

**FIR No.571/21  
PS Najafgarh  
State Vs. Rohit Gehlot**

**26.11.2021**

**At 02:00 PM**

**Applications moved on behalf of applicant/  
accused/arrestee Rohit Gehlot.**

Present: Sh. Shiv Kumar, Ld. APP for the State.  
Sh. Jitender Negi, Junior Assistant from DDU hospital.  
Dr. Ahmer Zafar, Orthopedic department and Dr. Ram Jaiswal,  
on behalf of MS DDU hospital.  
ACP Anil Juneja, from PS Dabri.  
ACP Jitender Patel from PS Najafgarh  
SI Raghuveer, IO in this case.  
Inspector Ajay Kumar, on behalf of SHO PS Najafgarh.  
Inspector Ram Kishore, SHO PS Uttam Nagar  
SI Vipin Malik, IO of case FIR No.800/21, PS Uttam Nagar.  
Applicant/accused/arrestee Rohit Gehlot produced from  
JC on Wheel Chair with injury in his left leg with visible  
metal implant/fixtures/rod.  
Accused Amit Gulia, Arjun @ Monu, Sonu @ Boxer and  
accused Jyoti @ Baba produced from JC.  
Sh. Vaibhav Tomar, Sh. Kunal Sharma and Sh. Aditya  
Bhardwaj, Ld. Counsels for applicant/accused/arrestee Rohit  
Gehlot.  
Sh. Vikram Singh, Ld. Counsel for accused Amit Gulia,  
accused Jyoti @ Baba, Arjun @ Monu and Sonu @ Boxer.

Today, the matter is fixed for reply from MS DDU hospital on  
the aspect as to what is/was the nature of injury for which  
applicant/accused/arrestee Rohit Gehlot(hereinafter referred as applicant)

was admitted in the hospital and for consideration on reply which was filed by Addl. DCP-1 on 22.11.21 as well as consideration on the contents mentioned in FIR No.800/21, PS Uttam Nagar and reply and arguments on pending applications.

Reply is filed by or on behalf of concerned Jail Superintendent Central Jail no. 4, Tihar Jail. Same is taken on judicial record. Copy of the same is supplied.

Reply is filed by or on behalf of worthy DCP. Same is taken on judicial record. Copy of the same is supplied.

Reply is filed by or on behalf of Medical Superintendent, DDU hospital. Same is taken on judicial record. Copy of the same is supplied.

Reply is filed by or on behalf of SHO PS Uttam Nagar. Same is taken on judicial record. Copy of the same is supplied.

It is submitted by Ld. counsel for applicant/accused/arrestee Rohit Gehlot that applicant/accused/arrestee Rohit Gehlot was taken by police officials from his home in a vehicle bearing no. DL8CAY2945 which is clearly visible in CCTV footage which is filed, in the form of CD, on the last date of hearing. It is further submitted by Ld. counsel for applicant/accused/arrestee Rohit Gehlot that through reply it is clear that this vehicle pertains to one Kulwant Singh who is no one but the main person Ct. Kulwant Singh who informed to Clean Dwarka Cell about the fact that one Rohit Gehlot who is involved in FIR No.571/21, PS Najafgarh will come and may be apprehended and he is the only person who had used the bullet proof jacket, which was issued by raiding team and he is the one who has taken a bullet shot on that bullet proof jacket and shot

applicant/accused/arrestee Rohit Gehlot in his leg. It is further submitted by Ld. counsel for applicant/accused/arrestee Rohit Gehlot that accused has been wrongly taken from his home, put in illegal detention and shot in the leg and a wrong case has been made against him. It is also submitted by Ld. counsel for applicant/accused/arrestee Rohit Gehlot that report dated 22.11.2021 clearly mention that involvement qua accused Rohit came into the notice only on 04.11.2021 whereas, as per newspaper which were published on 03.11.2021 and media bites by worthy DCP do clear mention that applicant was arrested in connection with Mittal Sweet shootout case bearing FIR No.571/21, PS Najafgarh on 02.11.2021, which clearly suggest that present encounter is a fake encounter. It is also submitted by Ld. counsel for applicant/accused/arrestee Rohit Gehlot that family members of the applicant/accused/arrestee Rohit Gehlot came to know about the factum of encounter/shoot out only through media report/newspaper, however, they have not been allowed to meet him. It is further submitted that the father of the accused/applicant is running everywhere in a desperate search, however, he has not been informed about his arrest and he had not been allowed to meet and finally the meeting was conducted with the permission of the court in DLSA office/Legal Aid Clinic situated at Lockup Room on 22.11.2021.

