

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
(DISTRICT – JAMNAGAR)**

Special Criminal Application No. 2101 of 2011

Sanjiv Rajendra Bhatt, IPS

...Petitioner

Versus

State of Gujarat & Others

...Respondents

ADDI-TIONAL AFFIDAVIT ON BEHALF OF THE PETITIONER

I, Sanjiv Rajendra Bhatt, do hereby solemnly affirm on oath and state as under that;

1. That I am the petitioner of Special Criminal Application No. 2101 of 2011. The present affidavit is filed for the purpose of replying to the allegations made by the respondents, during the course of hearing on 23.09.2011, regarding the suppression of material facts by the petitioner. The petitioner by way of this affidavit would also like to bring some germane facts and important events on record. I state that I was personally present in the court room during the course of the hearing on 23.09.2011.

2. That in November 2003, the petitioner was posted as the Superintendent of Police in-charge of Sabarmati Central Prison.

The petitioner, at the relevant time had come across very important documentary evidence regarding to the role of certain highly placed State functionaries/politicians and senior police officers of the State of Gujarat in the killing of Shri Haren Pandya. The said documentary evidence was immediately forwarded under a report to the Home Department, Government of Gujarat for further appropriate action as required by law. On the very same afternoon, the petitioner received a phone call from the then Minister of State for Home, Shri. Amit Shah, expressing severe displeasure about the report and documentary evidence forwarded to the Home Department by the petitioner. It was further conveyed to the petitioner that the report under which the unsavoury documentary evidence was forwarded to the Home Department should be immediately destroyed and obliterated. In view of the above referred telephonic instructions, the petitioner thought it fit and prudent to immediately send another report, along with a copy of the said documentary evidence, directly addressed to the Minister of State for Home, Shri. Amit Shah himself; thereby placing on record the telephonic conversation and also ensuring that the said crucial evidence was not disregarded or destroyed by interested parties. The petitioner has intentionally refrained from disclosing the details of the said evidence in this affidavit as he would be required to depose before other legally empowered, appropriate forums in due course of time.

3. I state that the Chief Minister, Shri. Narendra Modi and the then Minister of State for Home, Shri. Amit Shah were highly

disturbed and agitated by the act of the petitioner, whereby the above referred evidence was kept on record despite their instructions to the contrary. The petitioner was time and again directed to withdraw the communication by which the said evidence was placed on record. The petitioner having taken an unobliging stand, had refused to comply with the illegal verbal directions and was consequently transferred by the Chief Minister from the post of Superintendent of Police in-charge of Sabarmati Central Prison, in November 2003 itself, within a period of under two and a half months and was kept without any posting.

4. That from November, 2003 onwards the petitioner was repeatedly sought to be persuaded by the Chief Minister, Shri. Narendra Modi and the then MOS Home, Shri Amit Shah to facilitate the withdrawal and/or destruction of the communication sent by the petitioner in his capacity as the Superintendent of Police in-charge of Sabarmati Central Prison, delineating the role of certain highly placed State functionaries/politicians and senior police officers of the State of Gujarat in the killing of Shri Haren Pandya. Despite strong and coercive persuasion, the petitioner as being duty bound, refused to connive in or facilitate the act of withdrawing and/or destroying the communication sent by him in his capacity as the Superintendent of Police in-charge of Sabarmati Central Prison. It is submitted that the petitioner had maintained contemporaneous records of these events.

5. I state that on 27.09.2004, as a part of their ongoing coercive tactics and measures, the Legal Department of the State, at the instance of the Home Department headed by the Chief Minister Shri. Narendra Modi, wrote a letter to the Public Prosecutor at Jamnagar, directing him to withdraw the Criminal Revision Application No. 21 of 1996. In pursuance to the said communication, on 26.10.2004, the Public Prosecutor made an application below exhibit – 43, to the learned Sessions Judge Jam-Khambhalia, requesting for the matter to be taken on board. The said request being granted, an application was filed on the very same day seeking withdrawal of the Criminal Revision Application No. 21/1996 with a prayer to dispose of the same accordingly below exhibit – 44. The learned Sessions Judge passed the following order below the said application: “Issue notice to all concerned parties and fix for hearing on 20.11.2004”.

