

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

PETITIONER:
Rubabbuddin Sheikh

RESPONDENT:
State of Gujarat and Ors

DATE OF JUDGMENT: 17/05/2007

BENCH:
Tarun Chatterjee & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT
O R D E R

1. Acting on a letter written by the petitioner, Rubabbuddin Sheikh, to the Chief Justice of India about the killing of his brother, Sohrabuddin Sheikh 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), this Court forwarded the letter to the Director General of Police, Gujarat to take action. This letter of the Registry of this Court was issued on 21st January, 2007. After about six months and after reminders the Director General, Police, Gujarat, directed Mrs. Geetha Johri, Inspector General, Police (Crime), to inquire about the facts stated in the letter. A case was registered as Enquiry No. 66/06. Be it mentioned herein that about 6 months were taken to direct investigation into the matter. From 1st September, 2006 to 22nd January, 2007 four Interim Reports were submitted by one V.L. Solanki, Police Inspector, working under Mrs. Geetha Johri. Out of these four interim reports, it appears only one report was submitted initially in this Court. It was only on 16th May 2007 that the other three reports have been submitted.

2. In the report of Mrs. Johri dated 12th May, 2007, it has been stated as follows:

"However, based on the statement of various witnesses and subsequent identification of the photographs of Sohrabuddin and Kausarbi taken by Inquiry Team of CID Crime there appears to be some discrepancy regarding the presence of Sohrabuddin and Kausarbi at Hyderabad and Ahmedabad which needs to be further enquired into. Further enquiry also needs to be conducted with regards (1) who were the persons who claimed to be police who picked up the three passengers namely Sohrabuddin, Kausarbi and third unknown person. (2) what happened to Kausarbi after 22.11.2005 when the so-called police personnel took her off the bus."

3. In the same report, Mrs. Johri sought permission to interrogate one Tulsiram who was at that time in Rajasthan Jail. From the record it appears that on 27th /28th December, 2006, an FIR was lodged in which it was stated that when Tulsiram was sent on transit remand from Rajasthan to Gujarat, two armed persons rescued him at gun point and fled with Tulsiram. In the said FIR it has been alleged that while search was on for Tulsiram early in the next morning, he, along with two other persons, was spotted on a highway trying to stop a matador. It has also been alleged, that one of the police officers who was following the matador in which Tulsiram was traveling, accosted him, upon which Tulsiram was said to have fired at the Police officer

and the bullet was said to have hit the mudguard of the vehicle. The Police Officers were said to have fired at Tulsiram in self-defence, killing him. However, the other two persons somehow managed to escape in the darkness.

4. It appears from the records of this case that one Mr. Raigar, Additional Director General of Police and Head of CID Gujarat police who was in-charge of the investigation on the incident of death of Sohrabuddin and disappearance of Kausarbi was replaced by one Mr. O.P. Mathur, Additional Director General of Police (prison) who was given an additional charge as Head of CID.

5. However, Mrs. Geetha Johri was replaced by Mr. Rajnish Rai, Deputy Inspector General, as an Investigating Officer in respect of the fake encounter relating to the incident of Sohrabuddin's case and disappearance of Kausarbi. We may take note of the fact that this petition under Article 32 of the Constitution was moved in this Court on 22nd January, 2007 when notice was issued only to respondent No.11, Union of India, and Mr. Gopal Subramaniam, learned Additional Solicitor General, who was present in Court was requested by this Court to take instruction in the matter.

6. Subsequently, on 19th March, 2007 the matter came up before this Court and this time a Bench of this Court issued notice to the State of Gujarat which was made returnable on 23rd of March, 2007. Later, on 23rd March, 2007 when the matter was placed before this Court, three weeks' time was granted to the State to file a report in a sealed cover and on that date a report was submitted by the Addl. Solicitor General of India which was also kept in a sealed cover. An interim report was submitted by Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of the State of Gujarat, on 27th April, 2007 in which the State made an interim report on the investigation conducted by them in consonance with the different orders of this Court. Mr. Tulsi learned senior counsel for the State of Gujarat sought more time on 3rd May, 2007 so that a comprehensive status report or Action Taken Report could be submitted before this Court. Status Report or the Action Taken Report No.4 was thereafter filed in this Court by the learned senior counsel for the State of Gujarat. Learned Attorney General for India who appeared for the Union of India submitted that in view of the serious nature of the offence in which some highly placed police officials of the State of Gujarat were alleged to have been involved, directions may be given to the Central Bureau of Investigation (CBI) to take charge of the investigation and submit a report to this Court. After perusing the interim report and other materials on record and considering the submission of the learned senior counsel for the State of Gujarat that the investigation was at the final stage, we granted some time to the State of Gujarat to file a final status report within two weeks from that date by order dated 3rd May, 2007. However, from the order dated 3rd May, 2007 it appears that Mr. Tulsi submitted that "body of Kausarbi was disposed of by burning it in Village Illol, Sabarkanta Distt." which fact was brought on record in the Action Taken Report No.3 submitted on 30th April, 2007. In view of this statement made by the State of Gujarat before us and brought on record in the Action Taken Report No.3, we refrained ourselves from issuing a formal writ of Habeas Corpus directing the State of Gujarat to produce Kausarbi in Court. We also sought an explanation from the State of Gujarat as to the reason why Mrs. Geetha Johri was taken off the investigation relating to the incident regarding the death of Sohrabuddin and disappearance of his wife Kausarbi. The matter was placed for hearing again on 15th May, 2007.

