

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION (C) No.____ OF 2018**

IN THE MATTER OF

Bombay Lawyers' Association

**A body registered under the provisions of
the Society Registration Act, 1860, having
its own office at 2A, Ground Floor, Commerce
House, 140, Nagindas Master Road, Fort,
Mumbai-400001 ...**

Petitioner

Versus

1. State of Mahashtra

2. The Registrar General

High Court, Bombay, Mumbai-400032

3. Union of India,

through the Ld. Attorney General of India.

A-144, A-Block, Neeti Bagh, New Delhi, Delhi 110049

**WRITTEN SUBMISSIONS DRAWN BY DUSHYANT DAVE SENIOR
ADVOCATE**

MAY IT PLEASE YOUR LORDSHIPS:

This group of Petitions raise very serious questions of general importance as to Independence of Judiciary and protection of Subordinate Judiciary against any kind of threat or attack on its Members. Our Constitution expressly confers upon the Courts the power of Judicial Review and in so far as Fundamental Rights are concerned, this Hon'ble Court has been assigned the role of a sentinel on the qui vive. In ***Delhi Judicial Service Assn. v. State of Gujarat*, (1991) 4 SCC 406**, this Hon'ble Court held, inter-alia,

“43... The subordinate courts at the district level cater to the need of the masses in administering justice at the base level. By and large the majority of the people get their disputes adjudicated in subordinate courts, it is, in the general interest of the community that the authority of subordinate courts is protected. If the CJM is led into trap by unscrupulous police officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted Rule of Law shall be supplanted by Police Raj. Viewed in this perspective the incident is not a case of physical assault on an individual judicial officer instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to effect the entire judiciary in the country... Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties, any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct.”

It was further observed,

“54.... The apathy of the State Government in taking effective action against the erring police officers leads to an impression that in the

State of Gujarat, police appears to have upper hand, as the administration was hesitant in taking action against the erring police officers. If this practice and tendency is allowed to grow it would result in serious erosion of the Rule of Law in the State....”

BRIEF BACKGROUND:

1. This Hon’ble Court in **Rubabuddin Sheikh v State of Gujarat 2010 (2) SCC 200** directed as under:

“In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State police authorities to continue with the investigation and the charge-sheet and for a proper and fair investigation, we also feel that CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them.”

In so doing this Hon’ble Court observed,

“The scope of this order, however, cannot deal with the power of this Court to monitor the investigation, but on the other hand in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to investigate into the matter.”

It was also observed,

“From the above factual discrepancies appearing in the eight action taken reports and from the charge-sheet, we, therefore, feel that the Police Authorities of the State of Gujarat had failed to carry out a fair and impartial investigation as we initially wanted them to do. It

cannot be questioned that the offences the high police officials have committed were of grave nature which needs to be strictly dealt with”

2. Thus, this Hon’ble Court directed CBI investigation into killings of Sohrabuddin and his wife Kauserbi. After completing investigation, CBI filed charge sheet against number of accused including Shri Amit Shah, then Minister of State for Home, Gujarat. Subsequently in *Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79, this Hon’ble Court directed separate CBI investigation into killing of Tulsiram Prajapati, which was part of the conspiracy to kill Sohrabuddin and Kauserbi. It was directed as under:

“In view of the above discussion, the police authorities of the Gujarat State are directed to hand over all the records of the present case to CBI within two weeks from this date and CBI shall investigate all aspects of the case relating to the killing of Tulsiram Prajapati and file a report to the court concerned/Special Court having jurisdiction within a period of six months from the date of taking over of the investigation from the State police authorities. We also direct the police authorities of the State of Gujarat, Rajasthan and Andhra Pradesh to cooperate with the CBI Authorities in conducting the investigation.”

In so doing this Hon’ble Court was constrained to observe as under,

“It is not in dispute that it is the age-old maxim that justice must not only be done but must be seen to be done. The fact that in the case of murder of an associate of Tulsiram Prajapati, senior police officials and a senior politician were accused may shake the confidence of public in investigation conducted by the State police. If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI.”

