

CASE NO.:
Writ Petition (crl.) 6 of 2007

PETITIONER:
RUBABBUDDIN SHEIKH

RESPONDENT:
STATE OF GUJARAT & ORS

DATE OF JUDGMENT: 03/05/2007

BENCH:
Tarun Chatterjee & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT

O R D E R

1. The writ petitioner wrote a letter in the month of December 2005 to the Chief Justice of India complaining about the killing of his brother, Sohrabuddin, in a fake encounter and disappearance of his sister-in-law Kausarbi at the hands of the Anti Terrorist Squad (ATS) Police (Gujarat) and Rajasthan Special Task Force (STF). Taking notice of this letter of the writ petitioner, this Court forwarded it to the Director General of Police, Gujarat to take further action. The CID (Crime) conducted an enquiry and the statements of a number of witnesses, including the petitioner, were recorded.

2. The writ petitioner came to know that pursuant to preliminary inquiry of the CID, an interim report about the encounter of the brother of the writ petitioner and disappearance of his sister-in-law had been sent to the Court. The said inquiry was conducted by a team headed by Ms. Geetha Johri, IGP, CID, Crime. Accordingly, it has been submitted that a concerted effort to scuttle the inquiry and destroy the material evidence had started- resulting in another fake encounter with one Tulsiram who was a key link in the alleged murder of Sohrabuddin and was used by the team of ATS and Rajasthan STF to trace his whereabouts. The writ petitioner is apprehensive of the safety of his brother, Nayabuddin who is one of the witnesses in the present case and is named in the FIR in which Tulsiram was arrested.

3. Under the aforesaid circumstances, the writ petitioner, by filing the petition under Article 32 of the Constitution of India, has prayed for a direction to the Gujarat police to produce Kausarbi and for a fair and impartial investigation in both the episodes by the CBI so that the matter goes beyond the influence of the local police.

4. On the said application under Article 32, while issuing a notice to the Union of India, this Court on 22nd January 2007 made the following order:

"Issue notice to the respondent No 11- Union of India returnable in two weeks.

Ms. Sushma Suri, learned counsel appearing for the Union of India accepts notice. We request Mr. Gopal Subramaniam, learned Addl. Solicitor General, who is present in this Court, to take instructions in the matter, in the meantime."

5. Subsequently, by another order dated 19th March 2007, this Court issued a notice to the State of Gujarat which was made

returnable on 23rd March 2007. It is evident from the said order that the State of Gujarat was asked to produce the relevant records on 23rd March 2007. The Court passed the following order when the matter came up before it on 23rd March 2007.

"Learned senior counsel for the respondent State submits that as regards some of the police officers who were involved in the alleged acts, some of the details have been collected by the State and after the full details are available further action will be taken in the matter. Learned counsel also submits that the State will be writing to the Government of Madhya Pradesh for giving protection to the petitioners herein, who are residing at Village Jharnia Sheikh, Dist Ujjain, M.P. Three weeks' time is granted to the State to file a report in a sealed cover.

The report submitted by the learned Additional Solicitor General of India in the sealed cover may be taken on record."

6. In the meantime, the report submitted by the Additional Solicitor General for India was perused and placed on record. The matter came up again on 20th April 2007 for consideration before this Court. A week's time was granted to enable the State of Gujarat to make submissions on the report submitted by Additional Solicitor General of India, a copy of which was ordered to be supplied to the learned counsel for the State of Gujarat and other parties.

7. However, Mr. K.T.S. Tulsi submitted an interim report from the side of the State of Gujarat on 27th April 2007 in which the State made an interim report on the investigation conducted by them in pursuance of the orders of this Court dated 22nd January, 2007, 19th March 2007, 20th March, 2007 and 23rd April 2007.

8. Mr. Tulsi has submitted that the State of Gujarat would not spare any person who is connected with the incident and needs some more time to investigate the disappearance of Kausarbi. It has been further submitted by Mr. Tulsi that if some more time is granted, a comprehensive status report or Action Taken Report could be submitted before this Court. This was seriously objected to by the learned Attorney General for India and the learned counsel Mr. Huzefa Ahmadi.

9. The learned Attorney General for India submitted that in view of the serious nature of the offence in which some highly placed police officials of the State of Gujarat are alleged to have been involved, orders may be immediately passed directing the CBI to take charge of the investigation and report to this Court.

10. Having heard the learned counsel for the parties and after considering the fact that the investigation is now at the final stage, we feel that some more time may be granted to the State of Gujarat before any further action is taken in the matter. However, after going through the Interim Report placed before us by the Additional Solicitor General and also the Interim Status Report filed by Mr. Tulsi on behalf of the State of Gujarat, we are of the view that a prima facie case has been made out for issuance of a Rule Nisi calling upon the Union of India and the State of Gujarat to show cause why the order asked for should not be granted and also as to why a writ of Habeas Corpus should not be issued to produce Kausarbi in Court. While this was being contemplated, it was, however, submitted by Mr. Tulsi, senior counsel appearing on behalf of the State of Gujarat that 'body of Kausarbi was disposed off by

burning it in village Illol, Sabarkantha Disttrect', which fact has been brought on record in the Action Taken Report 3 submitted on 30th April, 2007. Hence, we desist from issuing a formal writ. Report No. 3 may be kept on record. The State of Gujarat is directed to submit the final status report within two weeks from this date.

11. It appears from the records submitted before us that Ms. Geetha Johri has already submitted interim reports. Now, an allegation has been made that she has been taken off the investigation for some reasons. The State of Gujarat is directed to submit a report in this regard also.

12. Let this matter be placed in the list for further orders on 15th of May, 2007.

JUDIS