Per contra, it is submitted by Ld. APP for the State, assisted by the IO as well as police officials that in the present case, the police officials have fulfilled all the formalities and the reply filed by the SHO PS Uttam Nagar clarify the position. It is also submitted by Ld. APP for the State that the information was provided to one Sh. Sunil, S/o Sh. Rajbir on 02.11.2021 itself and same was mentioned in the arrest memo. It is also submitted by

Ld. APP for the State that Sunil is close relative of applicant/accused Rohit Gehlot and police officials has fulfilled mandate of Cr.P.C and directions as made in D.K. Basu case. It is also submitted by Ld. APP for the State that as per reply filed by worthy DCP it is clear that Clean Dwarka Cell is special cell which is acting under supervision of concerned ACPs. It is also submitted by Ld. APP for the State that as per reply filed by PS Uttam Nagar this vehicle bearing no. DL8CAY2945 pertains to one Kulwant Singh, S/o Sh. Om Prakash and it is a matter of record. It is finally submitted by Ld. APP of the State that he is conveying his arguments on the basis of reply filed by concerned police officials and besides these replies, there is no other reply available with him.

It is specifically submitted by Dr. Ahmer Zafar that as per medical report, patient Rohit Gehlot was brought by police officials with a bullet shot injury in his left leg on 02.11.2021 and he got compound tibia fracture and the nature of injury is grievous.

Submissions heard.

After hearing arguments on behalf of both the sides, the court is deciding on the aspects for which the matter is fixed for today.

- **Consideration on reply dated 22.11.2021 filed by DCP-1**

Vide order dated 15.11.2021, a detailed order was passed by this court and reply was sought from worthy DCP Dwarka District on various aspects in terms of directions passed by **Hon'ble Apex Court in *D.K. Basu Vs. State of West Bengal, Writ Petition (CRL) No.592 of 1987***

*decided on 18.12.1996.* The Worthy DCP was also directed to clarify his stance on the aspect that as per news reported in various newspapers/media dated 03.11.2021 (more specifically in the newspaper 'The Hindu') which were published on the basis of statement made by worthy DCP on 02.11.2021, it had been published that accused Rohit Gehlot has been detained/nabbed/taken into custody by police officials/investigating agencies, in FIR No.571/21, PS Najafgarh on 02.11.2021 itself, after interrogation of two accused namely Arjun @ Monu and Sonu @ Boxer, whereas the formal arrest was only made on 13.11.2021 in the present case i.e. FIR No.571/2021, PS Najafgarh. To utter surprise of this court and in total defiance of the orders of the court, the Worthy DCP has neither filed reply nor forwarded the same. The said reply is under signature of two ACPs and forwarded by DCP-1. Such indifferent attitude and consequent disobedience of orders of the court by a head of District Police in a case where serious doubts have been raised through the relevant material produced before the court, is matter of serious concern. When a senior officer does so, it causes pain to the judicial conscience and threat to the judicial authority.

Be that as it may and without commenting further, at this stage, on willful defiance of worthy DCP, the court has to proceed further on consideration on the aforementioned reply. On perusal of the same, it is revealed that as per investigating agencies, on 01.11.2021 the clean Dwarka Cell of Dwarka District received a secret information that applicant/accused/arrestee Rohit Gehlot @ Chita, who was involved in the shooting incident pertaining to FIR No.571/21, PS Najafgarh, will come at

DDA Park, near Uttam Nagar Terminal, Kali Basti and on the basis of same, a raiding team was formed and at about 02:35 AM, accused was shot in his left leg in self defence by police officials and an FIR bearing No.800/21, U/s 307/186/353/411 IPC & 25&27 Arms Act was registered against Rohit @ Chita and the accused was taken to DDU hospital from where he was arrested in FIR No.800/21, PS Uttam Nagar and he remained there till 11.11.2021. It is also averred in the reply that accused Rohit Gehlot @ Chita disclosed his involvement in the firing incident at Mittal Sweets, Najafgarh i.e. in case pertaining to FIR No.571/21, PS Najafgarh. It is also averred in the reply that accused was taken on judicial remand from the concerned Duty MM on regular basis in FIR No.800/21, PS Uttam Nagar. Copy of FIR No.800/21 PS Uttam Nagar is also annexed with the reply. Same is also perused.

