

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION NO. _____ OF 2016 (PIL)

(In Re: Appointment of a person, charge-sheeted by the CBI in a High Court monitored investigation, for offences under the Arms Act and for offences of abduction, wrongful confinement, and premeditated murder of four persons, as in-charge DGP, Gujarat)

Julio Francis Ribeiro

... Petitioner

VERSUS

State of Gujarat & Ors.

... Respondents

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...	Synopsis and List of Dates & Events	
...	Memo of the Petition.	
A	Copy of Notification No. DPT/102016/GOI-74/B dated 15.04.2016 of the Home Department, Government of Gujarat.	
B	List of PILs previously filed by the petitioner.	
C COLLY	Copies of important judgments leading to the creation of a Special Investigation Team for investigating the Ishrat Jahan fake encounter	

	case.	
D	Copy of the Gujarat Hon'ble High Court order dated 08.04.2011.	
E	Copy of the Gujarat Hon'ble High Court order dated 21.04.2011.	
F	Copy of the Gujarat Hon'ble High Court order dated 05.08.2011.	
G	True copy of the FIR of CBI case RC-BS1/S/2011/0005/Mumbai.	
H	Copy of the order of the Hon'ble Supreme Court dated 11.06.2013.	
I COLLY	True copy of statement recorded u/s 161 dated 13.04.2013 of Shri K.M. Waghela and the true copy of statement recorded u/s 164 of Shri D.H. Goswami dated 04.06.2013.	
J	True copy of panchnama dated 09.06.2013 seizing audio recording regarding meeting of senior officers of the State, including Advocate General, the Ministers of Law and Home, the Principal Secretary to the Chief Minister, and Shri AK Sharma (IGP), discussing the common strategy for obstructing the investigation	
K COLLY	Copies of some press reports on the conversation between Shri P.P. Pandey and Shri G.S. Singhal.	

L	True copy of the summary of charge-sheet dated 03.07.2013.	
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N	Copy of letter of Shri D.G. Vanzara protesting the supersession of Shri P.P. Pandey.	
O	Copy of illustrative newspaper report on Shri P.P. Pandey eulogizing Shri Vanzara and calling him a 'rajarshi', i.e. a king turned saint.	
P	Copy of the Supreme Court judgment dated 22.09.2006 in the case of Prakash Singh.	
Q	True copy of the Bombay Police (Gujarat Amendment) Act, 2007.	

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In the matter of Articles 21 and 226 of
the Constitution of India;

AND

In the matter of Public Interest
Litigation

AND

In the matter of the appointment of a
person charge-sheeted by the CBI in a
High Court monitored investigation,
for offences under the Arms Act and
for offences of abduction, wrongful
confinement, and premeditated murder
of four persons as in-charge DGP,
Gujarat.

AND

In the matter between:

Julio Francis Ribeiro,

Son of Late Shri Angelo Frederick Ribeiro,

Aged about 86 years,

Occupation:

Retired as an officer of the Indian Police
Service. Formerly the Indian ambassador to
Romania. Presently engaged in private

service and social work.

Residing at

51, Sagar Tarang,

Worli Sea Face,

Worli,

Mumbai 400 018

... **Petitioner**

VERSUS

1. State of Gujarat,

(Through the Chief Secretary,

Government of Gujarat,

Block No. 1,

Sachivalaya,

Gandhinagar – 382 011)

2. Shri Prithvipal Pandey, IPS,

Director & DGP,

Anti-Corruption Bureau,

Dafnala,

Ahmedabad – 380003

... **Respondents**

TO

THE HON'BLE CHIEF JUSTICE AND THE

OTHER HON'BLE JUDGES OF THE HIGH

COURT OF GUJARAT AT AHMEDABAD.

THE HUMBLE PETITION OF THE

PETITIONERS ABOVENAMED;

MOST RESPECTFULLY SHOWETH:

1. The present petition under Articles 226 and/or 227 of the Constitution of India is being filed by way of public interest litigation and the petitioner has no personal interest. The petition is being filed in the general interest of the people of Gujarat and in the interest of justice and the rule of law. The petitioner is filing the instant writ petition to challenge the order issued by the State of Gujarat, the respondent no. 1, vide Home Department Notification No. DPT/102016/GOI-74/B dated 15.04.2016, directing that Respondent No. 2, Shri Prithvipal Pandey, IPS (Gujarat:1980), Director, Anti-Corruption Bureau, Gujarat would hold additional charge of the post of Director General & Inspector General of Police (herein after referred to as DGP) with effect from 16.04.2016 forenoon. A copy of the impugned Government of Gujarat, Home Department Notification No. DPT/102016/GOI-74/B dated 15.04.2016 (herein after referred to as the impugned order) is annexed hereto and marked as **ANNEXURE 'A'**. The petitioner submits at the outset that the impugned order entrusting the additional charge of the post of the DGP Gujarat State to Shri Prithvipal Pandey (hereinafter referred to as Shri P.P. Pandey) is contrary to public interest, likely to defeat the ends of justice, violates the direction of law, and is in contravention of the directions issued by the Hon'ble Supreme Court of India, as he is charge-sheeted for serious offences under the Arms Act and for

offences of abduction, wrongful confinement, murder of four persons by the CBI in a High Court monitored investigation.