The petitioner immediately made a written representation to the Government of Gujarat against the arbitrary and vindictive decision of the Legal Department, dated 27.09.2004, directing unilateral withdrawal of Criminal Revision Application No. 21 of 1996. The orders passed and directions issued by this Honourable Court on 06.02.2004 in Criminal Miscellaneous Application No. 4964 of 2003 filed in Special Criminal Application No. 43 of 1996; as well as the order passed and directions issued by this Honourable Court on 13.02.2004 in Special Criminal Application No. 164 of 2004, were also brought to the notice of the Government of Gujarat by the petitioner. A copy of

the petition memo of Special criminal Application No. 164 of 2004 is annexed herewith and marked as **Annexure A-1** to this additional affidavit. Consequentially, at the instance of the Home Department; another communication dated 28.03.2005 was sent by the Legal Department, rescinding their earlier instructions dated 27.09.2004, and thereby once again directing the Public Prosecutor Jamnagar to continue and proceed with the Criminal Revision Application No. 21 of 1996 filed by the State of Gujarat.

Thereafter on 09.07.2009, after a lapse of nearly four years and eight months, the Public Prosecutor submitted a *pursis* below exhibit -53 and placed on record, the above referred communication of the Legal Department dated 28.03.2005, by which the instructions contained in the earlier Legal Department communication dated 27.09.2004 were rescinded and the learned Public Prosecutor Jamnagar was directed to continue and proceed with the Criminal Revision Application No. 21 of 1996. The learned Public Prosecutor stated in the said *pursis* that the State Government had decided to continue and proceed with the Criminal Revision Application No. 21 of 1996.

6. I state and submit that in November 2005, the petitioner learnt about the killing of Sohrabbudin Shaikh in a staged police encounter. In December 2006, the petitioner came to learn about the killing of Tulsi Prajapati in a similarly enacted encounter jointly carried out by the police officers of Gujarat and Rajasthan. The subsequent arrest of Shri. Abhay Chudasma and Shri Amit Shah in 2010 by the CBI in connection with the killing

of Sohrabuddin Shaikh and his wife Kausarbi, fortified the suspicion in the mind of the petitioner about the real motives behind the efforts undertaken by Shri. Narendra Modi and Shri. Amit Shah to persuade the petitioner for facilitating the withdrawal/destruction of the communication referred to in paragraphs no. 2 and no. 3 above. The petitioner respectfully submits that he is under legal advice not to divulge further details about the said matter except before an appropriate statutory body or agency legally empowered to investigate into the real conspiracy and motive behind the killing of Shri Haren Pandya.

7. I state that in the meanwhile, on 11.08.2008 the petitioner along with other accused police officers filed an application, being Miscellaneous Criminal Application No. 485 of 2008, before the learned Sessions Judge, Jamnagar, praying for transfer of both the matters, viz. Sessions Case No. 35/2001 and Criminal Revision Application No. 21/1996 to one Court. It was stated in the said application that the aforesaid two proceedings, pertaining to the same matter and arising out of the same cause, were before two different Courts and it would cause great prejudice to the rights of the accused persons if one Court frames the charge in Sessions Case No. 35 of 2001 and proceeds without the other Court first deciding the Criminal Revision Application No. 21 of 1996 filed by the State of Gujarat. On 18.11.2008 the learned Sessions Judge granted the prayer of the petitioner and transferred the said Sessions Case No. 35/2001 to

the Court of FTC No. 1, Jam-Khambaliya viz. the Court before which the Criminal Revision Application No. 21 of 1996 filed by the State of Gujarat was pending final adjudication and pronouncement of order. A copy of the said application and the order is annexed herein and marked as **ANNEXURE – A2** to this additional affidavit.