On perusal of the reply dated 22.11.2021 as well as contents of FIR No.800/21, PS Uttam Nagar, it is brought to the fore that an encounter has been done on accused Rohit Gehlot @ Chita, wherein he has been shot in his left leg.

The reply as well as the contents of the FIR bearing No.800/21 do substantiate the claim made by accused Rohit Gehlot @ Chita in open court on 15.11.2021. This aspect of encounter has been put under cover/wraps till 22.11.2021, not only from this court but also from the family members and Ld. Counsel for applicant/accused/arrestee Rohit Gehlot.

It is also pertinent to mention here that the reply filed by SHO on 15.11.2021 only mentioned that accused was formally arrested in FIR

No.571/21 of PS Najafgarh on 13.11.2021 from JC/Tihar Jail as he was already in custody in FIR No.800/21, PS Uttam Nagar. Needless to say, the reply filed by SHO was silent on the aspect, as to what are/were the contents of FIR No.800/21, PS Uttam Nagar and from which date he was in JC. It is also pertinent to mention here that it is an admitted fact on the part of investigating agency as clear from the reply filed on 22.11.2021 and from the contents of FIR No.800/21, PS Uttam Nagar that the Special Cell (Clean Dwarka Cell, Dwarka District) got an information that one Rohit Gehlot @ Chita, who is involved in firing incident pertaining to FIR No.571/21, PS Najafgarh, is going to come at DDA Park, near Uttam Nagar Terminal towards Kali Basti and raiding team was made and he was shot in an encounter. It is also an admitted fact from the reply that after the encounter accused Rohit Gehlot @ Chita admitted his involvement in FIR No.571/21, PS Najafgarh. So admittedly, the involvement of applicant/accused/arrestee Rohit Gehlot @ Chita was well within the knowledge of investigating agency on 01.11.2021 itself. The so called encounter has been done only on the information that accused Rohit Gehlot @ Chita is involved in FIR No.571/21, PS Najafgarh. But very strangely he has not been arrested in FIR No.571/21, PS Najafgarh till 13.11.2021. It is not the case that the encounter had been done in some other state or district and they got information after sometime. Admittedly, the encounter is done within the same district by the Special Cell (Clean Dwarka Cell), Dwarka District on the information that he is involved in FIR No.571/21, PS Najafgarh but he is formally arrested only on 13.11.2021 from Tihar Jail that too, after one day when the court passed order on 12.11.2021. The investigating agency waited for almost 11

days till he was shifted from DDU hospital to Tihar Jail. To add to it, though, it is not out of place for the investigating agency to make formal arrest of the applicant/accused/arrestee at later stage, yet the gravity of the situation would have warranted his formal arrest immediately after his apprehension, but all these circumstances apparently demonstrate the attempt of investigation agency to keep the act regarding encounter of applicant under wraps from his family members and this delay in arrest was apparently staged, which further reflect on the malafide of the investigating agency surrounding the apprehension of the applicant/accused/arrestee. To further add to it, one person has been named/shown as uncle in the arrest memo (filed on 22.11.2021) of FIR No.800/21, PS Uttam Nagar whereas, the applicant categorically said that he has not uncle. Even father of the applicant also said that he is the only son of his father Chaudhary Bheem Singh and he has no brother.

It is worth while to mention here that the application filed by or on behalf of father of applicant was simple, the relief was clear and legal within the ambit of guidelines passed by **Hon'ble Apex Court** in ***D.K. Basu case(supra)***, however, reply filed by investigating agency is conflicting and evasive by which much of judicial time of this court has been taken. It appears that a whole hearted effort has been made by investigating agency not to bring the factum of encounter to the fore.

- **Consideration on CCTV footage**

A CCTV footage was filed on 24.11.2021 in a CD. The CCTV

footage apparently pertains to dated 01.11.2021 from 02:30 to 02:50 pm approximately. It is shown that one vehicle Maruti Celerio bearing registration No. DL8CAY2945 is coming and stopping before house (house of applicant as per Ld. Counsel for the applicant) and some persons in civil dress get down from that vehicle, went inside the house and after taking one person in that car left with car from the spot. It was submitted by Ld. Counsel for the applicant that four police personnel came in that car and took Rohit from his house.

