

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: AHMEDABAD

CRIMINAL MISC.APPLICATION NO.13195 OF 2011

State of Gujarat .....Applicant

V E R S U S

Teesta Setalvad ...Respondent

AFFIDAVIT-IN-REPLY OF THE RESPONDENT

I, Teesta D/o Atul Setalvad, Age-56 years, the respondent herein solemnly affirm and stated on oath as under.

1. I am filing this affidavit for limited purpose of opposing the present application.
2. I say and submit that the non denial of any averments made by the applicant would not tantamount to admission. I further submit that at the outset, I deny all and false allegations against me and file my reply accordingly.
3. The respondent herein is at pains to state that the applicant herein has been witch hunting the respondent on one or other ground. This is not the first time that the respondent has been deliberately drawn into malicious and fabricated cases related to the 2002 communal carnage. It is shocking that the applicant has chosen to approach this Hon'ble Court for the cancellation of







anticipatory bail and still, vindictively, pursues even after a lapse of seven years, this spurious issue, whereas the applicant herein has conveniently chosen to decline the opinion of Hon'ble Supreme Court appointed SIT with regard to the filing of Criminal Appeals in a case where 69 innocent people were killed on 28.2.2002 in Gulberg Society and registered as CR No. I- 67/2002 with Meghaninagar Police Station, Ahmedabad. Ultimately, it is only the civil rights and legal rights organisation, Citizens For Justice & Peace, of which the respondent is Secretary, that has had to support the victims who filed Criminal Appeal No. 1539 of 2016 and 1858 of 2016 before this Hon'ble Court and both have been admitted and tagged along with appeals of accused. This has been the pathetic and laggardly attitude of the state of Gujarat. through the past 16 years, when it comes to delivering qualitative and substantive justice to the victim survivors of the 2002 carnage.

4. The respondent herein submits that the order of the Ld. Magistrate referring this private compliant of the courts registrar to the police u/s 156 (3) Cr.P.C. itself is wrong and therefore, in a rare instance, a former lawyer of the Gujarat High Court had given an opinion to the effect that an application should be filed, to challenge the said order of the Ld. Magistrate. Such an application was drafted and was ripe and ready for filing, when, however, the Ld. Advocate was elevated to the bench. Therefore, after intimation of the same, another lawyer filed Misc. Criminal Application No. 1692 of 2011 on 7.2.2011. Ordinarily this



contention would not have been raised here, however, it became necessary to mention the history of this case, that a competent lawyer felt that the complaint could not, with a correct understanding of the law, at all, have been handed over to the police u/s 156(3) Cr.P.C. Once this Hon'ble Court dismissed the above application (with said contentions) the respondent herein had approached the Hon'ble Supreme Court though the present respondent was not a party in the Misc. Criminal Application No. 1692/2011 and the Hon'ble Supreme Court was pleased to admit and stay the proceedings vide order dtd. 02.09.2011. Ultimately, at the time of final hearing one of the contentions of the applicant 'state' was that it was too premature for the present respondent herein to approach the Hon'ble Supreme Court. However the respondent herein was not party to the proceedings in Hon'ble Gujarat High Court and no cognizance was taken against the respondent herein. Thus, the SLP was withdrawn from the Hon'ble Supreme Court.

5. For an effective adjudication of the matter, it is important that the facts are set out in a systematic order for a better appreciation of the case, which are as follows :

5 (A) The respondent and her organisation, Citizens for Justice and Peace, have been supporting, through intrepid legal aid, victims of communal violence for over 16 years. The respondent has filed various petitions before the Hon'ble Supreme Court as well as High Court of Gujarat in support of the victims of the Communal violence that took place in



2002. The organisation had also represented the victim survivors of the Godhra train burning in the Hon'ble Supreme Court.

5 (B) The respondent herein had approached the National Human Rights Commission, after Ms. Zahira Sheikh, a key Prosecution witness who had turned hostile in the Vadodara Court hearing the Best Bakery incident, contacted her explaining that she had been coerced into turning hostile which led to the acquittal of the accused in the Best bakery case. The NHRC, subsequent to a formal statement by Ms. Sheikh recounting her ordeal, filed a SLP before this Hon'ble Court, which was converted into a Writ Petition being Writ Petition (Crl.) No.109 of 2003 by this Hon'ble Court.

