal, Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice S.H. Kapadia.

W.P. (Crl.) No. 109 of 2003:

Issue notice of all the States and Union Territories confined only to the question of protection to the witnesses in the criminal cases.

List this petition on 12th July, 2004, for directions.

...6/-

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Crl.M.P. Nos. 8198 and 8165 of 2003 in S.L.P.(Crl.) No. 3770 of 2003:

Shri K.N. Raval, learned Solicitor General, stated that the Government of India has already passed an order providing security to Ms. Teesta Setalvad. So far Suhel Tirmizi and Raees Khan Azeekhan Pathan are concerned, we direct the Director General of Police, Gujarat to provide adequate personal security. Let this order be complied with forthwith.

The criminal miscellaneous petitions are disposed of.

Let a note dated 27th February, 2004, filed in W.P.(Crl.) No. 109 of 2003, of learned Amicus Curiae be treated as Criminal Miscellaneous Petition.

Issue notice.

Notice has been accepted by Ms. Sushma Suri, learned counsel.

List this petition on 5th May, 2004.

Criminal Miscellaneous Petition Nos. 3740-3742 of 2004, Writ Petition(C) No. 221 of 2002, Writ Petition (Criminal) Nos. 284 of 2003, 37-52 of 2002 and 11-15 of 2003:

List on 6th August, 2004.

...7/-

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S.L.P.(Crl.) No. 4409 of 2003 and Writ Petition (Crl.) No. 216 of 2003:

List on 3rd August, 2004.

S.L.P.(Crl.) No. 3770 of 2003:

List on 12th July, 2004.

[Alka Dudeja]
Court Master

[Janki Bhatia]
Court Master

Annexure-D

Ombudsman/Monitoring Team:

Justice Ravani (retired), Ahmedabad

Justice RA Mehta (retired), Ahmedabad

Justice Kolse Patil (former High Court Judge), Maharashtra

Justice KK Usha (retired), New Delhi

Justice Sujata Manohar (retired from the Supreme Court)

Annexure G

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P.NO.5643-5647 OF 2007
(@CRIMINAL APPEAL NO.1651-1652 OF 2008)

ANUSUYABEN SADASHIV JADAV AND ANR.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

WITH CRL.M.P.NO.4506/2007 @ CRL.A.NO.1113/2005, 5639 -5642, 5648-49/2007, 5981-5986/2007, 8315/2007, AND 15724-15725/2008 IN CRL.A.NOS.1651-1652/2008

ORDER

CRL.M.P.NOS.4506/2007 @ CRL.A.No.1113/2005, CRL. M.P.NOS.5639, 5640, 5641 AND 5642 OF 2007 @ CRL.A.NOS.1651-1652/2008, which are connected cases, are also taken on board, at the request of learned counsel.

2. These are bail applications/applications for impleadment by the accused petitioners filed in POTA/criminal cases pending on the files of Special POTA Judge, Sabarmati, Ahmedabad and other courts in regard to POTA cases registered with Godhra police station, , Crime Branch, Ahmedabad City and Ellisbridge Police Station, Ahmedabad. In some of these cases, bail applications were rejected by the Special Judge and in some cases the same were rejected by the High Court and in some other cases by this Court.

3. Subsequently the Prevention of Terrorism (Repeal) Act, 2004 (for short 'the Repealing Act') was enacted. Certain provisions of the said Act were challenged. This Court, by judgment dated 21.10.2008, upheld the validity of Section 2(3) and (5) of the

Repealing Act and also passed the following directions :

1. "the judgments under challenge to the extent they declare Section 2(3) and of the Repealing Act are not unconstitutional, are upheld;

2. the judgments under appeal are set aside to the extent they hold that in spite of deemed withdrawal of the cases, the procedure under Section 321 of the Code has to be followed for withdrawal;

3. the appeals filed by POTA accused are allowed in part accordingly. The appeals by the relatives of victims are disposed of reserving liberty to challenge the opinions of the Review Committee, wherever they are aggrieved;

4. We do not express any opinion on the merits of the cases of the POTA accused or in regard to the opinions expressed by the Review Committee." In the light of the said judgment, upholding the deemed withdrawal of cases under POTA, the bail applications filed by the accused have to be considered afresh. In all these cases wherever the Review Committee has recorded its opinion that there is no prima facie case for proceeding against the accused, the accused are not to be tried under the provisions of the POTA. However, these accused have also been charged in regard to several non-POTA offences and these offences will have to be tried by regular Sessions Judges (or CBI Court). By virtue of Section 33 of the POTA, the Sessions Judge has to proceed with these cases as if he had taken cognisance of these offences.

4. We, therefore, direct the POTA Special Judge, Sabarmati, Ahmedabad or other courts where the cases of applicants are pending to send all those cases to the respective Sessions Judge within a period of one month of receipt of a copy of this order. This is subject to the order, if any, that may be passed by any competent court against the opinion of Central POTA Review Committee.

5. All these petitions/applications for bail/impleadment are permitted to be withdrawn with liberty to move for bail before the concerned Sessions Court after the records are received on transfer. In the event of filing such applications, the Sessions Judge shall consider the same on merits untrammelled by the observations, if any, made by the superior courts in any bail application filed by these respective petitioners.

6. POTA Case No.12 against Crime NO.6 of 2003 in the Crime Branch, Ahmedabad city and POTA Case No.10 against Crime No.272/03 in Ellisbridge Police Station, C.B.I. Court, on transfer are to be tried by the Sessions Judge having jurisdiction.

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7. Learned counsel for the petitioners submit that these petitioners are under-trial prisoners since April, 2003. The respective Sessions Judge will consider this fact and dispose of the matters as expeditiously as possible.

.....CJI.
K.G. BALAKRISHNAN)

.....J.
(R.V. RAVEENDRAN)

.....J.
(DALVEER BHANDARI)

NEW DELHI;
1ST DECEMBER, 2008.

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