2. The Petitioner is a retired Indian Police Service (IPS) officer of 1953 batch, Maharashtra cadre. He has a nationally acknowledged and distinguished record of service. He was specially selected and appointed as the DGP of Punjab to tackle and solve the militancy problem in its worst years. He has served as DGP of Central Reserve Police Force and also as the DGP of Gujarat. After retirement, he has represented the country as its ambassador in Romania. He was honoured with Padma Bhushan in the year 1993. He is presently engaged in private service. The petitioner is also a well-accomplished social worker. For many years, the petitioner has been active in promoting social causes, especially for upholding the rule of law and the interests of the weaker sections. The petitioner has earlier filed many other public interest petitions, a complete list of which is annexed to this petition and marked herewith as **ANNEXURE 'B'**.

3. The petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. All litigation costs, including travelling expenses, are being borne by the petitioner himself in his personal capacity as his contribution towards a public cause. The fund has been generated out of his own personal savings.

The service of the advocate is pro-bono and hence no expense towards the same has been incurred.

4. That the facts of the case, in brief, are as follows:

4.1 On 15.06.2004, four persons, including a 19-years-old girl named Ishrat Jahan, were killed in a purported encounter with police officers of the Detection of Crime Branch (DCB), Ahmedabad City. An offence was registered in this regard at Ahmedabad City DCB Police Station vide I CR No. 8/ 2004, under sections 3(2)(a)(c), 13,14 of Foreigners Act, sections 120B, 121, 121(A), 122, 123, 307, 353, 186 of the Indian Penal Code (IPC), sections 25(1)(a), 27, 29 of the Arms Act, sections 3(1)(a)(b), 3(2), 3(3), 20, 21 of the Prevention of Terrorism Act (POTA), and under section 135 (1) of the Bombay Police Act, on the basis of an FIR lodged by Shri J.G. Parmar, then Police Inspector (PI), Detection of Crime Branch (DCB), Ahmedabad City before Shri G.L. Singhal, an Assistant Commissioner of Police (ACP) in DCB. Both Shri J.G. Parmar and Shri G.L. Singhal were participants in the purported police encounter. Shri P.P. Pandey, IPS, was the then Joint Commissioner of Police (JCP) heading the DCB, and Shri D.G. Vanzara, Additional Commissioner of Police (Addl. CP) was the second-in-command of the DCB. Investigation was entrusted to Smt. Parixita Gurjar, the then Assistant Commissioner of Police, Mahila Cell, functioning under the Crime Branch itself.

- 4.2** Later, the Investigating Officer (IO) had made an application on 14.07.2004 to the POTA Court for addition of sections 4 and 5 of the Explosive Substances Act and sections 4 and 53 of the POTA in the case. Subsequently, the IO had submitted a final report under section 173 of the Code of Criminal Procedure (CrPC) on 08.06.2006 in the POTA Court at Ahmedabad for grant of 'Abated Summary' in respect of the four deceased persons, shown as accused, and 'A Summary' in respect of five 'wanted' accused persons. The 'wanted' accused included three persons from Kashmir, one person from Uttar Pradesh, and one person from Pakistan who was not completely identified. However, the POTA Court at Ahmedabad did not approve the final report and directed further investigation, especially for apprehension of the three 'wanted' accused persons from Kashmir, vide order dated 07.07.2006.
- 4.3** The ADGP, CID (Intelligence), Gujarat State, Gandhinagar had also conducted an inquiry about the incident and submitted his report dated 14.10.2004 to the Director General of Police (DGP), Gujarat State. The ADGP, CID (Intelligence) had concurred with the version contained in the FIR of DCB PS I CR No. 8/ 2004.
- 4.4** Meanwhile, Mrs Shamima Kauser, mother of Miss Raza Ishrat Jahan, one of the deceased, filed Special Criminal Application No. 822 of 2004 in the Hon'ble High Court of Gujarat, stating that the police had killed her daughter in a fake encounter, and *inter alia* praying for transferring the investigation to the CBI.

The Hon'ble High Court admitted Special Criminal Application No. 822 of 2004 on 18.12.2006.