5(C) The NHRC also filed Transfer Petition (Crl.) No. 194-202 of 2003 seeking transfer of some trials outside the State of Gujarat. The respondent herein filed an intervention application in the Transfer Petition filed by the NHRC. On various dates, in 2003 and 2004, the respondent filed affidavits and copies of affidavits executed by various persons who were victims of the riots wherein they described the violence as it took place according to them. The affidavits executed by various persons (about 64) were filed along with Criminal Misc. Petition in Transfer Petition i.e. T.P. (Crl.) No. 194-202 of 2003 filed by the NHRC, before the Hon'ble Supreme Court to shed light on the violence faced by the victims. These affidavits, as is evident from the statements made by the witnesses, were prepared on the basis of facts as recounted by the witnesses. Since the



affidavits were in English, the contents of the affidavits were explained to them in vernacular and then sworn. Thereafter, the original accused no.1 sent them to the respondent in Mumbai, who sent these affidavits for filing in the Supreme Court. The respondent was not privy to the nuances of the facts as narrated by the victims to the original accused no.1 in Ahmedabad and she relied entirely on him for the purposes of collection of this information. These affidavits were filed as additional documents along with an application for permission to file the documents.

5 (D) On March 26, 2008, the Hon'ble Supreme Court appointed a Special Investigation Team (SIT) in W.P. (Crl) No. 109 of 2003 (filed by NHRC) and other connected matters directing that it submit a report on the 9 trials, which were earlier, stayed by this Hon'ble Court. One of the incidents was an incident that took place in Naroda Gaam. On May 1, 2009, by a judgment and order, the Hon'ble Supreme Court directed the SIT to file supplementary charge sheets in all the 9 cases and noted that thereafter, the trials shall commence in Special Courts on a day-to-day basis (reported in 2009 (6) SCC 767). It is pertinent to note that all the trials, except the one concerned in the present case have concluded and in all the cases where the respondent has provided legal aid, there have been convictions. It is also pertinent to note that similar attempts have been made by the original accused no. 1 to similarly level false accusations and delay other criminal trials too, related to the 2002 carnage.



5 (E) During the course of the present trial, many prosecution witnesses have appeared and supported the case of the prosecution. There were over seven witnesses in the trial who had also sworn affidavits which were filed before this Hon'ble Court. During the course of their cross examination by the Defence and they were confronted with these affidavits. In the course of the cross examination, they have differed with certain portions of the affidavit. It is admitted by all these persons that:

- a. They willingly swore the affidavits;
- b. They purchased the stamp paper for executing them;
- c. The affidavits were prepared in their presence;
- d. The contents were read over to them in vernacular;
- e. The respondent herein was not present when the affidavits were prepared;
- f. The facts were narrated by the witnesses to original accused no.1.
- g. Except for a few discrepancies, they stand by the contents of the affidavit;

5 (G) The original accused no. 1 namely Rais Khan, following his termination from the organisation in January 2008, clearly supported by the respondent and a powerful legal team, and others, began to level a series of false allegations against the respondent herein out of sheer vindictiveness. A copy of the list of complaints initiated at the behest of the original accused no.1 is marked herewith as **ANNEXURE –“I”**. He also filed applications under section



311 of the Cr.P.C. in the then ongoing proceedings of the above-mentioned trials. A list highlighting the cases in which he filed 311 applications and their outcome is marked herewith as **ANNEXURE –“II”**. He continues to be fully supported by the current administration of the State of Gujarat and has also been appointed as a member of the Central Wakf Board.

5 (H) The applications were rejected by the concerned trial courts and in one of the cases, the Sardarpura trial (Case No. 275 of 2002), the application filed by the original accused no.1 namely Rais Khan u/s 311 Cr.P.C. was not only dismissed but the Court directed that a prosecution be launched against Rais Khan u/s 177, 182 of IPC with reference to Section 195(1) and 340 (1) Cr.P.C. He challenged the same before the High Court which quashed the order and a SLP against the order of the High Court was also dismissed.