Though, the veracity of the CCTV footage produced in the form of CD is to be assessed at the appropriate stage, nonetheless, since prima facie it is revealing a narrative contrary to the stand of investigating agency, a report was called from worthy DCP and from SHO PS Uttam Nagar with respect to details of the impugned vehicle and from the reply filed by SHO PS Uttam Nagar, it came to the notice that it belongs to one Sh. Kulwant Singh, S/o Sh. Om Prakash, R/o P.O. Daulatpur, Shikarpur, New Delhi.

Now, in the backdrop of abovementioned, let us read the FIR No.800/21, PS Uttam Nagar, which is lodged on the basis of alleged encounter done on the intervening night of 01/02.11.2021 wherein, applicant Rohit shot in his left leg. It is written in said FIR that one constable Kulwant Singh came in the night on 01.11.2021 with a secret informer/mukhbar khas and told ASI Hans Kumar that one person namely Rohit, who is involved in Mittal shootout case (FIR No.571/21, PS Najafgarh), is going to come at night at about 2-3 am and he may be apprehended if raiding team is made. This raiding team was constituted and among other things one bullet proof

jacket was also issued. That only bullet proof jacket was used by that constable Kulwant Singh. He took a bullet on that bullet proof jacket and he acted in so called brave manner and shot applicant Rohit in his left leg.

The pertinent question which arises is whether it is a sheer coincidence that the person to whom vehicle bearing no. DL8CAY2945 pertains to is one Kulwant Singh and the person who played active role in informing about applicant Rohit to the Clean Dwarka Cell team and who took active participation in that so-called encounter and took bullet on his bullet proof jacket from applicant and shot applicant in a brave manner, has same name. This requires thorough investigation by an independent agency.

- **Now, four versions are available before this court.**

The **first version** from worthy DCP which was made on 02.11.2021 and published in newspapers (specifically 'The Hindu' dated 03.11.2021) wherein, it had been reported that as per worthy DCP Dwarka, the main accused Rohit Gehlot has been apprehended/nabbed in Mittal Sweet shootout case i.e. in FIR No.571/21, PS Najafgarh, on the basis of interrogation from two accused namely Arjun @ Monu and Sonu @ Boxer.

The **second version** came before the court through reply dated 15.11.2021 filed by SHO PS Najafgarh, wherein the SHO submitted that accused Rohit Gehlot @ Chita has only been arrested in FIR No.571/21, PS Najafgarh on 13.11.2021 from Tihar Jail wherein he was already in JC in FIR No.800/2021, PS Uttam Nagar (which culminated through the alleged encounter done by police officials).

The **third version** is made by applicant/accused/arrestee Rohit Gehlot on 15.11.2021 when he was produced from Tihar Jail on wheel chair with visible metal implant/fixtures/rod in his left leg. He submitted before the court that he was taken from his home on 01.11.2021 by four police officials names of two were Jitender and Surender on the pretext that he was called by worthy DCP. He was taken to Sector-16B Dwarka in some flats. He was kept there till midnight and at midnight he was taken to Uttam Nagar Nala wherein he was shot at leg in night after blind folding him and he remained in DDU hospital till 11-12<sup>th</sup> November 2021 and he was transferred to Tihar Jail on 11-12<sup>th</sup> November 2021.

The **fourth version** came to the notice of the court from the reply filed on 22.11.2021, wherein it was averred that Clean Dwarka Cell got an information that accused Rohit Gehlot @ Chita, who is involved in FIR No.571/21, PS Najafgarh was going to come at DDA Park, near Uttam Nagar Terminal towards Kali Basti and the accused was shot in his left leg in self defence by police officials and an FIR No.800/21, PS Uttam Nagar, U/s 307 IPC alongwith other sections, germinated against accused Rohit Gehlot @ Chita and he was arrested on 02.11.2021 from DDU hospital in FIR No.800/21, PS Uttam Nagar.