- 4.5** The killing of the aforesaid four persons in a police encounter was also inquired into by the Metropolitan Magistrate, Court No. 1, Ahmedabad, Shri S.P. Tamang under section 176 of the Cr.P.C. Shri Tamang, concluded the inquiry under section 176 CrPC and held that the encounter was fake and that the concerned police officers had committed premeditated murder of the deceased persons with the motive of earning favour and appreciation of the Chief Minister.
- 4.6** The petitioner submits, without getting into minute details, that after a protracted legal battle in the Hon'ble High Court of Gujarat and in the Hon'ble Supreme Court, investigations in this case were directed to be conducted by a specially constituted three-member Special Investigation Team comprising of a member nominated by the State of Gujarat (Shri Mohan Jha: IPS: 1985: Gujarat), a member nominated by one of the Petitioners, Shri Gopinath Pillai (Shri Satish Chandra Verma: IPS: 1986: Gujarat) and a Chairman to be nominated by the Central Government. When investigations into the fake encounter were completed, Shri R.R. Verma (IPS: 1978: Bihar) was heading the SIT. Copies of important judgments leading to the creation of a Special Investigation Team for investigating the Ishrat Jahan fake encounter case are annexed to this petition and marked herewith as ANNEXURE 'C COLLY'.

- 4.7** On 08.04.2011, the Gujarat Hon'ble High Court, in the proceedings monitoring the investigation, expressed serious displeasure regarding a complaint that was filed against a member of the SIT in the aftermath of the seizure of concealed evidence from the State FSL on 03.03.2012. It also directed the State to transfer within a week Shri P.P. Pandey, then ADGP CID (Intelligence), and others as per the earlier requisition of the SIT in pursuance of the directive dated 28.01.2011 of the Hon'ble High Court since Shri P.P. Pandey could have influenced some police officers who were potential witnesses and serving directly under him. A copy of the Gujarat Hon'ble High Court order dated 08.04.2011 is annexed hereto and marked as **ANNEXURE 'D'**.
- 4.8** On 21.04.2011, the Gujarat Hon'ble High Court observed in its order passed during the monitoring of the investigation that there appeared to be State complicity in disobeying the earlier orders of the Court for transferring Shri P.P. Pandey, now ADGP CID (Crime) and then ADGP CID (Intelligence), and others from their positions as per directions issued on 28.01.2011 by the Court. A copy of the Gujarat Hon'ble High Court order dated 21.04.2011 is annexed hereto and marked as **ANNEXURE 'E'**.
- 4.9** On 05.08.2011, the Hon'ble High Court observed in para 4, 5 and 7 of its order in Criminal Miscellaneous Application No. 10011 of 2011, which was in connection with the monitoring of the investigation, that the contention regarding State sponsored

obstruction of the investigation had considerable substance. Therefore, the Hon'ble High Court also directed the Chairman, SIT, to investigate the issue of retractions by witnesses. True copy of the Gujarat Hon'ble High Court order dated 05.08.2011 is annexed hereto and marked as **ANNEXURE 'F'**.

4.10 The SIT, after conducting the investigations into this case, came to the unanimous conclusion that the purported encounter of the four persons by the police was a fake encounter. Consequently, after considering the report of the SIT, the Hon'ble High Court, vide judgment dated 01.12.2011, *inter alia* ordered the Chairman, SIT, to file a fresh FIR with the CBI and directed the CBI to investigate the case.

4.11 Therefore, the Chairman, SIT, filed his complaint dated 15.12.2011 with the CBI, New Delhi. Accordingly, CBI case bearing RC-BS1/S/2011/0005/Mumbai under sections 302, 364, 368, 346, 120-B, 201, 203, 204, 217, 218 of the IPC, and sections 25(1)(e), 27 of the Arms Act, was registered on 16.12.2011. Shri P.P. Pandey, IPS, then Additional Director General of Police, CID (Crime), Gujarat State, was arraigned as accused no. 3 in the FIR so registered. True copy of the FIR of CBI case RC-BS1/S/2011/0005/Mumbai is annexed hereto and marked as **ANNEXURE 'G'**.

4.12 Beginning March 2013, the CBI began to arrest police officers in the case. The original version of the FIR dated 15.06.2004 in Ahmedabad City DCB PS CR No. 8/2004 was shown to be completely false by this time. On 02.05.2013, warrant u/s 70

CrPC was issued by the court of the Additional CJM, CBI court no. 2, Ahmedabad, for the arrest of Shri P.P. Pandey, since he reported sick from duty and became untraceable since 20.04.2013 and did not comply with two notices issued under section 41-A of CrPC for remaining present before the CBI-SIT.

4.13 The evidence against Shri P.P. Pandey in the case can be summarized as follows:

- (i) The deceased were in the illegal custody of police officers under the charge and control of Shri Pandey, since much before the date of the purported encounter. Shri Pandey, however, had had feigned in the FIR of the original case [Ahmedabad City DCB PS I CR No. 8/04, dated 15.06.2004] to have received from his 'personal sources' the last intelligence input six hours before the incident to the effect that the deceased persons had left Mumbai for Ahmedabad. Obviously, when the deceased persons were in the custody of the officers under his control, the recorded position of Shri Pandey about this intelligence input shows that he had conspired in the wrongful killing of the deceased persons in captivity at that time.
- (ii) During the CBI investigation, it transpired that the petitioner had conspired before the purported encounter with Shri D.G. Vanzara (then Additional CP, Crime Branch, Ahmedabad City) and others to kill the four deceased persons, who were then in their illegal custody.

