

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 164 of 2004
 With
 MISC. CIVIL APPLICATION No. 538 of 2004
 With
 CRIMINAL MISC.APPLICATION No. 10780 of 2006
 With
 CRIMINAL MISC.APPLICATION No. 11560 of 2005
 In
 CRIMINAL MISC.APPLICATION No. 164 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MOHMED JUNED SHAMSUDDIN SAIYED & 4 - Applicants

Versus

K C KAPOOR, PRINCIPAL SECRETARY & 3 - Respondents

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Appearance :

1. Cri. Misc. Applications No. 164 of 2004 & 11560 of 2005.
MR M.T.M. HAKIM WITH MR MAKBUL I MANSURI for Applicants.
MR KAMAL B TRIVEDI, ADVOCATE GENERAL WITH MR SUNIT SHAH, GOVERNMENT PLEADER WITH MR KP RAVAL, APP for Respondents.
2. Misc. Civil Application No. 538 of 2004
MR MUKUL SINHA WITH MR RAUF K. MANSURI for Applicant.
MR KAMAL B TRIVEDI, ADVOCATE GENERAL WITH MR SUNIT SHAH, GOVERNMENT PLEADER WITH MR KP RAVAL, APP for Respondents.
3. Cri. Misc. Application No. 10780 of 2006
MR GIRISH PATEL with MR V.A. MANSURI for Applicant.
MR KAMAL B TRIVEDI, ADVOCATE GENERAL WITH MR SUNIT SHAH, GOVERNMENT PLEADER WITH MR KP RAVAL, APP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 30/10/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. Since common issue is involved in all these petitions / applications requesting this Court to initiate contempt proceedings against the respondents - opponents in the

respective applications for the alleged custodial violence and wilful and deliberate breach of the guidelines issued by the Hon'ble Supreme Court in the case of **D.K. Basu V/s. State of West Bengal, 1997 (1) SCC 416** and since all these petitions / applications are heard together, the same are being disposed of by this common judgment.

2. Cri. Misc. Application No. 164 of 2004 is filed by five persons, namely, (1) Mohmed Juned Shamsuddin Saiyed (2) Harish Shakeel Ahmed Ansari, (3) Zahidkhan Khayyum Khan Pathan, (4) Abdul Rauf Ramjubhai Dhobi and (5) Mohmad Rafik Nasimbhai Ansari and according to them, they were illegally picked up and detained by the opponents during the period between 06.12.2003 to 09.12.2003. They came to be arrested on 11.12.2003 in connection with the offence registered with DCB, Ahmedabad being C.R. No. I 16/2003. They were produced before the learned Special Judge (POTA) on 12.12.2003. An application for police custody was moved by Additional Commissioner of Police, Ahmedabad – the opponent No. 3 herein seeking police custody for the period of 21 days. The learned Special

Judge (POTA) vide his order dated 12.12.2003 rejected the said application for police custody. Being aggrieved by the said order, the State Government has preferred Criminal Appeal No. 1557 of 2003 under Section 34 of the Prevention of Terrorism Act (for short "POTA") before this Court and this Court has admitted the said appeal and granted ad-interim relief in the form of granting police custody for a period of 10 days. Pursuant to this order, the applicants were taken in police custody from Sabarmati central jail on 24.12.2003. On the very same day, the applicants moved an application before the POTA Court ventilating the apprehension of custodial torture and custodial violence and seeking compliance by the opponents of the guidelines and directions issued by the Hon'ble Supreme Court in D.K. Basu's case (Supra). The wife of the applicant No. 3 Zahidkhan has also filed an affidavit stating that the opponent No. 4 i.e. Police Inspector, DCB, Ahmedabad had threatened the applicant No. 3 with fake encounter death. The said application however was rejected by the learned Special Judge, POTA.

3. It is also the case of the applicants that the applicants'

advocate Mr. L.R. Pathan and Mrs. Rehana Zahidkhan visited the applicants during the period when the applicants were in police custody and the applicants have complained of custodial torture and custodial violence being meted out to the applicants. The applicants, therefore, filed Special Criminal Application No. 1321 of 2003 before this Court which was disposed of on 30.12.2003, after recording consensus that with a view to allay the apprehension of the petitioners, the police, even during the custodial remand, shall allow visit by any lawyer of the choice of all the accused for about 30 minutes every day during the period between 07.00 p.m. to 08.00 p.m. and, if requested by the lawyers at the instance of the accused, the concerned accused shall also get examined through the Medical Officer. It is also the case of the applicants that on 02.01.2004 when the period of 10 days granted by this Court of police custody was over, the applicants were produced before the learned Special Judge (POTA) on 03.01.2004 and on being asked by the learned Special Judge (POTA), the applicants have complained of custodial torture and custodial violence meted out to them. The learned Special Judge (POTA), therefore, took notice of the said

facts and on a complaint of the applicant No. 1 - Juned, the learned Special Judge (POTA) also directed medical examination by taking note on record the physical marks of custodial torture and custodial violence on the body of the said Mr. Juned.

4. In the above background of the matter, the applicants have filed the present petition before this Court stating that the opponents have deliberately and willfully violated the guidelines and directions of the Hon'ble Supreme Court amounting to contempt of the said guidelines and directions and requested this Court to initiate and prosecute appropriate proceedings against the opponents under the Contempt of Court Act.
5. This Court has issued notice on 12.01.2004. An affidavit-in-reply was filed by the opponent No. 3 disputing and denying the contents of the application. It is contended in the said reply that the applicants have initiated proceedings before several Courts making same allegations and have failed to obtain the reliefs prayed for in the said applications / petitions. The applicants / accused Nos. 1,2 & 3 came to be arrested on 11.12.2003

and the accused Nos. 4 & 5 were arrested on 12.12.2003 and arms and ammunitions were recovered from each of these accused. It is further contended that the accused through their advocates have raised grievances when they were produced before the designated Court, Special Judge (POTA) on 12.12.2003. However, while rejecting the remand application filed by the Investigating Agency, the learned Special Judge (POTA) in absence of material to substantiate their case did not take cognizance of the said grievances and did not pass any order with regard to the said aspect on merit. It is further contended that while challenging the order of the POTA Court refusing to grant police remand, the Investigating Agency specifically averred in the petition before this Court that a criminal conspiracy was hatched with an intention to threaten the unity, integrity and security of the State with a specific intention to revenge by striking terror in the minds of the people of Gujarat. Considering the overwhelming merits, statements and gravity of the offences alleged, this Court has admitted the appeal and granted police remand for a period of 10 days. It is further contended that the allegations made by the applicants are totally baseless and unsubstantiated. The