3. Later in CBI v. Amitbhai Anil Chandra Shah, (2012) 10 SCC 545, while upholding the order of grant of bail passed by the Gujarat High Court releasing Shri. Amit Shah on bail, this Hon'ble Court directed as under:

“In another decision in Ravindra Pal Singh v. Santosh Kumar Jaiswal [(2011) 4 SCC 746: (2011) 2 SCC (Cri) 485] , this Court directed for transfer of the case outside the State because some of the accused in a case of fake encounter were policemen. The case in hand has far more stronger reasons for being transferred outside the State. We, accordingly, direct for the transfer of Special Case No. 5 of 2010 pending in the Court of the Additional Chief Metropolitan Magistrate, CBI, Courtroom No. 2, Mirzapur, Ahmedabad titled CBI v. D.G. Vanzara to the Court of CBI, Bombay. The Registrar General of the Gujarat High Court is directed to collect the entire record of the case from the Court of the Additional Chief Metropolitan Magistrate, CBI, Room No. 2, Mirzapur, Ahmedabad and to transmit it to the Registry of the Bombay High Court from where it would be sent to a CBI Court as may be decided by the Administrative Committee of the High Court. The Administrative Committee would assign the case to a court where the trial may be concluded judiciously, in accordance with law, and without any delay. The Administrative Committee would also ensure that the trial should be conducted from beginning to end by the same officer.

Sohrabuddin case [Criminal Miscellaneous No. 12240 of 2010, order dated 29-10-2010 (Guj)] stands transferred to Mumbai by this order. It is the case of CBI that the case of Sohrabuddin and the case of Tulsiram Prajapati are closely connected and in order to avoid any miscarriage of justice, both the cases can only be tried before the same court. It will, therefore, be open to CBI to make an application for transfer of Tulsiram Prajapati case also to the same court where Sohrabuddin case [Criminal Miscellaneous No. 12240 of 2010, order dated 29-10-2010 (Guj)] is transferred. In case such an application is filed, the court will pass appropriate orders, in accordance with law, after hearing all concerned.”

4. However, without allowing the trial to be completed, discharge application under Section 227 of the CrPC was moved on behalf of Shri Amit Shah in 2013. The said application was first heard by Learned CBI Judge, Hon'ble J T Utpat, who appears to have declined exemption from

appearance to Shri. Amit Shah on 06.06.2014 and fixed the trial for hearing on June 20th on which date again Shri. Amit Shah appears to have failed to appear before the Court. The Learned Judge fixed the matter on June 26, 2014. However before he could hear it on that date, the Learned Judge was transferred post haste on June 25th by the Administrative Committee of the Bombay High Court. This transfer was clearly contrary to express direction of this Hon'ble Court made on September 27, 2012 as referred above. The circumstances leading to the transfer are extremely suspicious and require investigation by this Hon'ble Court since this transfer appears to be a precursor or at least related to the subsequent appointment of Hon'ble Judge Brijgopal Harkishan Loya as the CBI Judge and his subsequent death within few months, i.e. December 01, 2014. If the Administrative Committee of the High Court did feel compelled to transfer Hon'ble Judge Utpat it was incumbent upon it to approach this Hon'ble Court for appropriate orders. Failure to do so raises serious questions, if not doubts, about the functioning of the Administrative Committee of the High Court. It appears that Hon'ble Judge Loya granted exemption to Shri Amit Shah but on October 31, 2014 he seems to have questioned the necessity of exemption when Shri. Shah could be in Mumbai and attend political functions and accordingly had fixed the trials for hearing on December 15, 2014. Sadly, the sudden and untimely death of Hon'ble Judge Loya intervened on December 1, 2014. Subsequently Hon'ble Judge M. B Gosavi was appointed and by his order dated 30th December 2014 he was pleased to allow the discharge application in a serious matter involving killings of three persons for which this Hon'ble Court had directed CBI investigation after recording findings of involvement of high officials of Gujarat and their attempt to tamper with evidence and course of justice. It is surprising, with respect, that the Learned Judge could pass the order of discharge in such a short time in respect of matters involving thousands of pages of evidence and hundreds of witnesses. (However the merits of the said order are not being questioned herein).