5 (I) The present proceedings at hand stems from the section 311 application filed by the original accused no. 1 in the Naroda Gaam Trial (Case No. 203 of 2009). Upon hearing his application, the Court observed that:

“...the court fails to understand as to how the person who has prepared the false affidavit and who has no sanctity for the ongoing process of justice at the relevant time and who has no regards for the truth, can be trusted/relied for just decision of the case. On the face of the present application itself, the applicant does not make himself credible and reliable to become a prosecution/court witness in any trial or proceeding before this Court as he has made an attempt to play with the administration of public justice and took



participation in preparing the false affidavits to be used in the judicial proceedings before the court.” (Para 12 of the order; page 37 of the SLP)

5(J) Despite these observations, the Court directed that a complaint be made by the Registrar of the City Civil and Sessions Court, Ahmedabad under Sections 193, 194, 195, 196, 199 and 200 and other provisions of the Indian Penal Code against original accused no. 1 named in the FIR and “other persons” and sent it to the competent Court for further proceedings. The said order has been upheld by the High Court and Rais Khan has volunteered to support the prosecution in the said case as per the statement made by him before the High Court. It is the submission of the respondent that while dismissing the application, the trial court misdirected itself in passing directions under Section 340 r/w 195 Cr.P.C.

5(K) At the outset it is submitted that the intent and purpose of submitting affidavits in the transfer petition before this Hon’ble Court was to demonstrate that the manner in which the police were registering the FIRs and recording the statements would ensure that there would be no convictions commensurate to the violence. The respondent did not conduct any investigation. The respondent herein had made submissions before the Hon’ble Supreme Court and the affidavits were filed to merely illustrate the point. The fact that this Hon’ble Court appointed an Amicus Curiae to independently assist the Court and the nine trials were monitored by this Hon’ble Court and the Hon’ble Court has still kept the matter pending clearly demonstrates that the





Hon'ble Supreme Court was convinced that the conduct of the State police was not above board and the trials needed to be monitored.

5 (L) It appears that during the course of investigation, the SIT had taken photocopies of these affidavits and had confronted the witnesses with the statements made in the affidavits before it filed the supplementary charge sheets. The affidavits were, therefore, used by the SIT merely as statements made prior to its investigations. Therefore, the statements made under Section 161 of Cr.P.C. include what SIT had asked the witnesses with regard to their affidavits and these documents were filed under section 294 Cr.P.C. by the SIT. The Section 161 statements became part of the Supplementary Charge Sheet. When the witnesses were confronted during trial with these affidavits, it was with regard to the statements made during investigation. No affidavits were filed by the persons before the SIT or before the trial court.

5 (M) It is submitted that photocopies of a few of the affidavits filed before the Supreme Court were also produced in another trial monitored by this Hon'ble Court. The Learned Addl Sessions Judge in that judgment (Naroda Patiya) recording the findings pertaining to this question, noted that there lies a distinction in the intention and nature of the affidavits executed before the Supreme Court and the deposition given by the same witnesses



before the investigating officer. The Court proceeded to state:

“the reason for which the affidavits were filed before Hon'ble the Supreme Court of India that too, in a transfer petition, is absolutely different than giving statement before the Investigating Officer. Hence it cannot be treated as earlier statement of the PW in the sense that it is not the same thing. In the humble opinion of this Court these affidavits cannot be used to challenge credibility of the witnesses as submitted.”

In the appeal before the Hon'ble Supreme Court, the affidavits indicate no intention to misguide or guide if at all, the Court with respect to the subject matter of the dispute in the trial. Moreover neither the prosecution nor the deponents have relied on these affidavits. The SIT filed these documents along with the entire record of the Supreme Court under Section 294 of the Code even though these are documents that could not have been filed under Section 294. It is only during the cross examination, that the defence had confronted the witnesses with these affidavits as well as other affidavits the victims/witnesses have filed in other forums.