conduct of the Investigating Agency by voluntarily making a concession to allay the fears of the applicants – accused and their family members itself demonstrate that the police had never desired to employ any kind of third degree method. The father of the accused No. 2, Shri Nasim Munir Ansari visited the accused on 27.12.2003 and has expressly stated that he was satisfied with the condition of his son and his son has not made any complaint with regard to the treatment meted out to him during the police remand. Similarly, Mrs. Banubibi, the mother-in-law of the accused No. 5 has also stated in clear terms that she had no complaint with regard to any of the misconduct by the police authority during his police remand. Even the concerned accused have not made any grievance during the presence of their advocate with regard to any pressure tactics being adopted / employed to obtain confessional statements. It is, therefore, urged that inspite of never having made any grievances before the competent Court with regard to illegally adopted / obtained confessional statements, at the belated stage, moving of such an application before this Court by the applicants – accused is nothing but an afterthought. Whenever medical examination of

the applicants - accused were required, the same were provided and necessary evidence to that effect was also produced before the Court. Despite the fact that all the allegations which were made by the accused in the present application are baseless and are denied, the opponent No. 3 in his affidavit-in-reply has stated that he holds this Court in highest respect and at no stage has violated any of the guidelines issued by the Hon'ble Supreme Court. He has also tendered his unconditional apology in the event if it is observed by this Court that there is any violation of the guidelines issued by the Hon'ble Supreme Court.

6. An affidavit-in-rejoinder was filed on 10.03.2004 by Mrs. Rehana, wife of Zayedkhan, the applicant No. 3. She has controverted the facts stated and averments made in the affidavit-in-reply and reiterated the contents of the application. It is inter alia, stated in the rejoinder affidavit that ex-parte remand granted by this Court was challenged before the Hon'ble Supreme Court and in its order dated 13.01.2004, it has been observed that the High Court ought not to have entertained the appeal. However, since appeal filed by the State itself was

withdrawn on 13.01.2004, the SLP was rendered infructuous and was accordingly dismissed. It is further stated that though the applicants-accused were stated to have been medically examined, no reports have been produced. It is further stated that when the applicants-accused were produced before the Special POTA Court, marks of injuries on the body of some of the applicants-accused were observed and yet the Medical Officer conveniently failed to observe marks of injuries. It is, therefore, contended that the non-performance of correct and true medical examination of the applicants during the period of police custody amounts to contempt of Court and the breach of guidelines.

7. After considering the reply as well as the rejoinder, this Court has passed an order on 16.03.2004 seeking an explanation in respect of an infirmity of non-recording of the injury which was visible as per the order of the learned POTA Judge, in the injury certificate issued in respect of the accused. This Court has directed the opponents to place on record the affidavits of the concerned persons and to produce authenticated copies of the relevant medical papers.

8. In compliance of the said directions of this Court, an affidavit-in-sur-rejoinder was filed by Mr. V.V. Chaudhary, on 09.04.2004 and along with the same, affidavits of the concerned Doctors as well as relevant case papers are produced on record. It is stated therein that there were no specific details given with regard to date, time and name of the concerned Police-Sub-Inspectors who have inflicted any injury on any of the applicants during the course of interrogation. During the course of hearing before the POTA Court, the applicants have not revealed the names of the Police Officers against whom allegations of beating have been made. The applicants could not give specific names nor enumerated any specific details. Mrs. Rehana Pathan, wife of Zahidkhan herself visited the concerned accused on several occasions during the period of police remand. However, on no occasion, she had voiced any complaint with regard to the same before the concerned authority or any superior Officer or even before the learned Special Judge, POTA with regard to any custodial violence or any physical torture. An explanation was also given with regard to the allegation of causing some

injury to the accused, namely, Mohmmmed Juned and in respect of whom injury marks were found by the learned Special Judge (POTA). It was stated that being night time and due to poor visibility, the learned Special Judge (POTA) took the mobile phone of P.S.I. And with the assistance of the light emitting from mobile phone made the visual examination and then made a note of the complained injury and directed medical examination of the said accused. Dr. Manish has examined each of the accused and in his affidavit produced on record he has clearly stated that though some of the accused complained of pain, no mark of injury was observed by him. Thus in the case history, he made a note of the complaint made by some of the accused and appropriate medicines were also prescribed. However, as no marks of injuries of beating were observed by him in the detailed medical examination, he did not make any noting in that behalf. He has also clearly stated that he holds the Hon'ble Special Judge (POTA) in the highest esteem and as the Hon'ble Special Judge (POTA) had noted some marks of injury, he was of the view that making any observations contrary to the same would amount to showing disrespect to the Hon'ble Court.

9. After the aforesaid affidavit of the concerned Doctor was filed and case papers were produced before this Court, the applicants have moved Cri. Misc. Application No. 11560 of 2005 praying for cross-examination of Shri V.V. Chaudhary, Dr. Manish, Dr. Dinesh Chandana and Dr. Kuldip Joshi under the provisions of Rule 17 of the Contempt of Courts (Gujarat High Court) Rules, 1984. it is contended that these persons are required to be cross-examined for finding out true facts and for proper adjudication of contempt petition.

10. Misc. Civil Application No. 538 of 2004 is filed by one Sadabkhan Mazharkhan Pathan. He was taken by the opponents on 05.01.2004 by transfer warrant from the judicial custody, in connection with the offence registered with the DCB, Ahmedabad being C.R. No. I 16/2003. An application was moved on 06.01.2004 by the Investigating Agency seeking police custody for the period of 21 days. The said application was partly granted and the police remand of 10 days was given. On 16.01.2004, when the police remand of 10 days was over, the applicant was produced before the learned

Special Judge (POTA) and on being asked by the learned Special Judge (POTA), the applicant complained of custodial torture meted out to him. The learned Special Judge (POTA) took notice of the said fact and on complaint of the applicant, directed medical examination by taking note on record the physical marks of custodial torture and custodial violence on the body of the applicant. It is, therefore, contended that the opponents have committed wilful and deliberate breach of the guidelines and directions issued by the Hon'ble Supreme Court and requested this Court to initiate contempt proceedings.

11. An amendment was made in the said application pursuant to leave granted by this Court vide order dated 19.04.2004 whereby the details regarding custodial torture meted out to the applicant were given and the names of the police officials and the role that has been played by them were also given.