5. Pertinently, the CBI did not file appeals against discharge order despite mandate from the Supreme Court to investigate and file charge sheets against the accused including Shri. Amit Shah. However CBI has subsequently filed appeals against discharge of some police officers including Shri M. K. Amin, Shri. Himanshu Singh and Shri. Shyam Singh Charan. It also appears that Rubabuddin, the original Petitioner before this Hon'ble Court also challenged the discharge order by filing

Criminal Revision Application (St) No. 413 of 2015 but on October 5, 2015 Shri Rubabuddin withdrew the application for condonation of delay and thus the criminal revision application was held as not maintainable by the Hon'ble Bombay High Court under its order dated November 23rd 2015.

6. It is in the above background that the present group of petition need serious and thorough consideration by this Hon'ble Court. For this purpose it would be imperative and in the interest of justice that the Respondents are directed to file appropriate affidavits to bring their case before this Hon'ble Court "on oath". After all, proceedings before this Hon'ble Court under Article 32 are under extraordinary original jurisdiction and it is well settled that unless the allegations contained in the Writ petition are denied specifically they are deemed to be admitted. Therefore this Hon'ble Court may direct the Respondents to file their replies at the earliest.

RE: REPORT PREPARED BY THE COMMISSIONER OF STATE INTELLIGENCE DATED 28.11.2017

1. At the outset it is submitted that the so called discreet enquiry and subsequent report prepared by the Commissioner of State Intelligence appears to be an attempt to stall independent and just investigation into the unfortunate death of Hon'ble Judge Loya. Everyday large numbers of reports appear in newspapers and magazines about the conduct and misconduct on the part of Executive and its officers. It is rare, if not impossible, to find the State Government being thrown into action forthwith to enquire into those allegations. Herein on 23rd November 2017 State Government directs the office of Commissioner of State Intelligence to conduct discreet verification. On the same day the Commissioner of State Intelligence Department addresses a letter to the Hon'ble Chief Justice of the Bombay High Court seeking permission to record the say of the judicial officers, claiming that the four Hon'ble Judicial officers had accompanied Judge Loya to the hospital on 1.12.2014. (The very basis of this enquiry stands exposed by this statement as it is inconceivable that without holding the enquiry the Commissioner of State Intelligence could have reached a conclusion that they had so accompanied). Curiously, on the very day i.e. November 23rd

the High Court of Bombay communicates to the Commissioner of State Intelligence that the Hon'ble Chief Justice has granted permission to record the say of the said Hon'ble Judicial Officers.

2. It is well impossible to find such alacrity amongst public functionaries. The speed at which these three orders have been made on the same day raises serious doubts about the exercise.
3. Within five days the Commissioner of State Intelligence prepares his report on November 28 and submits to the State Government and concludes in paragraph 8 and 9 as under:

“8. The undersigned has discreetly verified the facts connected with the sad demise of Mr. Loya and has found that the CARAVAN Report dated 20-11-2017 (Page 7 to 11) has made several unsubstantiated claims and is replete with falsehoods. In fact, Judge Mr. Loya suffered a heart attack in the presence of his colleagues belonging to judicial fraternity who made all possible efforts to provide medical assistance to save him.

9. It is unfortunate the false allegations and innuendos against the Senior Judicial Officers are made vide the said report to create doubts in the minds of people which could undermine people's faith in the Judiciary in particular and the system of governance on a larger canvas. The government may kindly take a view in this regard.”