7. Learned Attorney General for India has seriously submitted that this is a fit case where this Court should pass an order directing handing over the investigation from the State Investigating Agency to

CBI as the investigation would not only be made in the State of Gujarat but also in the State of Andhra Pradesh and Rajasthan and for such investigation, cooperation of the State of Rajasthan and State of Andhra Pradesh and their high police officials may be required. Therefore, according to Attorney General for India, it would be difficult for the Investigating Agency of the State of Gujarat to make proper and thorough enquiry and submit a report to this Court. Mr. Ahmadi appearing on behalf of the petitioner, drawing our attention to the factual aspect of the matter, argued that in the facts and circumstances of the case and in view of the serious nature of the same this Court may direct the CBI to take over but at the same time permit Mrs. Geetha Johri and Mr. Rajnish Rai to make the investigation jointly and submit a report to this Court.

8. Mr. Gopal Subramaniam, learned Addl. Solicitor General for India also submitted that it was a fit case for handing over the investigation to CBI from State of Gujarat. Mr. Gopal Subramaniam further submitted that although it has been accepted by the State of Gujarat that there were four preliminary reports even though only one interim preliminary report has been filed in this Court. Therefore, direction may be given to the State of Gujarat to submit the other three interim reports before this Court. So far as this grievance of Mr. Gopal Subramaniam is concerned, we find from the record that on 16th May, 2007 three interim reports have been submitted. Mr. K.T.S. Tulsi, learned senior counsel for the State of Gujarat, however, submitted that the final report would be submitted to this Court within 4 to 6 weeks' time from today.

9. From the Action Taken Report No.4 which has been submitted before this Court on 14th May, 2007 we find that the Assistance of Directorate of Forensic Science, Gujarat State, and BJ Medical College, Ahmedabad has been sought to obtain advice on the exhibits collected from the scene of offence. Permission of the Court has also been sought for narcoanalysis and other related tests in case of the accused namely, (1) Shri D.B. Vanzara, IPS, Ex-DIG of Police, Border Range, Kutch-Bhuj, (2) Shri Rajkumar Pandyan, Ex-SP, CID, IB and (3) Shri Dinesh MN, IPS, SP, Alwar, Rajasthan. However, the Court has fixed the hearing on the application on 28th May, 2007. In the said Action Taken Report No.4 it has also been stated that efforts are being made to arrest remaining accused officers and men against whom there is prima facie evidence. As noted herein earlier, efforts have been made to trace remains of Kausarbi. A well where reportedly the remains of Kausarbi have been dispersed has been dug up and samples collected have been sent to Forensic Science Laboratory, Gandhinagar for further analysis for comparison with the soil samples taken from the scene where the body of Kausarbi was allowed to have been disposed of by burning at Illool, Sabarkanta District. From the Action Taken Report No.4 it appears the following investigations are still pending :

- a. AP Police Personnel who helped the ATS, Gujarat in picking up the accused are yet to be identified. Cooperation of DGP & IGP, AP has been enlisted in this regard.
- b. Apprehension of accused of Rajasthan for which help of DGP & IGP Rajasthan is been enlisted.
- c. Reports from Directorate of Forensic Science, Gujarat State.
- d. Identification of the farm house to which Kausarbi was shifted and method by which she may have died and those involved in the crime if any.

10. From the said report, it also appears that the charge sheet shall be filed as soon as the evidence comes on record.

11. Having heard the learned counsel appearing for the parties and after examining the interim reports as well as Action Taken Reports

filed by the State, it is difficult for us to come to a conclusion at this stage that the investigation are not proceeding towards correct direction.

12. Mr. Tulsi learned senior counsel appearing for the state of Gujarat submitted as noted herein earlier, that the final report shall be submitted within four to six weeks from 15th May, 2007. In this view of the matter and in view of our discussions made herein above, we are of the view that at this stage we do not find any reason to hand over the investigation to the CBI from the State of Gujarat, nor we feel it appropriate to direct the State of Gujarat at this stage to include Mr. Raigar with Mrs. Johri for completing the investigation. Accordingly we pass the following orders:-

a) State of Gujarat is directed to submit its final report on 3rd July, 2007.

b) In the Action Taken Report No.4 it has been stated that the investigation is still pending in respect of four items which have been enlisted herein earlier. Accordingly, we direct the State of Gujarat to submit the final report on such investigation on or before the next date of hearing.

c) We also direct the State of Gujarat to file an appropriate affidavit stating all facts relating to the investigation which have been brought to our notice by Status/Action Taken Reports in this Court.

d) Considering the fact that the motive for committing the murder is yet to be known and in order to establish motive, investigation may have to be conducted also in two other different States, namely, State of Rajasthan and State of Andhra Pradesh, we direct the State of Andhra Pradesh and the State of Rajasthan and their high police officials to cooperate with the Investigating Agency of the State of Gujarat.

e) The Investigating Agency shall submit a report on the investigation to this Court only and there is no necessity for the Investigating Agency to take permission from the Director General of Police, Gujarat in the matter of investigation nor the DGP shall interfere with such investigation to be conducted by the Investigating Agency.

13. Before parting with this order, we may keep it in mind that under the law, there is a presumption that if the dead body is not found or the person concerned is not found for a period of seven years, only then the said person can be presumed to be dead. From the record, till today no proof of death of Kausarbi has been brought on record. We will take up this issue on the next date of hearing when the reports as directed shall be placed before us.

14. Let this matter be placed before us on 16th of July, 2007.