12. An affidavit-in-reply was filed by Shri V.V. Chaudhary, Assistant Commissioner of Police and the allegations made in the application were totally denied by him. It is

stated that between 06.01.2004 to 16.01.2004, the applicant has been subjected to medical examination on regular intervals at least on four occasions and the details were given in the reply. It is further stated that the remarks made in each of the medical reports obtained on different dates clearly revealed that none of the injuries being referred to by the applicant and alleged to have been inflicted on 09.01.2004 was ever reported or physically found. During the period between 06.01.2004 to 16.01.2004, several advocates were permitted to meet the applicant on various occasions and details thereof are also given. The wife and brother of the applicant were also permitted to meet the applicant on 11.01.2004 and 15.01.2004. While taking note of the confessional statement of the applicant, Chief Metropolitan Magistrate, Ahmedabad categorically observed that no complaint of ill-treatment was given. The said statement was read over to the accused and he admitted that he has voluntarily stated the facts before the Police and signed before him. It is, therefore, denied that the confession was false or has been extracted under torture and coercion as alleged. On none of the occasions, the complaint of whatsoever nature was ever

made by the applicant either before the Magistrate or before the concerned Medical Officers on 10.01.2004, 12.01.2004 and 14.01.2004 or to his advocates and/or his family members on the aforesaid dates. Had the applicant been ill-treated on 09.01.2004 as alleged, he would have definitely informed his wife and/or brother and/or advocate when they visited the applicant on various dates and even otherwise, the injury complained would have definitely been observed in the subsequent medical examinations. Since the learned Special Judge (POTA) is already seized of the matter and if any substance was found as regards the grievances made by the applicant in the present application, the learned Judge would have ordinarily directed further investigation by any expert committee or by senior Doctors in the panel of Doctors. The applicant was thereafter never referred to further medical examination for the purpose of expert opinion.

13. An affidavit-in-rejoinder was filed by the wife of the applicant on 13.09.2004 wherein the facts stated and averments made by the opponent in the affidavit-in-reply were disputed and denied. The facts regarding custodial

torture and violation of breach of the guidelines issued by the Hon'ble Supreme Court were reiterated in the rejoinder. It is further stated in the affidavit-in-rejoinder that the applicant-accused all throughout complained about custodial torture and custodial violence. But, since the applicant-accused was in police custody and the opponents were intimidating both the applicant-accused and his lawyers, neither of them could dare to complain. It is further stated that medical examination of the applicant-accused during the course of remand was merely an eye-wash and a redundant formality. It is further stated that gross and severe custodial torture and custodial violence was subjected to the applicant-accused and it was evident from the fact that the applicant-accused, when he was produced on completion of remand before the learned Special Judge, POTA, complained of the same and on observing him the learned Special Judge, POTA himself visualised and noted the injuries in the order dated 16.01.2004. An affidavit of the applicant-accused himself sworn on 24.04.2006 is attached along with the rejoinder-affidavit.

14.Further affidavits were filed by the opponent No. 1 Shri

V.V. Chaudhary, Assistant Commissioner of Police and by Mr. Tarun Barot, Police Inspector, DCB Police, Opponent No. 3 herein. Mr. V.V. Chaudhary has stated in his affidavit that all the averments and allegations levelled against him by the applicant are absolutely false and the same were denied. He had never personally gone to the lockup where the applicant is detained nor Mr. Tarun Barot, P.I. had ever accompanied him to the said lockup. After the formal arrest of the applicant on 05.01.2004, he had an occasion to interrogate the applicant in his office till he was sent to the lockup at 23.30 on 05.01.2004. Similarly, on 06.01.2004, he had not gone to the lockup at any point of time nor did the said Mr. Tarun Barot ever accompany him. He has also denied that the applicant's advocate had ever come to meet the applicant during his tenure as Investigating Officer and, therefore, there was no question of his sitting in front of the applicant's advocate whenever he came to meet the applicant in police custody. On 07.01.2004, Mr. D.D. Chaudhary was in charge of the investigation in question. When the applicant was produced before the learned Special Judge (POTA) on 06.01.2004, he had not made any whisper or complained about the alleged

custodial torture and / or violence either physical or mental as alleged or otherwise. He was not there in picture at all in respect of the investigation in question on and from 07.01.2004 and he was not concerned at all with any of the allegations made against him. All these things are nothing but an afterthought.

15.Mr. Tarun Patel, P.I. has also filed affidavit to the same effect and denied that he had ever gone to the police lockup of the applicant on 09.01.2004 as alleged. He had not visited the applicant at any point of time and hence, there was no question of his causing and/or threatening the applicant to the effect that if he would not confess according to his wish, he would be finished in an encounter as alleged. He was not personally aware of any of the medical examination which came to be conducted on several occasion in respect of the applicant. He was impleaded only because he happened to be the complainant in the FIR in question lodged against the applicants for various offences. He has, therefore, submitted that the notice issued by this Court against him is required to be discharged.

16.Misc. Civil Application No. 472 of 2006 is converted into Cri. Misc. Application No. 10780 of 2006. It is the case of the petitioners that the petitioner No. 1 Dr. Shakeel A. Ansari is the father of Harish and the petitioner No. 2 i.e. S.S. Saiyed is the father of Mohmmad Juned. Both these persons, namely, Harish and Juned were in judicial custody during the pendency of Special Pota Case No. 4/2004 and they were in Sabarmati Jail. It is also their case that FIR bearing C.R. No. 1/06 came to be registered on 03.02.2006 with ATS Police Station and petitioners' sons were taken on 06.02.2006 through transfer warrant from their judicial custody by the respondents in the said offence. They were produced before the learned Magistrate and immediately on their production, they have complained of custodial torture and violence, more particularly, Harish complained that by covering his face, electric shocks were given to him and he was threatened that electric shocks will be given on his penis. Juned has also complained of electric shocks, beaten by wooden sticks on the soles of his foot and also on his hand and fingers. The learned Magistrate observing the injuries, sent them for medical treatment on 07.02.2006. On 08.02.2006, an application

was moved by the opponents for police remand and the same was granted upto 13.02.2006. On completion of the remand, both the accused were warned not to make any complaint before the Magistrate and if they would do it, they have to face serious and dire consequences. It is also their case that pursuant to their complaint on 12.02.2006, their relatives were permitted to meet their sons but that was in the presence of the police personnels and at that time also, complaint was made by them with regard to torture and violence.

17.On this factual background, the present application is filed ventilating the grievances that the opponents have grossly violated the fundamental rights and human rights of the petitioners and their sons. The respondents have also acted in violation of the guidelines issued by the Hon'ble Supreme Court and by virtue of it, the opponents have committed contempt of this Hon'ble Court and they are required to be prosecuted.