5 (N) That the respondent herein was constrained to approach the Hon'ble Supreme Court by way of a Special Leave Petition being SLP (Crl.) No. 6754-56 of 2011 thereby praying for quashing and setting aside the order dated 03.12.2010 passed by the Ld. Trial Court, Ahmedabad, thereby directing the Registrar, City Civil & Sessions Court to initiate complaint under Sections 193, 194, 195, 196, 199 and 200 and other provisions of the Indian Penal Code against original accused no.1 and



“other persons” and send it to the competent Court for further proceedings.

5(O) That the Hon’ble Supreme Court vide its order dated 06.12.2017 disposed of the Petition filed by the present respondent while directing as follows:

“After arguing at length Mr. Kapil Sibal, learned senior counsel appearing on behalf of the petitioners, on being instructed, submitted that he wants to withdraw these petitions with a liberty to defend at the appropriate stage in accordance with law as and when occasion arises. Without commenting on merits of prayer the statement is placed on record. The Special Leave Petitions are disposed of as withdrawn. Pending application(s), if any, stands disposed of accordingly.”

6 I say and submits that the first Ground of the application states that the impugned judgment and order of the learned Judge is ex-facie illegal, perverse and based without proper appreciation of mind. I say and submit that the use of such harsh words towards the Hon’ble Court amounts to contempt. That there is no perversity in the impugned judgment and order. That the learned Judge granting anticipatory bail was pleased to impose five conditions way back on 02.08.2011 and in ground (D) of the above application the applicant has nowhere mentioned which condition has been breached. The respondent herein has always shown her willingness to co-operate with the investigation. The applicant has wrongly mentioned in ground-(d) that the respondent herein was summoned by the Investigation Officer and



had not co-operated with the investigation. The impugned order is dated 02.08.2011 and as per the best of the knowledge of the respondent herein, there was no summons whatsoever from the police. Therefore, it cannot be said that the respondent had not co-operated with the investigation. Therefore, the above application is required to be rejected in the interest of justice.

7 That merely because the present respondent is the Secretary of one organisation, the applicant herein has no reason to infer that the investigation would be tamper. Thus, these grounds are absolutely imaginary, made to deliberately mislead this Hon'ble Court, and therefore, this is the fit case for rejecting the above application.

8 The applicant has sought rejection of the impugned order on the ground that custodial interrogation would be required. The applicant has wrongly mentioned that by way of filing false affidavit an attempt was made to implicate the innocent persons in the offence of Sessions Case No. 203 of 2009. From the material on record, there is nothing to show that any of the accused of the Sessions Case No. 203 of 2009 was specifically sought to be falsely implicated.

9. That, the Trial Court of Sessions Case No. 203 of 2009 has virtually concluded and at present the same is at the stage of argument of prosecution.

10. That, the applicant has sought rejection of the impugned order on a ground that material use in the



commission of the offence was required to be recovered. It appears that the applicant herein has drafted in a cursory manner as usually such cancellation of bail applications are filed in offence of murder or attempt to murder or serious offence of dacoity with murder where muddamal weapons or looted articles are to be recovered. In this case the applicant is required to spell out what it wants to recover. Even as per the allegations stretched to extent unbelievable, the alleged offence had occurred in 2003 and therefore after a period of 16 years what recovery is possible ? This ground for cancellation of anticipatory bail for recovery is absolutely baseless ground and for that, anticipatory bail need not be cancelled.

11. The applicant refers to antecedents of the respondent herein which has no connection with the facts of the alleged offence. That this is a case where hurdles and difficulties are hurled upon organisations and NGOs that have attempted to ensure justice to poor victims of riots.
12. That, I respectfully deny the allegations in ground (i) wherein it is alleged that the present respondent had used false and concocted documents of evidence, who were not witness to the alleged incident and that the respondent herein would tamper with the investigation. That the evidence of the witnesses have already been recorded and entire evidence is already on record. This is nothing but a flimsy imagination of the applicant, albeit made with malicious intent. On the one hand the applicant states that





was notarized and after that it was explained to him in Hindi. It is from the evidence of other witnesses, the son of this witness namely Sadiq is a lawyer. This witness has not implicated the respondent. This witness specifically states that the affidavit was read over to him and thereafter it was notarized.