4. The documents and statements which are part of the said report suffer from glaring, obvious and fatal inconsistencies, contradictions and omissions, thereby prima facie destroying the truthfulness of the report based on the enquiry. They are as follows:
 - (i) Death Investigation Report prepared under Section 174 of the Cr.PC by PSI R K Mundhe of Sitabardi Police Station, Nagpur City is dated 01.12.2014 (**Page 22-23**) which categorically records that the deceased was recognized by Dr. Prashant Bajrang Rati and does not speak a word about the presence of anyone else, especially the Hon'ble Judicial Officers who now claim to have been present at that time. The statement of Shri. Rati recorded at 8:30 am (the death having been recorded at 6:15 am) **{Pg 18}** also does not speak about anyone else's presence or about anyone having been involved. Shri. Rati's statement read as a whole

clearly establishes complete absence of anyone else on the scene. Dr. Rati in his statement allegedly given to Commissioner of State Intelligence 22.11.2017 (**Pg 56A**) also does not refer to presence of any other person including the Hon'ble Judicial Officers but suggests on the contrary that since none was available he was requested by his uncle to *"complete all the procedure and send the dead body to the native place in Latur. Hence I completed the procedure and had taken the dead body in my custody."* But suggests that the ambulance carrying the dead body *"was followed by two persons from law department and one policeman"*.

- (ii) Case papers of Meditrina Institute of Medical Sciences (**Page 15-17**) clearly record that the patient "was brought with no evidence of life to our hospital". This document surprisingly shows that the patient was admitted by Shrikant D Kulkarni (Hon'ble Judge) who disclosed his relation to the deceased as "friend". The document shows cause of death as "undetermined (unknown)".

Doctor's Progress Notes are more telling and show *"As per History given by accompanying person - ___chest pain-yday night"*. At **Pages 40 to 43** receipt and final patient bill summary of Meditrina are enclosed which make even curious reading. For a patient who was allegedly brought dead, the final bill is, inter-alia, for "Non Invasive Lab", "Neurosurgery", "diet consultation", "non medical expenses" amongst others and raised a bill of Rs 5540 and after giving discount of Rs 1250, a net bill of Rs 4290. This is absolutely shocking and belies the claim of Meditrina Hospital fully. These documents are clearly self serving and have been procured to mislead the investigation in right direction.

- (iii) Post Mortem Report at **Pages 25 to 32** also appears to be a fabricated document. The description of clothes and of ornaments on the body is shown as follows: *"brown colour full shirt, blue jeans pant with black belt..."* (It is inconceivable that if indeed Hon'ble Judge Loya suffered heart attack in his sleep at 4 am, as is made to believe, he would be sleeping in such clothes). Rigor Mortis- well marked sight or absent whether present in whole body or part only shows, *"slightly present in the upper limbs. Not appeared in lower limbs."* Now interestingly the post mortem report does not indicate the time. The documents at **Page 33 to**

35 also do not give any time while handing over and taking back the body from the Medical College Hospital, Nagpur City. But it does indicate that the dead body was placed in the mortuary of the Medical Hospital and subsequently it must have been taken for post mortem. This Hon'ble Court in Baso Prasad v State of Bihar has extensively discussed rigor mortis from well known textbooks of Modi and Parikh on Medical Jurisprudence And Toxicology. Modi's textbook says

“Rigor mortis first appears in the involuntary muscles, and then in the voluntary muscles. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration.”

Further it states,

“Time of onset.—This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death”.

Now, one can assume that post mortem was done several hours later and therefore rigor mortis would have set in fully. The post mortem report is therefore contrary to the well accepted concepts of medical science in recording the findings on rigor mortis as above. Document obtained under RTI and now in Public Domain from the said medical college Nagpur in January 2018 shows post mortem having been done at 10:50 am by Dr. Tumram (enclosed as **Annexure I**). But the entry appears to have been interpolated.

Similarly some pages appear to be missing from the Post Mortem Report filed along with Report of the Commissioner Intelligence which is Page 25 therein. A copy of the said missing page, now in public domain and obtained under RTI is enclosed herewith as **Annexure II**. This document refers to Police Reports on 10/12/14 and 07/12/14 respectively. The record does not show any such reports of those dates. But what is important is that this page 25 has been withheld even from this Hon'ble Court.