18.An affidavit-in-reply is also filed by one Mr. P. L. Mal, D.S.P., Anti-Terrorist Squad, Ahmedabad whereby the allegations made in the application were totally denied.

It is stated that the opponents have not flouted any of the directions issued by the Hon'ble Supreme Court and the opponents are treating the Hon'ble Supreme Court as well as all the Courts of the country in its highest esteem and have never thought of flouting any orders / directions issued by the Hon'ble Supreme Court or this Court. It is further stated that the charges levelled against the accused are of very serious nature. They have committed offences punishable under Sections 120-B, 121, 121-(a), 122 & 123 of the Indian Penal Code and Sections 25(1-a), 27 & 29 of the Arms Act and Section 4 of the Explosive Substances Act and Sections 17, 18, 19, 20, 23(1), 38 & 39 of the Unlawful Activities (Prevention) Amendment Act, 2004. The accused are associated with the terrorist organization based in Pakistan, namely, Jaish-E-Mohammad and the accused are involved in committing various crimes of terrorism involving bomb explosion, exchange and import of illegal fire arms and also other activities of terrorism. Therefore, the charges levelled against them are that of being involved in activities of terrorism and waging war against the country. It is, therefore, stated that while deciding the present application, this aspect is required to be borne in

mind. The present application is nothing but an abuse of the process of Court and the applicant's main endeavour is to see that the Investigating Agency is not able to carry out the investigation properly and the applicants are trying to derail the Investigating Agency by making frivolous complaints and allegations. The applicants are in the habit of making false complaints against the police personnels and the same are being done only with a view to derail the Investigating Agency and the main motive is to see that the Investigating Agency may not be able to find out the truth and the accused persons can be benefited by the same. The accused persons were sent for the medical examination on 07.02.2006 and the Doctors have found that as far as the accused Harish is concerned, there is a bruise on right thigh whereas Juned is concerned, there is a bruise on lower part of left leg. In the first examination report of Harish, the Medical Officer has stated that there are two contusions on the upper portion of right thigh and the size of the said bruise is 4 X 1.5 cm and the same is blackish in colour and the accused has made the complaint of assault by police on 07.02.2006. However, the accused persons were brought for medical examination on the

same day. The Doctor has, therefore, submitted that within a period of one hour, the size of the bruise is shown to have been reduced. Thus, there was a clear contradiction in the report of the Doctor. As per the report of the CMO, the bruise is blackish in colour whereas as per opinion expressed in the book viz. The Essentials of Forensic Medicine and Toxicology by Dr. K.S. Narayan Reddy, the colour of bruise is red at first, thereafter the same turns blue in few hours to 2-3 days. Thereafter, on the 4th day, the same turns to bluish black to brown and then onwards. It is, therefore, submitted that looking to the colour of the bruise, it is impossible to believe that the bruise were made on 07.02.2006. Bruise might have been self-inflicted or the same might have been caused by someone else by application of irritant substance. The object was also not identified by the Doctor. In absence of this, it cannot be presumed that the same is caused by the opponents. It is further stated that during remand, three year old offence of bomb blast in Nehrunagar Circle was also detected, for which complaint was registered against accused with Satellite Police Station being C.R. No. I - 894/2003. Certain incriminating materials were found during remand. It is

revealed therefrom that the accused persons had conspired with other terrorists to blast various important buildings of Ahmedabad and had actually surveyed the said buildings and maps and measurements were taken. If, the accused persons would have been successful in destroying such buildings by bomb blasts, thousands of people would have been killed. Thus, only with a view to see that the Investigating Agency may not succeed in its efforts to know the truth, such kind of frivolous applications are being preferred.

19. An affidavit-in-rejoinder was filed by the applicant No. 2, the father of Juned. The facts stated and averments made in the reply were denied and he has emphatically reiterated the contents of the application. With regard to the contradictions and discrepancies pointed out in the medical report, it is submitted that it can never be imagined that the bruise can be self inflicted or have appeared on account of the application of irritant substance. When the accused were taken on transfer warrant on 06.02.2006, no marks of injuries on the body of the accused were present. Only after, when the accused were produced before the Magistrate on

07.02.2006, visible marks of injuries on the accused were observed. Therefore, there is not even a remote possibility of bruises being self inflicted by the accused during the period of their police custody after 06.02.2006 till 07.02.2006 when they were produced before the learned Magistrate. When the accused were in the police custody, it is not possible to imagine and conceive that the accused could use irritant substance as alleged. It is, therefore, submitted that the affidavit-in-reply filed by the opponent No. 2 clearly establishes that there is gross violation of the guidelines issued by the Hon'ble Supreme Court and the applicants' sons were subjected to the custodial torture and violence and the visible marks of the injuries were also observed by the learned Magistrate and are also recorded in the medical reports of the doctors. The opponents have not permitted the petitioners to meet the accused during the police custody and hence, appropriate actions for contempt are required to be taken against the opponents.

20. After recording in nutshell the pleadings of the parties, let us now discuss in brief the submissions made and

authorities cited before the Court by the learned counsels appearing for the respective parties.

21.Mr. Mukul Sinha, learned advocate appearing with Mr. Rauf K. Mansuri for the petitioner in Misc. Civil Application No. 538 of 2004 has submitted that the opponent Nos. 1 to 3 have clearly violated the guidelines issued by the Hon'ble Supreme Court in the case of D.K. Basu V/s. State of West Bengal. Not only this, there are ample evidence establishing the custodial violence and torture meted out to the petitioners while they were in the police custody between the period from 06.01.2004 to 16.01.2004. He has further submitted that for the purpose of preventing custodial violence and torture, certain remedial as well as preventive measures have been suggested by the Courts as well as Legislatures from time to time. While laying down the guidelines in D.K. Basu's case, the Hon'ble Supreme Court has suggested certain preventive measures. These guidelines are based on Article 21 of the Constitution of India. He has referred to para 35 of the judgment wherein as many as 11 guidelines have been issued by the Hon'ble Supreme Court. He has further submitted

that guidelines Nos. 7,8 & 9 have been clearly violated by the opponents. The applicants were neither examined at the time of their arrest nor they have been examined at the interval of every 48 hours after their arrest, by the qualified doctors. The opponents have also not supplied the relevant documents including the memo of arrest nor the same have been sent to the Magistrate for his record. He has, therefore, submitted that the opponents have committed breach of these guidelines on the face of the record and hence, they are liable to be prosecuted under the Contempt of Courts Act. Mr. Sinha has further submitted that mere denial on the part of the opponents or certain contradictions shown in the reports of the Doctors with regard to the actual injury inflicted upon the applicants are not enough to hold that the fact stated and averments made by the applicants in this application are not correct and that the application is filed only with a view to forestall any further investigation or to create hurdles in the criminal proceedings against them. Mr. Sinha has further relied on the decision of the Hon'ble Supreme Court in the case of **Ahmed Noormohmed Bhatti V/s. State of Gujarat and Others, (2005) 3 S.C.C. 647** for the proposition that the requirements

enumerated in the case of *Joginder Kumar V/s. State of U.P. (1994) 4 S.C.C. 260* and *D.K. Basu V/s. State of West Bengal, (1997) 1 S.C.C. 416*, are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. Any failure to comply with those requirements, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court.

