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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: SURENDRANAGAR

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (P.I.L.) NO. OF 2021

Sohanaben Hanifkhan Malek

...Petitioner

Versus

State of Gujarat and others

...Respondents

SYNOPSIS

The present petitioner is the daughter of the deceased Hanifkhan @ Kalo Munno Amirkhan Jatmalik and sister of Madeenkhan Hanifkhan Jatmalik who were killed in fake encounter by the Respondent no. 5.

On 06.11.2021, at around 7-8 p.m., the P.S.I V. N. Jadeja (Respondent no. 4 herein) and other Police officers who are respondents no. 6 to 11 herein came to the house of the petitioner in a private vehicle and dragged the father of the petitioner and put him in the vehicle that they had brought in. Looking to the atrocity, the 14 year old brother of the petitioner went to ask the reasoning and followed his father. Seeing this the Respondent no. 5 shot the brother of the petitioner point blank in the chest. On seeing his son being shot in cold blood, the father of the petitioner also got angry and as he came to see his child, he

was also shot dead. No doubt, there are many^B offences registered against the father of the petitioner herein i.e. Hanifkhan. However, this will not give an automatic license to the respondent no. 5 to 11 to carry out a fake encounter.

That seeing this cold blooded murders by the police authorities, the neighbours of the petitioner also gathered, and on the basis of this, the aforementioned Police authorities made out a false case stating that the encounter of both father and son was done in self-defence as they had tried to attack the police.

The Respondent no. 5 then went on to file and FIR against the deceased father and brother of the petitioner along with their family members on 07/11/2021. The FIR alleges that an FIR came to be filed by Police Sub-Inspector in Bajana Police Station for the incident that took place on 06.10.2021 at around 20:10 hours. The FIR alleges that on 06.11.2021 at around 19:30 hours, a secret information was received regarding Hanifkhan being present at his house and Pursuant to the said secret information, the complainant along with other police officers went at the house of Hanifkhan in a private vehicle. It is alleged that when they reached at village Gedia of Hanifkhan at around 20:10 hours, Hanifkhan was present standing at the main door of his house and he tried to abscond. It is stated that accused no. 1 of the above mentioned FIR Hanifkhan had called accused no. 2

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of the FIR i.e. his son and other persons and had tried to hide inside one room. It is alleged that at that time, the respondent no. 4 had opened the door of the room in which Hanifkhan was hiding and at that time, Hanifkhan had fired on him. It is alleged that at that time, the respondent no. 4 was given a blow on the shoulder of respondent no. 4 and when he had seen, it was the son of Hanifkhan i.e. accused no. 2 of the present FIR. It is alleged that for self-defence, the respondent no. 4 had fired on Madeenkhan. It is alleged that thereafter, they had tried to put Hanifkhan in the car and at that time, a mob of 15-20 people had attacked on police official and at that time, the respondent no. 4 had again fired on Hanifkhan for his self-defence and in doing so, Hanifkhan was also hit by gun. It is alleged that on account of the incident, mob of people had gathered with weapons and had inflicted blows haphazardly on the police officials.

The FIR further named one Hanifaben Bismillahkhan Jatmalik, Aged 75 and alleged she is the neighbour, and one Ismailkhan Bismillahkhan Jatmalik is the relative and Havaben Amirkhan Jatmalik Aged 75 years who is also the neighbour and all had tried to attack on police officials. It is also stated that accused no. 6 Amirkhan and accused no. 7 Alubhai were also present and identified as being present by the police officials.

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Accused No. 6 Amirkhan was armed with wooden log and accused no. 7 Alubhai was armed with a scythe. It is alleged that Hanifaben Bismillahkhan Jatmalik and Havaben Amirkhan Jatmalik were armed with wooden log and Ismailkhan Bismillahkhan Jatmalik was armed with pipe and they had given blows on police officials.

The FIR is false inasmuch as the respondent no. 4 clearly identifies accused no. 6 Amirkhan and accused no. 7 Alubhai present at the place of incident and specifically alleges that accused no. 6 and 7 were holding weapons in their hand and had attacked on police officials on the said day. Pertinent to note that accused no. 6 and 7 though are identified by the respondent no. 4 of having been present, the said fact is false inasmuch as accused no. 6 Amirkhan Jatmalik has died wayback on 14.01.2012 and accused no. 7 Alubhai Motibhai had died way back 40 years back. Thus, though these persons had died many years back, FIR is sought to be filed against dead persons involving all the accused wrongly.

Though the respondent no. 4 is aware that in firing, the accused no. 1 Hanifkhan and accused no. 2 minor Madeenkhan had died on account of firing by respondent no. 2, the said dead persons are also implicated as accused no. 1 and 2. It is submitted that so far as accused

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no. 3 is concerned, she is aged around 75 years. Allegations against her is that she was holding wooden log. At the age of 75 years, she can hardly even stand and walk, then also wrong allegations against a person that too a lady aged 75 years are levelled.

So far as the Accused no.4 Ismailkhan is concerned, way back since year 2015, he became a disabled person and 50% of his body is not working. One of his hands is not working. He was again operated in the year 2018 on account of his disablement.

So far as Accused no.5 is concerned, again she is a lady aged 75 years old and allegations are falsely levelled she was holding an iron log. It is submitted that Accused no.4 is a physical disabled person and therefore, there is no question of him being able to hold a weapon in his hand but since, he is a relative of deceased Hanifkhan and on the date of incident since the respondent no. 4 had fired from a gun on a minor son Madeenkhan, it is obvious that certain people standing over there were frightened that even they would be shot and therefore, in such fear, injury is caused to some police officers.

Though accused no. 6 and 7 have died long back, it is very surprising that with a mala fide intention, just because the accused no. 6 and 7 are relative and villagers of

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Hanifkhan, they are falsely implicated though accused no. 6 and 7 have died long back.

Though accused no. 1 and accused no. 2 of this FIR died on the spot, they are shown as accused in the said FIR very cunningly, intentionally and with a mala fide intention stating that it is the son of Hanifkhan who was armed with scythe and he had attacked on respondent no. 4 which caused injury.

The mother of the petitioner had submitted various representation wherein it was stated to various authorities including making a representation to the Hon'ble Chief Justice of the High Court of Gujarat stating that under the guise of arresting the wanted accused no. 1, the police is also harassing the family members and the life of the son of accused no. 1 and other family members is also at stake.

Thus it is evidently clear that the police authority more particularly the respondent no. 5 who was In-charge of the Police station was harassing the family members of deceased Hanifkhan.

After the incident wherein under the guise of arresting Hanifkhan, brutal act of murder was committed by the respondent no. 5 to 11 under the guise of encounter, the minor daughter of Hanifkhan i.e. the petitioner submitted a representation to the Superintendent of Police,

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Surendranagar wherein it was requested to take steps against respondent no. 5 to 11 and other police officers.

It also appears that a representation was submitted instantly on 07.11.2021 which is signed by petitioner wherein it was requested that the complaint against respondent no. 5 to 11 of committing an illegal act of killing his father and brother be taken care by and investigated by superior authority.

Hence, the petition.