4.14 A Writ Petition (Criminal) No. 95 of 2013, filed by the absconding accused, Shri P.P. Pandey, in the Hon'ble Supreme Court of India praying for quashing the FIR of the CBI Case No RC-BS1/2011/S/0005/Mumbai, and seeking protection against his arrest, etc, was dismissed by the Hon'ble Supreme Court on 11.06.2013 while liberty was given to him to approach any appropriate forum. Shri Pandey then approached this Hon'ble High Court, which petition was also dismissed vide its order dated 01.07.2013. A copy of the order of the Hon'ble Supreme Court and the Order dated 01.07.2013 of the Hon'ble High Court are annexed to this petition and marked herewith as **ANNEXURE 'H COLLY'**.

4.15 As Shri Pandey was absent from duty in an irregular fashion and was unavailable also to the State DGP, and the warrant could not be served even by the DGP, an application was moved by the CBI u/s 82 CrPC before the CBI court. Subsequently, a proclamation u/s 82 CrPC was issued against him by the Additional CJM, CBI Court No. 2, Mirzapur, Ahmedabad.

4.16 It is emphasized that the evidence against Shri P.P. Pandey in the case is serious. For illustration of his pivotal and directorial role in the conspiracy to kill the four persons in their illegal custody, true copy of statement recorded u/s 161 dated 13.04.2013 of Shri K.M. Waghela and the true copy of statement recorded u/s 164 of Shri D.H. Goswami dated 04.06.2013 is annexed hereto and marked as **ANNEXURE 'I COLLY'**. [There are various other evidences against Shri P.P.

Pandey in this case and those form part of the charge-sheet subsequently filed by the CBI in the competent court on 03.07.2013.]

4.17 During the investigation an audio record was recovered containing conversations during a meeting held in November 2011 where leading State functionaries, including the Minister of State for Home, Minister of State for Law, Advocate General, the Principal Secretary to the Chief Minister, and Shri AK Sharma (IGP), were discussing with two accused police officers their common strategy for obstructing the investigation derailing the proceedings before the Division Bench. True copy of the panchnama dated 09.06.2013 seizing audio recording is annexed hereto and marked as **ANNEXURE 'J'**.

4.18 In yet another recording reported by a large section of the press, Shri P.P. Pandey is heard instructing another co-accused senior police officer, Shri G.S. Singhal, to influence an Under-Secretary of the Ministry of Home Affairs, New Delhi, who was to come to Ahmedabad to file an affidavit in this Ishrat Jahan fake encounter case. Copies of some press reports on this conversation are annexed to this petition and marked herewith as **ANNEXURE 'K COLLY'**.

4.19 On 03.07.2013, CBI filed charge-sheet against Shri P.P. Pandey, a proclaimed offender, and others for offences punishable under sections 302, 364, 368, 346, 120-B, 201, 203, 204, 217, 218 of Indian Penal Code and 25(1)(e), 27 of Arms

Act. True copy of the summary of charge-sheet dated 03.07.2013 is annexed hereto and marked as ANNEXURE 'L'.

4.20 Shri P.P. Pandey finally submitted to the process of law by surrendering before the CBI court at Ahmedabad in the month of August 2013, after he was directed on 26.07.2013 by the Hon'ble Supreme Court to report to the competent court at Ahmedabad. After his police remand was exhausted, he was remanded to judicial custody. He was also placed under suspension by the State as per service rules. He remained in jail till February 2015, when he was released on bail. Within four days of his release on bail, the State Government reinstated him in service and posted him as Additional DGP (Law and Order). He deserved a departmental charge-sheet for his dereliction of duty during the period April – Aug 2013 when he was an absconder from law, but such a departmental enquiry has not been initiated against him by the State Government.

4.21 Shri Pandey was not promoted as DGP in April 2015 when his juniors in service were promoted to the rank of DGP. The supersession of Shri P.P. Pandey was justified as it was in accordance with the Ministry of Home Affairs guidelines bearing no. 45020/11/97-IPS-II dated 15 January 1999 (reference: para 11 of the annexure with this letter). True copy of the Ministry of Home Affairs guidelines bearing no. 45020/11/97-IPS-II dated 15 January 1999 is annexed hereto and marked as ANNEXURE 'M'. It could not be ignored that Shri Pandey had the gravest criminal prosecution pending

against him, and the CBI charge-sheet was duly committed to the Court of Sessions (the CBI Special Judge at Ahmedabad).