22.Mr. Sinha has further relied on the decision of the Hon'ble Supreme Court in the case of **Munshi Singh Gautam (Dead) and Others V/s. State of M.P. (2005) 9 S.C.C. 631** for the purpose of indicating the Court's role while considering the complaint regarding police atrocities in police custody. The Hon'ble Supreme Court has observed that Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an

affront to human dignity. Police excesses and the maltreatments of detainees/undertrial prisoners or suspects tarnish the image of any civilised nation and encourage the men in “khaki” to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism.

23.Mr. Sinha has further relied on the decision of the Hon'ble Supreme Court in the case of **Sube Singh V/s. State of Haryana and Others, (2006) 3 S.C.C. 178** for the purpose of deciding the preventive and remedial measures to prevent custodial violence / death or illegal detention.

24.On the basis of the aforesaid judgments of the Hon'ble Supreme Court and considering the facts of the case on hand, Mr. Sinha has strongly urged that since the police authorities have violated the guidelines issued by the

Hon'ble Supreme Court and custodial violence has been taken place and the applicants have become the victims of such breach of guidelines as well as custodial violence, the contempt proceedings should be initiated and the opponents should be prosecuted and sentenced in accordance with the said provisions.

25.Mr. Girish Patel, learned Senior advocate appearing with Mr. V.A. Mansuri for the applicant in Cri. Misc. Application No. 10780 of 2006 has submitted that the applicants have ventilated their grievance in this application against custodial violence subjected to their sons who were taken to the police custody from 06.02.2006 to 13.02.2006. Prior to the accused were taken to the police custody, they were in judicial custody and during the period between 9.15 p.m. on 06.02.2006 to 09.00 p.m. on 07.02.2006, the accused were tortured and humiliated in the police custody by the opponents. Specific allegations were made against them. Despite this fact, the affidavit is filed by only one opponent. Not only the guidelines issued by the Hon'ble Supreme Court in D.K. Basu's case are violated but the opponents have also committed custodial violence. This custodial

violence itself amounts to contempt of court as per the various decisions of the Hon'ble Supreme Court.

26.Mr. Patel has relied on the decision of the Hon'ble Supreme Court in the case of **In Re. M.P. Dwivedi and others, Contemnners, AIR 1996 S.C. 2299** wherein after referring to the decisions of the Hon'ble Supreme Court in the case of Prem Shankar Shukla V/s. Delhi Administration (AIR 1980 SC 1535) and Baradakanta Mishra, Ex. Commr. Of Endowments V/s. Bhimsen Dixit, (AIR 1972 SC 2466) and after recording the satisfaction that prima facie case is made out for taking action for contempt of Court against persons responsible for the aforementioned acts of handcuffing of under trial prisoners, the Hon'ble Supreme Court has observed in paragraph 17 of the judgment that Contempt of Court is disobedience to the Court by acting in opposition to the authority, Justice and dignity thereof. It signifies a wilful disregard or disobedience of the Court's order. It also signifies such conduct as tends to bring the authority of the Court and the administration of law into disrepute. The Court further observed that wilful disregard or disobedience of Court's order pre-supposes an

awareness of the order that has been disregarded or disobeyed.

27. On the basis of these judgments, Mr. Patel has submitted that the opponents are aware about the guidelines issued by this Court in D.K. Basu's case and still in flagrant violation of those guidelines, they have physically and mentally tortured the applicants while they were in police custody. They have committed the contempt of Court and hence, they should be prosecuted and penalized.

28. Mr. Patel has further submitted that torture given by the opponents in police custody is civil as well as criminal contempt. The judgment delivered by the Hon'ble Supreme Court in D.K. Basu's case is the judgment in *ram*. It is not with regard to any particular party but it applies to all. The guidelines are clearly violated and hence, it is a civil contempt and moreover, the contempt is between the Court and the contemner. The applicants have brought to the notice of this Court about the alleged contempt committed by the opponents and hence, the Court should take suo-motu action against

them and those actions would be in the nature of criminal contempt. The disputed questions are bound to be there and in that case, the right to cross-examination is conferred under the Rules framed by the Court and hence, if the affidavits filed by the parties before this Court are not inspiring the confidence of the Court in that case, under the contempt of Court, the parties should be called for and their detailed cross-examinations should be made so as to arrive at the truth in the matter.

29.Mr. M.T.M. Hakim, learned advocate appearing with Mr. M.I. Mansuri in Cri. Misc. Application No. 164 of 2004 & Cri. Misc. Application No. 11560 of 2005 has virtually adopted the arguments canvassed by Mr. Mukul Sinha and Mr. Girish Patel and appraised the Court about the facts of this case. He has submitted that the applicants were tortured in the police custody and guidelines issued by the Hon'ble Supreme Court were violated. Even after due observance by the learned Special Judge (POTA), the Doctors have not meticulously examined the applicants and when clearly the injury marks were visible on the body of the applicants and when the doctors were asked

to file affidavit in this regard pursuant to the order of this Court, false affidavits were filed before this Court. It is in this context the applicants have moved another application seeking cross-examination of the doctors and police personnels. He has, therefore, submitted that the opponents are required to be prosecuted under the contempt of Courts Act and they are also required to be penalised.