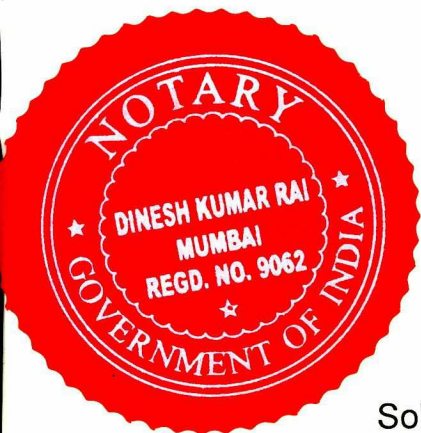
15. That the second witness namely Badshah Usmangani Qureshi, PW-114, has stated that this affidavit was explained to him as per his statement was recorded before the SIT. This witness has specifically stated that the affidavit was prepared in his presence at Jamalpur. This witness had not communicated with the respondent herein and therefore there is no question of involvement of the present respondent in the alleged offence. It is pertinent to note at this juncture that as per the prosecution the office of the original accused no. 1 (at the relevant time) is in the Shahpur area of Ahmedabad. This witness had affirmed his affidavit somewhere in Jamalpur area.
16. The prosecution witness namely Maqsoodmiya Hussainmiya, PW-144 has stated in Para-6 of his evidence that his affidavit was prepared in a hostel near Church near Gujarat College. This witness has stated that he was introduced by one another prosecution namely Imran, as both of them were accused in another offence. This witness has stated that he has filed the affidavit before Hon'ble the Supreme Court of India at the instance of Imran and Yusuf. This witness further states that the contents of the affidavit / statement, which was produced



before Hon'ble the Supreme Court were as per his version. Thus, only three affidavits have been exhibited before the Trial Court. The crux of the details of all the three affidavits with regard to the relevant portions have been mentioned briefly for the sake of convenience. Thus, the present respondent is nowhere connected with the alleged offence and therefore the present application for cancellation of anticipatory bail after a delay of seven years is required to be rejected.

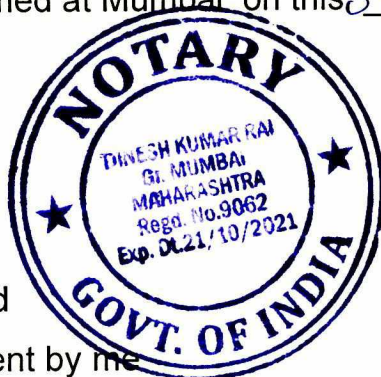
17. That, the present application is already delayed by seven years and further the delay of two months after the order of Hon'ble the Supreme Court. The present respondent has abided by the conditions mentioned in the impugned order. Therefore, the present application is required to be rejected in the interests of justice.

I have read the above affidavit-in-reply and I solemnly affirm and state that the contents of its para 1 to 17 are true to the best of my knowledge and belief.



Solemnly affirmed at Mumbai on this 3<sup>rd</sup> March, 2018.

Explained  
and interpreted  
To the Deponent by me



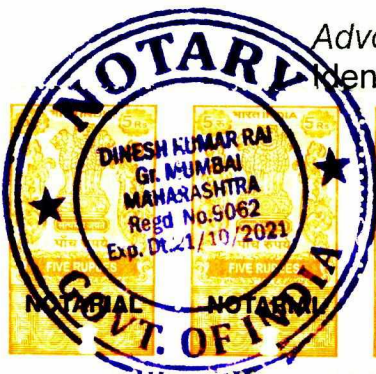
*[Signature]*

DEPONENT  
BEFORE ME

*[Signature]*

**DINESH KUMAR RAI**  
NOTARY (MAHARASHTRA)  
Govt. Of India.  
Reg. No. 9062

Advocate  
Identified by me.



- 3 MAR 2018

Register Sr. No. 110/2018  
Dated .- 3 MAR 2018