- 4.22** Shri D.G. Vanzara, an accused in several cases of fake encounters in Gujarat and also a co-accused of Shri P.P. Pandey in the instant case, protested the supersession of the latter. His public protests and statements were published in newspapers of May 7, 2015. A copy of his letter addressed to the Chief Secretary, Gujarat, is annexed hereto and marked as ANNEXURE 'N'. Thereafter, curiously, the State revisited its earlier decision and Shri Pandey was consequently promoted and posted as DGP (Law and Order).
- 4.23** In February 2016, Shri P.P. Pandey was transferred and posted as Director, Anti Corruption Bureau of Gujarat State.
- 4.24** When Shri D.G. Vanzara returned to the State (after his release on bail and permission by the competent court to enter Gujarat) on 08.04.2016, Shri P.P. Pandey attended his welcome ceremony in the town hall of Ahmedabad. Shri Pandey eulogized Shri Vanzara and called him a 'rajarshi', i.e. a king turned saint. An illustrative newspaper report is annexed hereto and marked as ANNEXURE 'O'.
- 4.25** Vide the impugned order dated 15.04.2015, the State of Gujarat has given Shri P.P. Pandey the additional charge of the post of the DGP, Gujarat State, after the incumbent DGP, Shri PC Thakur, was taken on central deputation and posted as DGP of Home Guard, Fire Services and Civil Defence at New Delhi by the Government of India.

5. The petitioner most humbly submits that the facts pleaded are on the basis of a study carried out by the petitioner, along with his colleagues. The available literature in this regard has been studied by the petitioner and his colleagues in arriving at the correct facts related to fake encounter of Ishrat Jahan and others.
6. The petitioner has not made a prior representation in this regard to the concerned authorities.
7. No such public interest litigation has been filed on this subject matter to the knowledge of the petitioner.
8. That the present petition has been filed on the following amongst other grounds:

GROUND

- A. The appointment of Shri P.P. Pandey as an in-charge DGP of Gujarat State, is in violation of the Doctrine of Public Trust. The Doctrine of Public Trust entails that the government elected by the people would be run as per law, establish the Rule of Law and should be seen as acting in fairness and with equity. The government cannot be run as per the whims and fancies of an individual or a group of individuals. In this context, the police force of a state cannot be left to be headed by a

person accused of the extremely serious offence of the murder of four persons, especially, when the trials are yet to begin. In this sense, such an appointment is itself a breach of law, being arbitrary and in violation of Article 14 of the Constitution of India.

- B.** Several witnesses in the CBI charge-sheet dated 03.07.2015 are serving police officers of Gujarat. These witnesses have given evidence against accused persons including Shri P.P. Pandey. Subjecting these serving police officers to the paramount departmental authority of Shri P.P. Pandey in his position of the DGP of the State is likely to harm the prosecution case even before the trial begins. Moreover, several retired police officers, serving and retired forensic science experts, and members of the public are witnesses in the case, and these witnesses too are likely to be compromised under the overarching influence of the DGP. Thus, it is against public interest that Shri P.P. Pandey holds the position of the DGP of Gujarat State.
- C.** As has been mentioned above and as is clear from the audio recording, Shri P.P. Pandey has previously attempted to tamper with the evidence. Once posted in-charge as the head of police, his intentions to sabotage the investigations and the trial are very likely.
- D.** As has been mentioned above and as is clear from the seizure *panchnama* of the audio recording, the senior

functionaries of the State, including the Ministers, had made concerted efforts to derail the investigation of this case. Now that Shri P.P. Pandey has been posted as in-charge DGP of the State police, his capacity to influence the witnesses to sabotage and derail the investigation and trial of the case has increased manifold.

E. The Hon'ble Supreme Court of India has directed in Writ Petition (Civil) No. 310 of 1996 (Decided on 22.09.2006; Prakash Singh and Ors. Vs. Union of India (UOI) and Ors) that the DGP of the State should have a very good record [Direction no. 2 under para 14]. Shri P.P. Pandey, facing the gravest criminal prosecution, does not satisfy this criterion. True copy of the Supreme Court judgment dated 22.09.2006 in the case of Prakash Singh (supra) is annexed hereto and marked as **Annexure 'P'**.

F. The criminal record and professional conduct of Shri P.P. Pandey made him unfit for promotion to the rank of DGP, in view of para 4.21 above and the Govt. of India guidelines at Annexure – M. Thus it is nothing but a violation of the letter and spirit of section 5A of Bombay Police (Gujarat Amendment) Act, 2007. For ready reference, true copy of the Bombay Police (Gujarat Amendment) Act, 2007 is annexed hereto and marked as **Annexure 'Q'**.

Pertinently, the State of Gujarat has not implemented the Direction no. 1 under para 14 of the above-referred

judgment of the Hon'ble Supreme Court. Though the State enacted Bombay Police (Gujarat Amendment) Act, 2007, and constituted a State Security Commission under section 32A, this section is not as per the spirit and directive of the SC order. The Supreme Court had directed that the State Security Commission be "independent of Government control" but section 32A excludes the Leader of the Opposition as well as a Judge – thus none of the three models for a Commission independent of Government control is followed.