As against that the form under which the dead body was sent for post mortem records the status of rigor mortis quite differently and records rigor mortis as “*well marked*”. Interestingly both this form and the post mortem report are allegedly prepared by same doctor N K Tumram on December 01, 2014.

Equally the opinion as to cause of death differs. In the form Dr. Tumram gives opinion as follows: “*a case of sudden death*” while in post mortem report he records it as “*coronary artery insufficiency*”.

- (iv) Shockingly as late as 05.02.2015 the Regional Forensic Science Laboratory appears to have forwarded its report on viscera sent on 01.12.2014 which records its conclusion as under: “*General and specific chemical testing does not reveal any poison in exhibit nos. (1), (2) and (3)*” and shows that the analysis started on 05.01.2015 and was completed on 19.01.2015 and was conducted in pursuance of AD No 44/14 of PS Sadar under Section 174 of CrPC. Now clearly on 01.12.2014 Seetabardi Police Station was investigating and had taken steps to forward the body for post mortem and complete other procedure. Form prepared by Dr Tumram also shows that forwarding officer was “*PC Pankaj 6538 PS Seetabardi*”. P C Pankaj is the same person who has prepared dead body handing and other reports. So it is clear that Viscera Report of 5.2.2015 is again fabricated as it refers to PS Sadar instead of Sitabardi as having forwarded the same.

It is only on 10.12.2014 (**Page 39A**) that Sadar Police Station swings into action and addresses a letter to Medical Hospital, Nagpur to change the name in all the records of the hospital of Hon’ble Judge Loya from Brij Mohan Harikishan Loya to Brijgopal Harkishan Loya (Now it is impossible that Hon’ble Judges who claimed to have accompanied late Judge Loya would not have given correct name on December 1, 2014 to various authorities and hospitals).

- (v) More curious is **Page 40A and 41A** which show that Sadar Police Station is making a fresh accidental death summary almost one and a half year later i.e. on 2.2.2016. In so doing Shri S S Gaja of Police Station Sadar records as under:

“Sir,

PSI SD Warade was day officer on 01/12/2014. E got AD no 00/14, 174 CrPC from PC Pankaj B No 6238 [from Sitabardi Police Station]. The said AD was that of Shri. Brijgopal Harikishan Loya, age 48 years, resident of Hajiali Government Colony, Building No 11. Mumbai.

On perusing the case diary, I found that the place of occurrence is in jurisdiction of Police Station Sadar, so I registered AD No 44/14, u/s 174 Cr.PC”.

If AD No 44/14 is registered as late as in February 2016 how is it that the number finds reference in regional forensic science report on viscera dated 5.2.2015. Clearly something is seriously remiss.

- (vi) The statements of the four Hon’ble Judges have omitted to say much more than what they have stated. For example, none of them give the suite number at Ravi Bhawan in which Hon’ble Judge Loya had stayed the night of November 30/December 1st. (Documents obtained under RTI and now in public domain of the Register of Ravi Bhawan of that date clearly does not show any entry of Judge Loya having stayed there. The same is attached herewith as **Annexure III**). Further Hon’ble Judge Kulkarni claims that he along with Hon’ble Judge Loya and Hon’ble Judge Modak stayed in the same suite, something that is impossible to digest. None of the Hon’ble Judge, who claim to be close colleagues of late Judge Loya, even claim to have informed the wife of the late Judge whom they knew very well as some of them lived together in the same colony. This is clearly a very unnatural conduct since the first thing upon someone’s health becoming bad would be to inform the family members. If indeed Judge Loya complained of chest pain at 4 am, why were no phone calls made till he allegedly died at 6:15 am or even thereafter is a moot question. Hon’ble Judge Barbe even states that “*We all were in deep shock. Myself and Judge Kulkarni met the relatives of Judge Loya at Hajiali colony after few days*”. This is absolutely an unnatural conduct. If indeed they were together, any reasonable man’s conduct would have been to accompany the dead body to the home town of Judge Loya where he was cremated. Hon’ble Judge Barde claims that “*While Shri Loya sir was in ICU I tried to contact the friends of Shri Loya sir at*