8. I submit that the respondents had stated during the course of arguments of this Special Criminal Application on 23.09.2011, that the petitioner has filed an independent Criminal Revision Application challenging the order dated 20.12.1995 passed by the learned JMFC Jamjodhpur and hence the petitioner is not entitled to get any relief in the present Special Criminal Application. The respondents also accused the petitioner of not disclosing the said fact in this Special Criminal Application.

With reference to the above allegations, the petitioner most humbly states that on 15.07.2011, despite the objections of the petitioner and other co-accused, the Learned Sessions Judge allowed the State to unilaterally and arbitrarily withdraw the Criminal Revision Application No.21 of 1996. The petitioner and other accused police officers were thus once again suddenly rendered vulnerable to the *mala fide* machinations of highly vindictive State machinery, which all of a sudden, was extremely overenthusiastic and unusually keen on getting charges framed against the petitioner, as expeditiously as possible. It is the knowledge and belief of the petitioner that the sudden reversal of stand and overzealous attitude of the Public Prosecutor Jamnagar has been kindled, inspired and brought about at the

behest and instance of highly placed persons in the Government of Gujarat including the Chief Minister Shri. Narendra Modi, certain senior bureaucrats and high ranking law officers of the State of Gujarat who are still in very close and regular contact with Shri. Amit Shah.

The petitioner states and submits that an appropriate inquiry by this Honourable Court will bring out the collusion between the highest officials of the State Executive, senior bureaucrats, selected law officers of the state and the respondent no. 2.

9. In the backdrop of the above stated circumstances, the Advocate of the petitioner, with a view to safeguard the interest of the petitioner and other co-accused police officers, contemplated the filing of a yet proposed Criminal Revision Application challenging the order of the JMFC Jamjodhpur dated 20.12.1995; and accordingly, immediately resorted to the filing of an application for Condonation of Delay, on the very same day itself viz. 15.07.2011. The said application for Condonation of Delay has come to be numbered as Miscellaneous Criminal Application No. 212 of 2011. The application for Condonation of Delay has been strongly opposed by the respondents and is yet to be decided by the learned Sessions Court. Copies of the Miscellaneous Criminal Application No. 212 of 2011 along with the reply of the complainant, as well as the yet proposed Criminal Revision Application are annexed and marked as **Annexure-A3** to this additional affidavit.

I state and submit that the proposed Revision Application contemplated by the petitioner and other accused police officers will come into existence, *if and only after*, the Sessions Court condones the delay and decides the Miscellaneous Criminal Application No. 212 of 2011 in favour of the petitioner and not otherwise.

I state and submit that the Respondent No. 1, the State of Gujarat, in their Affidavit-in-Reply filed on 19.09.2011, has consciously and deliberately chosen not to refer to the pendency of Miscellaneous Criminal Application No. 212 of 2011 for condonation of delay is pending before the Sessions Court at Jam-Khambhaliya and has instead made a factually incorrect averment that a Criminal Revision Application is pending before the learned Sessions Court Jam-Khambhaliya. The petitioner states that the Respondent No.1 has indulged in this subterfuge with the clear intention of misleading this Honourable Court.

The petitioner begs to draw the attention of this Honourable Court to his earlier affidavit dated 07.09.2011 where he had annexed the Order passed by the learned Sessions Court below Exhibit-68. The said Order dated 06.09.2011 also does not take into consideration or carry any mention about the proposed Criminal Revision Application as the same does not exist till date.

The petitioner states and submits that during the course of this hearing the petitioner had submitted an elaborate List of Dates wherein it was very clearly mentioned that the petitioner had sought to file a Criminal revision Application and that the

application for condonation of delay was pending for hearing before the learned Sessions Court.