- G.** The credibility of democratic institutions depends on the unimpeachable integrity of the officers performing the highest executive roles in these institutions. When an officer accused of the grave charge of being part of a conspiracy to murder is given the responsibility of exercising the highest form of oversight over the police force of the State Government, basic tenets of institutional propriety and rule of law are violated. Institutional propriety and rule of law demand that high officials of the State must be exemplars of probity and the strongest forms of ethical commitment. However, when an officer who chose to abscond instead of cooperating with investigating agencies occupies the office of the DGP, the highest office of the State police force, the institutional majesty of the high office of the DGP of the State is eroded beyond repair.

- H.** In democratic societies, institutions decay when establishments of the State convey the impression that they are willing to bend democratic norms for protecting the interests of those considered to be close to the ruling dispensation. When the ruling dispensation shows undue haste in promoting an officer whose name is still under legal cloud to the highest post possible, a message is conveyed that institutional and legal processes are subordinate to the discretionary authority of the political establishment. Basic democratic norms and the Rules of the Government place a demand on the State to wait for the trial to be completed in serious criminal matters before it hands over sensitive and important postings to officers accused of these crimes. An officer who was interested in expeditiously clearing his name would have chosen to cooperate with investigating agencies rather than abscond. When such an officer is given the additional charge of being DGP of the State of Gujarat, it is clear that the decay of institutions has advanced to such an extent that there is no hesitation in compromising with the legitimacy of institutions in order to serve the personal interests of the individuals accused of serious crime.
- I.** The sanctity of democracy lies in constantly reiterating the public accountability of the State to citizens. In these circumstances, it may sometimes be even worthwhile to

retain officers without portfolio or work while serious criminal charges are still pending against them. However, when the most important posts such as DGP of the State are given to them, faith of citizens that establishments of the State are functioning on the basis of the rule of law completely collapses. When faith in the democratic credibility of the executive collapses, citizens can only rely on the exceptional intervention of the judiciary to ensure that the grossest violation of propriety, conflict of interest and subversion of justice are undone.

- J.** When an officer who is an accused exercises administrative authority against those who are witnesses, a chilling atmosphere of intimidation results. Their morale, will and sense of conscience is under threat as they have to report to the same officer against whom they have given evidence either before a magistrate or to the investigation officer. Citizens may even be afraid to report normal crimes in the fear that the police agencies are being controlled by those who themselves are accused of serious crimes. An atmosphere of breakdown of trust and democratic accountability will result unless the dangerous precedent of appointing an officer accused of murder is not immediately undone.

- 9.** The petitioner submits that he has not filed any other petition with regard to the subject matter of this petition either before

this Hon'ble Court or any other Court of law including the Hon'ble Supreme Court of India, except as stated hereinabove.

10. The petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this writ petition. The petitioner craves leave to add, amend, alter or rescind any of the grounds, if need arises to do so.
11. The petitioner, therefore, prays that:-

Prayer

- A. The Hon'ble Court may be pleased to allow this petition;
- B. The Hon'ble Court may be pleased issue the writ of mandamus or any other appropriate writ, order or direction, to quash and set aside the impugned order dated 15.04.2015 entrusting additional charge of the post of DGP Gujarat State to Shri P.P. Pandey;
- C. The Hon'ble Court may be pleased issue the writ of mandamus or any other appropriate writ, order or direction, to appoint a regular DGP for Gujarat State keeping in view the guidelines given by the Hon'ble Supreme Court in Prakash Singh's (supra) case;

- D.** The Hon'ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to quash and set aside the order promoting Shri P.P. Pandey to the rank of DGP;
- E.** The Hon'ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, directing Respondent No. 2 to consider instituting disciplinary proceedings against Shri P.P. Pandey for misconduct within one month of the disposal of this petition and give a speaking order in case Respondent No. 2 decides not to institute departmental proceedings against him;
- F.** Pass any such other orders as may be deemed fit, proper and just in the interest of justice pending admission, hearing and final disposal of the present petition.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE
PETITIONERS, AS IN DUTY BOUND, SHALL FOREVER PRAY.

Mumbai

(Rahul Sharma)

Date: 25.04.2016

Advocate for the Petitioner

AFFIDAVIT

I, Julio Francis Ribeiro, aged about 86 years, son of Late Shri Angelo Frederick Ribeiro, having retired from the Indian Police Service and

presently engaged in private service and social service and residing at 51, Sagar Tarang, Worli Sea Face, Worli, Mumbai 400 018, the petitioner herein, do hereby solemnly affirm and state on oath what has been stated hereinabove in para Nos. 1 to 8 is true to my knowledge and I believe the same to be true and correct. Para No. 9 to 10 are the formal contentions. Para 11 is the prayer clause.

SOLEMNLY AFFIRMED ON THIS TWENTIFIFTH DAY OF
APRIL 2016, AT MUMBAI.

(Deponent)

Identified by me.