There are material differences in all these four versions. However, the third version, as made by accused, in the open court stands prima facie substantiated through a CCTV footage filed on 24.11.2021 and through reply filed on 22.11.2021, to the effect that accused was taken from his house on 01.11.2021 and shot in his left leg by police officials in a suspicious manner.

From the aforementioned discussion, it is clear that the investigating agency has handled this case in most dubious manner. All the above mentioned facts raise some serious doubts on the encounter, which came to the notice of this court on 22.11.2021.

It is also worthy to mention here that the court is not/cannot decide upon the aspect of the impugned encounter, being staged/fake and/or not real, as the same has to be decided by appropriate authority/courts, at an appropriate stage as and when they would be seized of the matter.

- **Duty of the Court**

Now the question arises as to what is the duty of the court in a case where any encounter, being real or otherwise, is brought to the notice of the court and there are facts/material which give serious doubts in the mind of the court about that encounter. The court is mindful that this court, has limited jurisdiction and within the four walls/contour of that limited jurisdiction, the court has to fulfill its constitutional duty of preservation of rule of law, recognition of human rights and check on abuse or misuse of powers.

As to whether the court has to shut its eyes on the ground that no specific application is made to proceed further or the court has to take a proactive, positive and prompt approach in a case where it is being brought to the notice of the court that an encounter has happened in connection with a case, which is pending before the court. The court finds support/answer from judgment passed by **Hon'ble Apex Court** in *Madhya Pradesh Vs.*

**Shyamsunder Trivedi & Ors. 1995 (3) Scale, 343**, wherein, it was observed:-

*“The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the case of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of crime has the satisfaction that ultimately the Majesty of Law has prevailed.”*

The present case appears to be suspicious and dubious case of custodial crime, which has been seeming done in FIR No.571/21, PS Najafgarh and shown to be made in FIR No.800/21, PS Uttam Nagar. Now the question arises as to what court can do in such situation, where the fact of encounter is brought to the notice of the court with respect to the case which is pending before the court. The court finds answer from judgment of **Hon'ble Apex Court in *People's Union for Civil Liberties & Anr. Vs. State of Maharashtra & Ors. Criminal Appeal No.1255 of 1999 decided on 23.09.2014***, relevant paras quoted here as under:-

*“31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant - PUCL, amicus curiae and the affidavits filed by the Union of India, State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:  
(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities*

*pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.*

*(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.*

*(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:*

*(a) To identify the victim; colour photographs of the victim should be taken;*

*(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;*

*(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;*

*(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;*

*(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;*

*(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;*

*(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.*

*(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.*

*(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.*

*(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.*

*(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.*

*(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.*

*(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.*

*(9) In the event of death, the next of kin of the alleged*

*criminal/victim must be informed at the earliest.*

*(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15<sup>th</sup> day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:*

*(i) Date and place of occurrence.*

*(ii) Police Station, District.*

*(iii) Circumstances leading to deaths:*

*(a) Self defence in encounter.*

*(b) In the course of dispersal of unlawful assembly.*

*(c) In the course of affecting arrest.*

*(iv) Brief facts of the incident.*

*(v) Criminal Case No.*

*(vi) Investigating Agency.*

*(vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:*

*(a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and*

*(b) whether use of force was justified and action taken was lawful.*

*(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.*

*(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.*

*(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the*

*investigating team, subject to the rights under Article 20 of the Constitution.*

*(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.*

*(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.*

*(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein."*

The Hon'ble Apex Court further observed and directed that the abovementioned guidelines shall be applicable in cases of grievous injury caused in police encounter, as far as possible. The relevant para is quoted here as under:-

***"32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible."***

In the present case, applicant suffered grievous injury through a gun shot in his left leg and he got compound tibia fracture as per report filed by MS DDU hospital. So, aforementioned guidelines applicable in the present case.

It was also directed that abovementioned required/norms shall be strictly observed in all cases of death and grievous injury in police encounter by treating same as law declared under Article 141 of Constitution. The relevant para is quoted here as under:-

***“33. Accordingly, we direct that the above requirements / norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India”***

The strict compliance of above mentioned aspects/requirement/norms/guidelines is the unflinching/inevitable duty of investigating agency/police officials and cross checking/ensuring the compliance on the abovementioned aspects/requirement/norms/guidelines is surely the duty of the court, who is dealing with FIR No.800/21, PS Uttam Nagar, as and when that court would be seized of the matter.