30.Mr. K.B. Trivedi, learned Advocate General appearing with Mr. Sunit Shah, learned Government Pleader and Mr. K.P. Raval, learned Asstt. Government Pleader appearing for the opponents in all these matters has strongly opposed all these applications and submitted that there is no substance in any of these applications. The applicants are either terrorists or they have a close link with them. They have been arrested with arms and ammunitions and they have decided to wag war with the country and because of their terrorist activities, actions are required to be taken against them. It is only with a view to prevent the police personnels from making any further inquiry or investigation in the matter, false allegations are made by them taking shelter of the

guidelines issued by the Hon'ble Supreme Court and alleging all sorts of baseless allegations against the police personnels. Detailed affidavits have been filed denying and disputing all the allegations levelled against them. This is not an appropriate forum to approach especially when the principal proceedings are still pending before the concerned POTA Court. It is open for the applicants to raise the grievance before the concerned Court which requires detailed investigation and leading of evidence. He has further submitted that to bring the case of the applicants within four corners of the law relating to contempt of court, first of all it has to be proved that there was failure on the part of the opponents in observing the guidelines laid down by the Hon'ble Supreme Court in D.K. Basu's case and that such failure is deliberate and with wilful intention. He has further submitted that the affidavits filed by the opponents clearly prove that the guidelines have been duly observed by the opponents and there was no deliberate failure on their part. While laying down the guidelines, the Hon'ble Supreme Court has made it very clear in para 35 of the judgment that these requirements are to be followed in all cases of arrest or detention till

legal provisions are made in that behalf as preventive measures. He has, therefore, submitted that the life span of these requirements has been fixed by the Hon'ble Supreme Court. Pursuant to Court's order, the Parliament has framed the Act, namely, Prevention of Terrorism Act, 2002 (POTA Act). Section 52 of the said Act makes it clear that where a police officer arrests a person, he shall prepare a custody memo of the person arrested. The person arrested shall be informed of his right to consult legal practitioner as soon as he is brought to the police station. Whenever any person is arrested, information of his arrest shall be immediately communicated by the Police Officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the Police Officer under the signature of the person arrested. The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person. He has, therefore, submitted that the guidelines issued by the Hon'ble Supreme Court were taken care of by the Legislature by incorporating these guidelines in the Act. If any breach is committed

by the opponents of these provisions, the remedy lies under the Act itself and no contempt proceedings can be initiated against the opponents. He has further submitted that even under Section 58 of the POTA Act, a provision is made for punishment and compensation for malicious action. Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punished with imprisonment which may extend to two years, or with fine, or with both. Sub-section (2) of Section 58 also makes a provision that if the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it should be paid by the officer, person, authority or Government, as may be specified in the order. He has further submitted that the Special Court is vested with the powers to take action against the persons responsible for maliciously abusing their powers. He has further submitted that all subsequent decisions which have been referred to by Mr. Sinha have not suggested to initiate contempt proceedings in case of violation of the guidelines issued

in D.K. Basu's case. There is no dispute about the fact that those guidelines are to be observed. However, at the same time, for breach of such guidelines, certain other avenues are open for the applicants and for that purpose, the applications are not required to be entertained by this Court, especially when the principal matters are still pending before the Special Court, POTA. In support of this contention, Mr. Trivedi relied on the decision of the Hon'ble Supreme Court in the case of **State represented by Inspector of Police and others V/s. N.M.T. Joy Immaculate, (2004) 5 S.C.C. 729** wherein the High Court in revision challenging the order granting police remand has awarded Rs. 1 Lac as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation etc. It is noteworthy that after investigation, the police has submitted charge-sheet against the accused. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18.01.2002 prior to the decision of the revision. There is, of course, no justification in awarding compensation to a person who is facing prosecution for a

serious offence like murder even before the trial has commenced. The Hon'ble Supreme Court has, therefore, set aside the judgment of the High Court awarding compensation of Rs. 1 Lac to the accused. In this case, the High Court has also directed to take immediate departmental action against the police personnel who were responsible for the detention and other alleged acts committed on the accused. The Hon'ble Supreme Court has observed that this direction is not warranted in view of the fact that Supreme Court has allowed the appeal and set aside the judgment of the High Court.

31. Based on this decision, Mr. Trivedi has submitted that no action can be taken against the opponents under the Contempt of Courts Act and all the four applications are therefore deserved to be rejected.

32. We have extensively heard the learned counsels appearing for the respective parties and have given our anxious thoughts to their submissions. We have minutely and carefully gone through the pleadings of the parties as reflected in all these applications, affidavits and counter affidavits filed in support of and to strengthen

their contentions. Document produced on record and authorities cited before the Court have also received our due attention. The moot question which arose before the Court for its consideration is as to whether the opponents in these group of applications have committed custodial violence and/or breach of guidelines issued by the Hon'ble Supreme Court in the case of **D.K. Basu Vs. State of W.B, reported in (1997) 1 SCC 416**, subjecting or exposing them to the contempt of court and if they have committed any contempt, whether it is civil contempt or criminal contempt.

33.A question whether there is contempt of court or not is serious one. The Court is both accuser and judge of the accusation. The Court is to act with great circumspection. It is only when a clear case of contemptuous conduct, not explainable otherwise, arises then the contemner must be punished. The question as to whether there is civil or criminal contempt arises only if the Court takes the view that there is a contempt. The view which the Court is going to take is that there is no contempt looking to the facts and circumstances of the case and having considered the submissions made and

materials produced before the Court. However, since the point is raised before the Court with regard to the nature of contempt – whether it is civil or criminal, the Court hereby discusses this issue and deals with the submissions made in this behalf.

34. The applicants have approached this Court with the case that the opponents have violated and/or not complied with the guidelines or requirements laid down by the Hon'ble Supreme Court in D.K. Basu's case. In other words what they have intended was that the opponents have committed civil contempt under Section-2(b) of the Contempt of Courts Act. Civil Contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore in order to constitute

contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case **(Ashok Paper Kamdar Union vs. Dharam Godha, (2003) 11 SCC 1)**.

35. In none of these applications, the Court has taken any suo motu action for contempt against the opponents. From the material on record it is not possible to accept the contention of the applicants that on bringing its notice the fact about custodial violence and breach of guidelines, the Court must take suo motu action. It is true that the Court has power and jurisdiction to initiate contempt proceeding suo motu and for that purpose consent of the Advocate General is not necessary. But the Court normally takes suo motu action in rare cases. In the present applications the proceedings are initiated by the applicants by filing contempt petitions. They have been vigorously pursued and strongly argued as

private petitions. The same were never treated as suo motu petitions. In absence of compliance of the mandatory requirements of Section-15, the present applications cannot be considered as the applications for proceedings of criminal contempt against the opponents. The Court is, therefore, confining itself to deal with the aspect as to whether the opponents have committed any civil contempt or not.

36.The root cause of filing of these applications is the alleged breach of the guidelines issued by the Hon'ble Supreme Court in D.K. Basu's case. In para-35 of the judgment, the Court has considered it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures;

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of

arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory Director, Health Services should prepare such a panel for all

Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not through out the interrogation.

(11) A police central room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police central room it should be displayed on a conspicuous notice board.

37.While issuing the aforesaid directions, the Court was conscious of the fact that Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The court observed in para-22 of its judgment that the rights inherent in Articles 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. The Court cannot whisk away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to

become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws.