Advocate

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
(EXTRA ORDINARY ORIGINAL JURISDICTION)

WRIT PETITION NO. _____ OF 2016 (PIL)

(In Re: Appointment of a person, charge-sheeted by the CBI in a High Court monitored investigation, for offences under the Arms Act and for offences of abduction, wrongful confinement, and premeditated murder of four persons, as in-charge DGP, Gujarat)

Julio Francis Ribeiro

... Petitioner

VERSUS

State of Gujarat & Ors.

... Respondents

SYNOPSIS

This petition is filed in public interest to challenge the Government of Gujarat, Home Department, notification dated 15.04.2016 entrusting Shri P.P. Pandey, IPS (Gujarat: 1980), Director of the State Anti Corruption Bureau, with the additional charge of the post of DGP of Gujarat State. Such an additional charge is against the Doctrine of Public Trust, is against the law and the express guidelines of the Supreme Court. Moreover, it is likely to defeat the ends of justice and is against the public interest because Shri P.P. Pandey is an accused committed for trial in a case of abduction and premeditated murder.

LIST OF DATES AND EVENTS

- 15.06.2004 Four persons, including a 19-years-old girl named Ishrat Jahan, were killed in a purported encounter with police officers of the Detection of Crime Branch (DCB), Ahmedabad City. An offence, vide Ahmedabad City DCB PS I CR No. 8/ 2004, was registered against the four deceased persons.
- 08.06.2006 The Investigating Officer (IO) filed a final report under section 173 of the Code of Criminal Procedure (CrPC) in the POTA Court at Ahmedabad for grant of 'Abated Summary' in respect of the four deceased persons, shown as accused, and 'A Summary' in respect of five 'wanted' accused persons.
- 07.07.2006 The POTA Court at Ahmedabad did not approve the final report and directed further investigation.
- 18.12.2006 The Hon'ble Gujarat Hon'ble High Court admitted Special Criminal Application No. 822 of 2004, filed by Mrs Shamima Kauser, mother of Miss Raza Ishrat Jahan, one of the deceased, stating that the police had killed her daughter in a fake encounter, and *inter alia* praying for transferring the investigation to the CBI.

- 13.08.2009 The Hon'ble High Court (Coram: Hon'ble Mr Justice K.S. Jhaveri) passed an order in the Special Criminal Application No. 822 of 2004, resulting in the constitution of a Special Investigation Team (SIT) comprising (i) Shri Pramod Kumar, ADGP, (ii) Shri Mohan Jha, Inspector General of Police (IGP), and (iii) Shri JK Bhatt, Deputy Inspector General of Police (DIGP), for further investigation of DCB PS I CR No. 8/ 2004.
- 07.09.2009 Shri SP Tamang, Metropolitan Magistrate, Court No. 1, Ahmedabad concluded the inquiry under section 176 CrPC and submitted his report to the Chief Metropolitan Magistrate , Ahmedabad. In the inquiry report, the Metropolitan Magistrate had held that the encounter was fake and that the concerned police officers had committed premeditated murder of the deceased persons with the motive of earning favour and appreciation of the Chief Minister.
- 09.09.2009 Shri G.L. Singhal filed Criminal Miscellaneous Application No. 10624 of 2009 on in the Hon'ble High Court of Gujarat and prayed to stay the operation of the report dated 07.09.2011 of Shri SP Tamang, Metropolitan Magistrate, and to declare it as null and void. Simultaneously, Shri G.L. Singhal also filed Criminal Miscellaneous Application No. 10621 of 2009 to be impleaded as a party in the

proceedings of Special Criminal Application No. 822 of 2004.

The State of Gujarat also filed Criminal Miscellaneous Application No. 10625 of 2009, in Special Criminal Application No. 822 of 2004, contending that the inquiry report dated 7.9.2009 of the Metropolitan Magistrate was without jurisdiction.

After hearing these applications, the Hon'ble High Court (Coram: Hon'ble Mr Justice K.S. Jhaveri) stayed the inquiry report dated 07.09.2009 of the Metropolitan Magistrate, and directed for an inquiry against the Metropolitan Magistrate.

19.04.2010 The Apex Court set aside the Hon'ble High Court order dated 09.09.2009 and requested the Hon'ble Chief Justice of Gujarat High Court to constitute a Division Bench for final hearing of the said matter.

12.08.2010 The Division Bench of the Hon'ble High Court heard all the petitions filed by parents of two of the deceased persons, viz. Ishrat Jahan and Javed @ Pranesh Pillai, State of Gujarat, and some police officers involved in the purported encounter, and, *inter alia*, directed transfer of the investigation to the SIT headed by Shri RK Raghavan, which was formed by the Hon'ble Supreme Court for investigating some of the cases related to riots in the

year 2002.