- **On the aspect of investigation**

Keeping in mind the peculiar facts of this case as discussed above and keeping in mind the fact that there are ample material, as brought before the court, which is making this encounter as an apparent case of dubious, staged and suspected encounter, the court is expecting from the worthy Commissioner of Police, Delhi Police to be mindful of the guidelines of Hon'ble Apex Court in PUCL case (Supra), as noted above and that an independent investigation into the incident/encounter may be conducted by the CID or police team of another police station under the supervision of a

senior officer (at least a level above the head of the police party engaged in the encounter) in the manner as provided in point no.3 of above quoted judgment.

- **On the aspect of preservation of evidence**

At this stage, court also deems it fit to mention here that the father of applicant is apparently running from pillar to post, however, neither his complaint was heard by police officials nor he was allowed to meet with his son and with each day there are chances that existing evidence may disappear or may be made to disappear by the persons/personnel engaged in this suspected case of grave violation of human/constitutional/legal/fundamental rights. There is an immediate need to preserve the evidence which is available at this stage. The court find support from the judgment passed by **Hon'ble Apex Court in *D.K. Basu case (Supra)*** wherein the court conveyed deeper concern and observed as follows:-

*“Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co- prisoners who are highly reluctant to appear as prosecution witness due to fear of letaliation by*

*the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal...*

*...How do we check the abuse of police power? Transparency of action and accountability perhaps are tow possible safeguards which this Court must insist upon..."*

Keeping in mind the above observations as made by **Hon'ble Apex Court** and to avoid the loss of evidence and to bring the truth to the fore, it is also expected from worthy Commissioner of Police, Delhi Police to direct the concerned official to preserve CCTV footage from 1<sup>st</sup> to 3<sup>rd</sup> November, 2021 with respect to three places i.e.

- (1) area covering the radius of 2 kms from the house of applicant/accused/arrestee Rohit Gehlot @ Chita;
- (2) area covering the radius of 2 kms of/from the office of Special Cell (Clean Dwarka Cell, Sector-16 Dwarka) and
- (3) area covering the radius of 5 kms of DDA Park, near Uttam Nagar Terminal towards Kali Basti.

The Cell tower location and CDR pertaining to two numbers belonging to applicant i.e. 9267951754 & 9310884652 is also ordered to be preserved. The Cell tower location and CDR pertaining to Ct. Kulwant Singh be also preserved.

- **Intimation to NHRC**

Let copy of this order as well as order dated 12.11.2021, 15.11.2021 & 22.11.2021 and copy of FIR No.800/2021, PS Uttam Nagar, be sent to NHRC, in terms of directions passed by **Hon'ble Apex Court** in ***People's Union for Civil Liberties & Anr. Vs. State of Maharashtra & Ors*** which is quoted again for the sake of clarity:

*“(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of **the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.**”*

- **On willful defiance/indifferent attitude of worthy DCP**

Now, coming to point of non-compliance of the order/directions of this court. The court has to mention that in the present case the father of the applicant is running from pillar to post to find whereabouts of his son, however, neither his complaint was heard by police officials nor he was allowed to meet with his son. Apparently, he has been shot in his left leg by police officials in a suspicious and dubious encounter. The worthy DCP has shown an indifferent attitude to the orders of the court and have not filed clarifications on the points which has been specifically raised by this court on 15.11.2021.

The casual attitude and consequent willful defiance of orders of the court by a district head of police, in a case where serious questions and doubts are being raised about violation of human/legal/constitutional/fundamental rights, is not only troublesome but

also very alarming. If this is done by a district head then what to expect from subordinate police officials.

In the light of above, it is again directed to worthy DCP that he has to clarify the points which has been specifically asked from him qua the fact of arrest of applicant/accused/arrestee Rohit Gehlot in the present FIR i.e. 571/21, PS Najafgarh. In case of failure in filing the same by next date of hearing by worthy DCP, the court shall be compelled to take appropriate course of action.

SHO PS Najafgarh is also directed to preserve the Cell tower location pertaining to two numbers belonging to applicant i.e. 9267951754 & 9310884652 for a period from 01.11.2021 to 03.11.2021. The SHO PS Najafgarh is also directed to preserve the CCTV footage as filed in the form of CD on 24.11.2021.