Hajiali government colony where he was residing. Shri O K Bhutada, Senior Civil Judge could be contacted to whom the entire occurrence was told. Shri Modak sir and Shri Kulkarni sir also contacted the other friends of Shri Loya sir at Hajiali, known to them and told the occurrence to them. Local judges were also called at the hospital. The Hon'ble High Court Judges and Judges from the District Judiciary and some court staff approached the hospital and some were consulting the doctor. Judge Shri Bhutada from Mumbai provided my mobile number to the near relatives of Shri Loya sir and by making call to me told that I should inform the happenings at hospital to such near relatives if they contact me. Some relatives contacted me to whom I told the happenings and that they may come to Nagpur."

These statements do not appear to be voluntary and contain inherent contradictions. If indeed the Hon'ble Chief Justice of Bombay High Court, the Registrar General, other Hon'ble Judges of High Court and other responsible Hon'ble Judges and colleagues of late Judge Loya were present at hospital, surely someone should have made an effort to contact the wife and ensure that the family is flown into Nagpur at the first available flight. Smt. Loya in her statement dated 27.11.2017 to Commissioner Intelligence states,

"At around 5 am on 1/12/14 we got call from of Shri Modak and he informed that Brij-ji was not feeling well and so he was taken to a hospital".

But Hon'ble Judge Modak in his statement categorically states that *"At the hospital doctors have declared him dead. We have informed this fact to our judges at hajiali colony. We all were in shock. I do not exactly remember who informed this fact to family members of Loya"*.

- (vii) The attempt to extract statements from the wife, son, father and the sister of Late Judge Loya by the Intelligence Department of Maharashtra State is to say the least, unfortunate and unwarranted. It is a matter of record that the son had indeed given a letter in 2015 for filing of an FIR and/or instituting an enquiry into the unfortunate death. The father and the sister who are both responsible citizens have in video recorded interviews to

Caravan magazine demanded enquiry and made startling allegations including as offering of bribes on behalf of Shri Amti Shah by former Chief Justice of Bombay High Court, Shri Mohit Shah. Surely the father and the sister were privy to what was happening in the life of Judge Loya before he passed away. These interviews completely belie the Report and the documents contained therein and prepared by the Commissioner of State Intelligence. On the contrary the video interviews clearly demand fiercely independent investigation into the death of Judge Loya.

- (viii) It is a cause of serious concern and cause for investigation that the security of Judge Loya was withdrawn on 24.11.2014, a week before his death and hence Judge Loya did not have any personal security at the time of his death. Documents obtained under RTI and now in public domain indicating the same in attached hereto as **Annexure IV**

5. It is respectfully submitted that the report by the Commissioner of State Intelligence is self serving and has been prepared and presented do this Hon'ble Court to mislead this Hon'ble Court. The report appears to be wholly incorrect and contains material inconsistencies and contradictions. The author of the report should be called upon to file an affidavit in support of the report so that appropriate proceedings can be instituted against him under Section 340 of CrPC read with Section 195 (1) (b) of the Code.
6. It is respectfully submitted that this Hon'ble Court may be pleased to consider that the matter should be heard and decided by the Hon'ble High Court under Article 226 and not by this Hon'ble Court under Article 32 since Article 226 is much wider in scope. It is therefore prayed that the matter be relegated to the Hon'ble High Court of Bombay.
7. In the alternative it is respectfully submitted that this Hon'ble Court may forthwith order an independent enquiry by a Special Investigation Team comprising of independent persons into the death of Hon'ble Judge Loya and upon receiving report therefrom take such further actions as required in law to instil confidence in the minds of people at large.