38.While making the above referred observation the Court is also conscious of the fact that the police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation

into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

39.To strike the balance the Court has, however, observed that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organised gangs, have taken strong roots in the society. It is being said in certain quarters that with more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights,

such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The Court has further observed that the concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.

40. It is in the above background, the guidelines issued by the Hon'ble Supreme Court are to be kept in mind while dealing with the allegations made against the opponents in this group of applications. A submission has been made by the learned Advocate General that the Hon'ble Supreme Court itself has fixed up the life span of these guidelines. At the time of issuance of such guidelines it is categorically made clear in para-35 itself that these requirements are to be followed in all cases of arrest or detention till legal provisions are made in that behalf as

preventive measures. It is true to some extent that legal provisions are made by the Parliament by enacting the Preventive of Terrorists Act, 2002. It is a different question that by now the said act has been scraped but the accused have been arrested and cases have been registered against them under the said Act. Hence we are not concerned for the time being the abolition of the said Act. As discussed earlier, the Act specifically makes a provision under Section-52 thereof and statutory provisions are made to the effect that while making arrest the police has to comply with the said statutory requirements which are more or less nothing but the statutory version of guidelines issued by the Hon'ble Supreme Court in the D.K.Basu's case. Not only this, under Section-58 of the Act even provisions are made to the effect that if the powers are exercised by any police officer corruptly or maliciously in that case they are also required to be prosecuted under the Act. In this view of the matter, strictly speaking the breach of guidelines may not now give rise to contempt proceedings. However, looking to the subsequent pronouncement of the Hon'ble Supreme Court dealing with these very guidelines issued in D.K. Basu's case it appears to us

that these guidelines still hold the field and strict observance of these guidelines is insisted upon by the Hon'ble Supreme Court.

41. In **Dilip K. Basu and others vs. State of W.B. and others, reported in (2002) 10 SCC 741**, the Hon'ble Supreme Court had an occasion to deal with the issue regarding non compliance with the guidelines issued on 19.10.2001 in D.K. Basu's case. Commenting upon the report from the Commissions/Committees received from the State of Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the Hon'ble Supreme Court has observed that the reports project a dismal picture prevailing in these States in the matter of compliance with the requirements laid down in D.K. Basu case. No serious effort appears to have been made by these States and their senior officials in apprising the police personnel, dealing with people, of the directions made by this Court which is the law of the land, not to speak of their having been educated and trained in securing compliance with the directions of this Court. The State Governments ought to know that protection of human rights is their primary constitutional obligation and not the sole

concern of this Court alone. The Court, thereafter, issued certain directions to the respective States to file the response to the matter of non-compliance with the directions of this Court highlighted in the reports, the action taken by the State Governments against the officials responsible for non-compliance, and the steps taken and to be taken in seeing that such directions are complied in letter and spirit by the State. It is true that in this judgment despite recording the fact that the directions issued have not been complied with by the State and their officials, the Hon'ble Supreme Court has not thought it fit to initiate the contempt proceeding and reiterated its insistence for the due compliance with the directions.

Subsequently, in this very case i.e. **Dilip K. Basu and others vs. State of W.B. and others, reported in (2003) 11 SCC 723**, the Hon'ble Supreme Court after considering the affidavits filed by most of the States and Union Territories which states that the 11 requirements laid down by the Hon'ble Supreme Court in D.K. Basu's case on 18.12.1996 in the interest of the arrestees and to minimize, if not altogether eliminate custodial violence, are being implemented, it was observed that there were,

however, some reports which have appeared in the press or otherwise brought to the notice of the Hon'ble Supreme Court that despite those requirements, the rights of the arrestee, which are sought to be protected by those requirements were not being respected and custodial violence continued. The Hon'ble Supreme Court, therefore, with a view to ensure proper compliance, considered it proper that for further monitoring of the case, to see that the 11 requirements as spelt out in D.K. Basu's case, besides other statutory safeguards, are implemented in letter and in spirit, that the task was assigned to the Human Rights Commission constituted in various States/Union Territories. The Hon'ble Supreme Court has, therefore, directed the Chairman of the State Human Rights Commission of different States / Union Territories to constitute a Sub-Committee in the Human Rights Commission with a view to oversee whether those requirements are being carried out or not and to take all such further necessary steps as are required to ensure that those requirements are carried out.

This fact itself proves that the directions issued still hold the filed and they are required to be complied with.

42. In the case of **Ahmed Noormohmed Bhatti Vs. State of Gujarat and others, reported in (2005) 3 SCC 647**, after reproducing the 11 requirements laid down in the D.K. Basu case, the Hon'ble Supreme Court has observed that these requirements are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. The Hon'ble Supreme Court has also cautioned that failure to comply with the requirements aforesaid, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court. While upholding the constitutional validity of Section-151 of the Code of Criminal Procedure the Hon'ble Supreme Court has observed that Section-151 of the Criminal Procedure Code itself makes provision for the circumstances in which an arrest can be made under that section and also places a limitation on the period for which a person so arrested may be detained. The guidelines are inbuilt in the provision itself. Those statutory guidelines read with the requirements laid

down by the Hon'ble Supreme Court in Joginder Kumar and D.K.Basu provide an assurance that the power shall not be abused and in case of abuse, the authority concerned shall be adequately punished. A provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional, merely because the authority vested with the power may abuse his authority. Since several cases of abuse of authority in matters of arrest and detention have come to the notice of Hon'ble Supreme Court, Hon'ble Supreme Court laid down the requirements which have to be followed in all cases of arrest and detention.

43. In the case of **Sube Singh Vs. State of Haryana and others, reported in (2006) 3 SCC 178**, the Hon'ble Supreme Court was concerned with the question as to whether on the facts and circumstances of the case, compensation should be awarded to the petitioner and his family members as a public law remedy for the violation of his fundamental rights under Article-21 of the Constitution. While considering this question the Hon'ble Supreme Court in para-49 of its judgment has observed that custodial violence requires to be tackled

from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very cause, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures;

(a) Police training should be reoriented, to bring in a change in the mindset and attitude of the Police Personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.

(b) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and ensure adherence to lawful standard methods of investigation.

(c) Compliance with the eleven requirements enumerated in D. K. Basu should be ensured in all cases of arrest and detention.

(d) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.

(e) Computerization, video-recording and modern methods of record maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIRs, mahazars, inquest proceedings, post-mortem reports and statements of witnesses, etc, and to bring in transparency in action.

(f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by

prosecution, wherever necessary.