Before putting rest to today's order, the court has to mention that the father of the applicant/accused/arrestee Rohit Gehlot has been kept uninformed by the police officials for almost 10 days from the date when the alleged encounter has happened. It was the right of father of the applicant/accused/arrestee Rohit Gehlot to be informed and to meet his son and to get copy of FIR and other documents, in terms of guidelines passed by ***D.K. Basu case (Supra)***. The investigating agency has acted in highly suspicious manner. The court has to convey with heavy heart that today we are celebrating 72<sup>nd</sup> Constitution Day and despite the presence of constitutional and statutory provisions, incident of custodial violence are increasing, which is nothing but alarming and depressing. This is matter of deep concern, as it is done/committed by a person who is supposed to be

protector of citizens; it is committed under the shield of uniform and authority in a situation where victim is totally helpless. No doubt and the court is conscious of the fact that police has to perform a difficult and delicate task to preserve law and order but to deal with such a delicate situation, a balanced approach is needed. In any situation human/legal/constitutional/fundamental rights must be preserved of all citizen. Dubious encounters cannot be used as solution to control crime as it has to be remembered that the cure cannot be worse than disease itself.

The preservation of rule of law, recognition of human rights and check on abuse or misuse of powers are the most sacrosanct function of the court. It has to be reminded that criminal antecedents and/or background cannot be a ground to crush legal/human/fundamental/constitutional rights of a person. It does not matter whether the victim is or was a common person or a criminal or a militant or a terrorist, nor does it matter whether the aggressor was common man or state; the law is same for both and is equally applicable to both.

Before concluding, the court has to quote here the relevant portion from the letter written from Birmingham Jail by Sir Martin Luther King Jr.:-

*“Injustice anywhere is a threat to justice everywhere, we are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”*

Threat to human rights anywhere is threat to human rights everywhere.

The court hope, expect, believe and have full faith that worthy Commissioner of Police, Delhi Police shall take all the steps to bring the goodwill that Delhi Police enjoys and known for. The wrong doer shall be dealt with iron hands.

The first application was moved on behalf of the applicant on 12.11.2021 for allowing the meeting of family member and lawyer of applicant/accused with applicant/accused. The court directed police officials and then jail officials to allow the meeting, however, same was not done and evasive and conflicting reply was filed. Finally, the meeting was allowed/arranged on 22.11.2021 at Legal Aid Clinic, DLSA, situated in Lockup Room, Dwarka Courts through separate application which was moved on 22.11.2021 itself. Accordingly, as the meeting has been arranged, the first application is disposed of. At this stage, court wishes to convey sincere thanks to DSLSA for providing such a mechanism/legal aid clinic in lockup room, due to which the mandate of **Hon'ble Apex Court**, as given in **D.K. Basu case (supra)**, was fulfilled.

As far as second application is concerned, same is partly allowed and relief qua preservation of CDR and cell tower location of accused/applicant is allowed. The relief qua taking on record the CCTV footage is also allowed. The SHO PS Najafgarh is again specifically directed to file compliance report regarding preservation/procuring of CDR and cell tower location of two numbers pertaining to applicant, as mentioned above and preservation of impugned CCTV footage from the original source/camera/recorder, as available with Ld. counsel/family member of applicant/accused and the compliance report be filed within five days from

today.

Put up on **07.01.2022** for compliance report from worthy Commissioner of Police, Delhi Police on the above mentioned aspect and reply/clarification from worthy DCP qua the aspect of arrest of accused in the present case i.e. FIR No.571/21, PS Najafgarh specifically mentioned in order dated 15.11.2021. Also, put up for compliance report from SHO concerned on the above mentioned aspects. Ahlmad is directed to file report with respect to compliance on the next date of hearing.

Let copy of this order as well as copy of order dated 12.11.2021, 15.11.2021, 22.11.2021& 24.11.2021 be sent to worthy Commissioner of Police, Delhi Police, Joint Commissioner of Delhi Police and to NHRC.

Let copy of this order be also sent to Member Secretary and Special Secretary, DSLSA for information.

Copy of this order be provided to Ld. counsel for applicant and IO/SHO of the case.

**(VINOD KUMAR MEENA)**  
**CMM (SW)/DWARKA COURTS**  
**NEW DELHI/26.11.2021**