The petitioner begs to most humbly reiterate that the proposed Revision Application contemplated by the petitioner and other accused police officers will come into existence, *only after*, the Sessions Court condones the delay and decides the Miscellaneous Criminal Application No. 212 of 2011 in favour of the petitioner and not otherwise.

10. I state and submit that on 15.07.2011, after the learned Sessions Court allowed the State of Gujarat to unilaterally and arbitrarily withdraw the Criminal Revision Application No. 21 of 1996, the advocate of the petitioner immediately moved another application before the learned Sessions Court requesting it to stay the said order permitting withdrawal of the Criminal Revision Application No. 21 of 1996 for a period of 90 days in order to enable the petitioner and other police officers to apply for certified copies of the proceedings and challenge the said order before an appropriate higher judicial forum. The said application was also strongly objected by the Public Prosecutor Jamnagar. However, the learned Sessions Court was pleased to grant time of 30 days to the petitioner and other accused Police officers to approach this Honourable Court. The advocate of the petitioner immediately applied for certified copies of the proceedings of Criminal Revision Application No. 21 of 1996 on the very same day viz. 15.07.2011 itself. It may kindly be noted that the certified copies were not made available till 15.08.2011

and therefore the petitioner was constrained to file this Special Criminal Application on 16.08.2011 without the certified copies of the impugned order and proceedings

I state that the respondents, have on the one hand, opposed the Application for Condonation of Delay before the Sessions Court; and on the other hand, are pressing for dismissal of the present Special Criminal Application without entering into merits of the present petition, on the misconceived ground and misleading argument that a Criminal Revision Application filed by the petitioner is pending before the Sessions Court. Whereas, the factual position as clarified hereinabove, is that only the Miscellaneous Criminal Application No. 212 of 2011, praying for Condonation of Delay is pending before the learned Sessions Court and the proposed Criminal Revision Application is still under contemplation and has not yet come into existence. It is therefore apparent that the respondents are making all possible attempts to mislead this Honourable Court and render the petitioner absolutely remediless.

The petitioner states and submits that the present Special Criminal Application is filed with two main prayers, one being the prayer to quash and set aside the communication of the Legal Department dated 06.07.2011; and the other being the prayer to quash and set aside the order dated 15.07.2011 passed by the learned Session Judge, allowing withdrawal of the Criminal Revision Application No. 21 of 1996 filed by the State of Gujarat. It is most humbly stated that the proposed Criminal Revision Application contemplated to be filed by the petitioner before the

learned Sessions Court has not yet come into existence; however, even if the delay is condoned and the proposed Criminal Revision Application comes into existence, the prayer contained in the said proposed application is to quash and set aside the order of the JMFC Jamjodhpur dated 20.12.1995. It is submitted that the aforesaid two proceedings are not only distinct and separate but are arising out of completely independent causes of action; therefore, non-disclosure of the fact regarding the pendency of Miscellaneous Criminal Application No. 212 of 2011 viz. the Application for Condonation of Delay, in the humble opinion of the petitioner, would not amount to non-disclosure of a material fact as per the settled law. It is most humbly reiterated that the petitioner is not asking for the same relief in different forums, as the prayers and the reliefs being sought in the current Special Criminal Application before this Honourable High Court and the prayer contained in the Miscellaneous Criminal Application No. 212 of 2011 viz. the Application for Condonation of Delay as well as the proposed Criminal Revision Application under contemplation before the learned Sessions Court Jam-Khambhaliya, are completely distinct from each other. It is most humbly submitted that *either* or *both* the remedies are open and available to the petitioner, and in the given circumstances, neither can be said to be barred by the other. It is most respectfully submitted that this petition is therefore required to be decided on its own merits.

Whatever has been stated hereinabove is true and correct to the best of my knowledge and belief and I have personal knowledge of all the facts stated hereinabove.

Solemnly affirmed on this 27th day of September, 2011 at Ahmedabad.

Deponent