44. In its conclusion arrived it after appreciating the fact and evidence on record of the case, the Hon'ble Supreme Court has observed in that case that as there is no clear or incontrovertible evidence about the custodial torture, nor any medical report of any injury or disability, and as the grievance of the petitioner and his relatives is against different officers in different police stations at different points of time, more importantly, several of the allegations are proved to be exaggerated and false, the Court did not consider the said case to be a fit case for award of compensation. The Court further observed that all reliefs which should be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course.

45. In the case of **State represented by Inspector of Police and others vs. N. M. T. Joy Immaculate, reported in (2004) 5 SCC 729**, while deciding the question of maintainability of revision preferred against the order granting police remand the Hon'ble Supreme Court has observed that the High Court disposed of writ

petition by several directions. The High Court directed (1) that the order granting police custody in respect of J was ex-facie illegal and, consequently, it was non est and had to be erased from the records, (2) that since the said order became non est, the consequent so-called confession and alleged recovery had no evidentiary value, (3) that the investigation conducted by the police concerned was not bonafide and false records had been created to implicate J, (4) that J had been wrongfully and illegally detained by the police for four days and was harassed and tortured by the police personnel, (5) that the Commissioner of Police Must take departmental action against the police personnel who were responsible for the illegal detention and other obscene acts committed on J, and (6) that the Government of State concerned will pay a compensation of Rs.1,00,000/- to J. A direction was also issued to the State Government to issue circulars to all the police stations that women accused/witnesses should not be brought to the police station and they must be inquired only by the women police at the place where they reside. Allowing the appeals and setting aside the impugned judgment and order of the High Court, the Hon'ble Supreme Court has

set aside the directions to pay compensation of Rs.1 lac to the accused on the ground that she was illegally detained in the Police Station etc,. The Court has further observed that it is noteworthy that after investigation, the police has submitted charge-sheet against the accused. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18.1.2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. Even with regard to the direction to take immediate departmental action against the police personnel who were responsible for the detention and other alleged acts committed on the accused, the Hon'ble Supreme Court has observed that this direction is not warranted in view of the fact that the Court has allowed the appeal and set aside the judgment of the High Court. This shows that when the matter is pending no interim direction causing an adverse impact on the final out come of the matter should be issued by the Court.

46. In *Prakash Singh & Ors. V/s. Union of India and Ors.* JT 2006 (2) SC 225, the Hon'ble Supreme Court while considering criminal justice delivery system, police reforms, its role, performance and responsibilities in the post independence scenario, establishment of National Police Commission and its recommendations made in its various reports to make police function as an efficient and impartial law enforcement agency fully motivated and guided by the objectives of service to public at large, has held that the preparation of a model police Act by the Central Government and enactments of new Police Acts by the State Governments are matters of necessity and urgency and till there is an enactment of such new legislations, it felt an imperative need to issue certain guidelines, which inter alia, include constitution of State Security Commission by the States, selection of DCPs, IGs and other Officers, separation of investigation, and for setting up of Police Establishment Board, Police Complaints Authority and National Security Commission. As per the guidelines pertaining to Police Complaints Authority, the Hon'ble Supreme Court directed that there shall be a Police Complaints Authority at the district level to look into complaints against police

Officers of and upto the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the state level to look into complaints against Officers of the rank of Superintendent of Police and above. The State Level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The Hon'ble Supreme Court has made it clear that these directions shall be complied with by the Central Government, State Governments or Union Territories , as the case may be, on or before 31st December, 2006.

This shows that different avenues are suggested by the Hon'ble Supreme Court from time to time to prevent custodial violence and to safe-guard human dignity, basic values and fundamental rights of arrestees, detenus.

47.From the foregoing discussion, we think it imperative to decide as to whether the opponents - either all or any one of them - have committed contempt of court by committing alleged custodial violence or breach of the guidelines issued by the Hon'ble Supreme Court in D.K.

Basu case. As far as custodial violence is concerned, the pleadings of the parties depict a highly controversial picture. Allegations are made by persons who are said to have been involved in very heinous crimes. Arms and ammunitions and other incriminating materials were found from them. The whole pattern of allegations is more or less same or similar. Time selected by them for making such allegations is also very important one. As soon as an application for police remand or extension thereof was made, they have come out with such allegations. To some extent, they succeeded in exhibiting some marks of injuries on their bodies. As against this, the opponents who are senior police personnels and Government Officers, in their counters, seriously disputed and denied these allegations. Medical reports and affidavits of Doctors run contrary to the allegations made by the applicants. Contempt being very serious matter, the Court would always rest its decision on incontrovertible facts which are lacking in this group of applications. The persons who are branded as hard-core criminals, terrorists and who are alleged to have waged war with the Country and caused danger to the safety and security of the people at large, can go to

any extent – even to the extent of inflicting injuries by themselves on their bodies so as to malign the police personnels and to prevent them from making any further investigation in the matter. Having objectively considered all these issues, we see no justification in disbelieving the prosecution version and hold its officials guilty for committing contempt of Court by resorting to custodial violence. There is no doubt in our mind that custodial violence in any form is highly condemnable and no civilised society or any legal system ever approves it. However, mere bald statements, false and frivolous allegations, concoction of shaky and self-serving evidence and ill-motivated abuse of legal process by the persons who are alleged to be enemies of the whole society, nation and mankind, can not persuade us to take actions against the police personnels who are discharging their duties and obligations to unearth the crime. It is more so when the matters are still pending before POTA Court. There may be some minor lapses here and there for which they have already tendered their unconditional apology while holding the Court in high esteem.

48.As far as alleged breach of some of the guidelines laid down in D. K. Basu's case is concerned, they are procedural in nature and the same pertain to the entire system. Proper and effective and impartial police set up for smooth administration of criminal justice system is of utmost necessity and urgency. The Hon'ble Supreme Court has taken note of this fact and expressed its anguish in its subsequent decision of Dilip K. Basu and others (Supra) and issued certain directions to the respective States. Many other subsequent decisions and last in the line is the decision of Prakash Singh & Others (Supra) send messages to all concerned for due observance and proper implementation of these guidelines. Simply because we have not found any case of initiation of contempt against the opponents would not absolve them or any other officials to ignore these guidelines in future nor it debars the arrestees, detenus, undertrials or such similarly situated persons from raising their grievances against custodial violence or breach of guidelines before appropriate forum, if occasion so arises, in accordance with law.

49.With these observations and directions, notices issued in

all or any of these applications stand discharged. All these applications are accordingly disposed off as rejected.

[A. M. KAPADIA, J.]

[K.A. PUJ, J.]

Savariya