- 24.09.2010 The Division Bench of the Hon'ble High Court of Gujarat reviewed order dated 12.08.2010 and constituted a Special Investigation Team (SIT) for the investigation of Ahmedabad City DCB PS I CR No. 8/2004 (Ishrat Jahan Encounter Case), as per judgment and order in Criminal Miscellaneous Application No. 9832 of 2010 in Special Criminal Application No. 1850 of 2009 with Criminal Miscellaneous Application No. 10621 of 2010.
- 08.04.2011 The Gujarat Hon'ble High Court, in the proceedings monitoring the investigation, expressed serious displeasure regarding a complaint that was filed against a member of the SIT in the aftermath of the seizure of concealed evidence from the State FSL on 03.03.2012. It also directed the State to transfer within a week Shri P.P. Pandey, then ADGP CID (Intelligence), and others as per the earlier requisition of the SIT in pursuance of the directive dated 28.01.2011 of the Hon'ble High Court.
- 21.04.2011 The Gujarat Hon'ble High Court observed in the hearing of matters relating to Ishrat Jahan Encounter Case that there appeared to be State complicity in disobeying the earlier orders of the Court for transferring Shri P.P. Pandey, now ADGP CID (Crime) and then ADGP CID (Intelligence), and

others from their positions as per directions issued on 28.01.2011 by the Court.

- 15.07.2011 The Hon'ble High Court observed in para 11 of its order in matters regarding Ishrat Jahan Encounter Case that witnesses were being made to retract during ongoing investigation, and that "SIT shall ensure that appropriate protection is extended to the witnesses and if any requisition is made by SIT to the State for providing extra protection to the witnesses, the same shall be made available by the State Government."
- 05.08.2011 The Hon'ble High Court observed in para 4, 5 and 7 of its order in Criminal Miscellaneous Application No. 10011 of 2011, which was in connection with the matters of Ishrat Jahan Encounter Case, that the contention regarding State sponsored obstruction of the investigation had considerable substance.
- 21.11.2011 The Hon'ble High Court of Gujarat declared in the open Court the SIT's unanimous finding that the Ishrat Jahan Encounter Case was a case of fake encounter and indicated that a fresh offence under Section 302 etc. of IPC and other applicable sections of law shall be registered against the police officers involved in the case.
- 01.12.2011 Judgment and order was passed by the Hon'ble High Court of Gujarat in Criminal Miscellaneous

Application No. 15981 of 2010, in Criminal Miscellaneous Application No. 9832 of 2010 with Special Criminal Application No.1850 of 2009, directing, *inter alia*, that the SIT shall file a complaint with the CBI against those responsible for the fake encounter, and that the CBI will investigate the case thereafter.

- 15.12.2011 The SIT filed an FIR with the CBI, New Delhi, under Section 302 of IPC against concerned persons including Shri P.P. Pandey, IPS, then Additional Director General of Police, CID (Crime), Gujarat State. Accordingly, CBI case bearing RC-BS1/S/2011/0005/Mumbai under sections 302, 364, 368, 346, 120-B, 201, 203, 204, 217, 218 of the IPC, and sections 25(1)(e), 27 of the Arms Act, was registered on 16.12.2011. Shri P.P. Pandey was arraigned as accused no. 3 in the FIR so registered.
- 02.05.2013 Warrant u/s 70 CrPC was issued by the court of the Additional CJM, CBI court no. 2, Ahmedabad, for the arrest of Shri P.P. Pandey, since he reported sick from duty and became untraceable since 20.04.2013 and did not comply with two notices issued under section 41-A of CrPC for remaining present before the CBI-SIT.
- 11.06.2013 Writ Petition (Criminal) No. 95 of 2013, filed by the absconding accused, Shri P.P. Pandey, in the

Hon'ble Supreme Court of India praying for quashing the FIR of the CBI case No RC-BS1/2011/S/0005/Mumbai, and seeking protection against his arrest, etc, was dismissed by the Hon'ble Supreme Court. Subsequently, a proclamation u/s 82 CrPC was issued against him by the Additional CJM, CBI Court No. 2, Mirzapur, Ahmedabad.

03.07.2013 CBI filed charge-sheet against Shri P.P. Pandey, a proclaimed offender, and others for offences punishable under sections 302, 364, 368, 346, 120-B, 201, 203, 204, 217, 218 of Indian Penal Code and 25(1)(e), 27 of Arms Act.

August 2013 Shri P.P. Pandey surrendered to CBI Court in Ahmedabad. Sent to police remand and then to judicial custody.

February 2015 Shri P.P. Pandey released on bail, and within four days of his release was reinstated by the State of Gujarat in service and posted as Additional DGP (Law and Order).

April 2015 Shri P.P. Pandey was not promoted as DGP when his juniors in service were promoted to the rank of DGP.

He was subsequently promoted and posted as DGP (Law and Order).

February 2016 Shri P.P. Pandey was transferred and posted as

Director, Anti Corruption Bureau.

15.04.2016 Shri P.P. Pandey has been given additional charge of the post of DGP, Gujarat State, vide the impugned order passed by the State of Gujarat.

Several serving police officers who are witnesses in the criminal case, wherein Shri P.P. Pandey is a charge-sheeted accused, are subject to his authority and influence, which is likely to adversely affect the judicial process of trial. Other witnesses can also get influenced.