

IN THE SUPREME COURT OF INDIA

(CRIMINAL ORIGINAL JURISDICTION)

WRIT PETITION (CRIMINAL) NO. OF 2019(PUBLIC INTEREST LITIGATION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA)**IN THE MATTER OF:**

1. Raman Kumar Shah (Male), . . . PETITIONER
aged about 60 years,
S/o Late Harish Shah,
Presently R/o Kumbhichour, Kotdwar,
District, Pauri Garhwal
UTTARAKHAND

PERMANENT ADDRESS

S/o Harish Chandra Shah
83, Tallital, Ramsay Road,
Ward No. 13, Tallital
Nainital
Tallital, Nainital
UTTARAKHAND- 263002

VERSUS

1. STATE OF UTTARAKHAND, RESPONDENT NO. 1
through the Principal Secretary,
Department of Home Affairs,
Uttarakhand Secretariat
Dehradun- 248001,
UTTARAKHAND
2. CENTRAL BUREAU OF INVESTIGATION, RESPONDENT NO. 2
through its Director,
CBI Hqrs, 6th Floor,
CGO Complex, Lodhi Road,
NEW DELHI – 110003
3. ADMINISTRATIVE OFFICER, RESPONDENT NO. 3
District Court,
Dehradun
UTTARAKHAND
4. ADMINISTRATIVE OFFICER RESPONDENT NO. 4
District Court
Muzaffar Nagar
Uttar Pradesh

[ALL RESPONDENTS ARE CONTESTING RESPONDENTS]

**WRIT PETITION (PUBLIC INTEREST) UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice and his
Companion Justices of the
Hon'ble Supreme Court of India

The Humble Petition of the
Petitioner abovenamed

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is filing present Writ Petition under Article 32 *inter alia* in Public Interest to bring before this Hon'ble Court the lackadaisical state of affairs in conducting Trial and enquiry by the Respondents with regards to the several FIR's/Chargesheets filed by the CBI chargesheeting several police officers for committing five (5) murders, seven (7) gang rape and seventeen (17) molestation of women activists cases and killing of 28 agitators by the police and authorities during State agitation which amounts to complete violation of Human Rights of Uttarakhand activists and the Petitioner is therefore seeking issuance writ of mandamus or any other appropriate writ. The prayers sought by the Petitioner in this regard are as follows:

- i. *Issue a writ, order or direction in the nature of mandamus commanding and directing, the Respondent no. 2 to initiate High Level Inquiry in murder of accomplice eye witness constable Subash Giri, in criminal case no. 42/1996 pending in Special Judicial Magistrate to Dehradun;*
- ii. *Issue a writ, order or direction in the nature of mandamus commanding and directing the Respondents to submit a status report pertaining to all the cases registered and status of Trial; and*

- iii. *Issue a writ, order or direction in the nature of mandamus commanding and directing the Respondent no. 1, 2 & 3 to trace the missing file (purportedly wrongly transferred) of the Case No. 42 of 1996 pending before Special Magistrate Dehradun and issue a direction to restart the trial proceeding and provide certified copy of cognizance order dated 22-4-1996 to the petitioner; and*
 - iv. *Issue a writ, order or direction in the nature of mandamus commanding and directing the Respondent no. 3 and 4 the Administrative officer/ Registrar of Special Judicial Magistrate to submit a report pertaining to file of Criminal Case No. 42 of 1996; and*
 - v. *Issue appropriate writ, order or direction Transferring Case No. 42/1996 purportedly pending before the Additional District and Sessions Judge, Muzaffarnagar to Special Judicial Magistrate Dehradun, Uttarakhand*
2. The Petitioner by way of present Petition is making composite prayers also including seeking transfer of proceedings/cases pending before Courts in UP to Uttarakhand to avoid filing multiple Petitions. The Petitioner also not being the party to such proceedings will not be able to give a cause title, however, since the present Petition is filed in public interest the said prayer for transfer be considered by this Hon'ble Court.
3. That the Petitioner has no personal interest involved in the present matter and only seeks for the fulfillment of the Respondents obligation in ensuring that the Rule of law is upheld and the fundamental rights of the victims of the movement of fair Trial is not infringed due to the lackadaisical approach of the State in bringing the Trial to its logical conclusion and the accused are convicted.

4. The present petition is filed before this Hon'ble Court in view of liberty granted by the Hon'ble High Court of Uttarakhand at Nainital in WPCRL No. 734 of 2018 by order dated 11.03.2019 (Annexure P-10). That the Petitioner is not involved in any litigation, civil, criminal or revenue, before any other forum/court/authority, which has a legal nexus with the issues involved in the instant Public Interest Litigation. It is further submitted that no similar writ petition has been filed either this court or any other High Court except the instant Writ Petition. It is also submitted that the Petitioner has not approached any authority, however, the present Petition is filed pursuant to the liberty granted by the Hon'ble High Court in public interest and upholding rule of law.
5. The Petitioner is a public-spirited person, the activist who participated and struggled for the formation of separate State of Uttarakhand and also a practicing advocate in the High Court of Uttarakhand. The Petitioner being an advocate has been actively involved and pursuing the legal recourse to uphold the fundamental rights of the activists who participated in Uttarakhand movement and has also stood for the rights of the victims and has ensured that the victims get appropriate compensation and representation before the Courts. The Petitioner has filed the present Petition in public interest and has an unblemished record in social service. The Petitioner has been providing free legal aid and advice to the victims and their families. It is submitted that the petitioner is presently Residing at Kumbhichour, Kotdwar, District Pauri Garhwal, Uttarakhand however his permanent address is 83,

Tallital, Ramsay Road, Ward No. 13, Tallital Nainital, Tallital, Nainital Uttarakhand- 263002 as recorded in his aadhaar card and other documents. The copies of PAN card, Voter ID card and bank account details from 01.05.2019 to 18.10.2019 of the Petitioner have been enclosed along with the vakalatnama. The name of the Petitioner father is mentioned as Late Harish Shah in affidavit, however his name as reflected in his aadhaar card is Harish Chandra Shah. It is submitted that Late Hariash Shah and Harish Chandra Shah is one and same person. It is lastly submitted that the annual income of the petitioner is Rs. 3,00,000/-.

6. That Respondent No. 1 is the State of Uttarakhand through its Secretary Home, Dehradun.
7. That Respondent No. 2 is the Central Bureau of Investigation which is empowered to investigate under Section 2 of the Delhi Special Police Establishment Act, 1946. Respondent No. 2 has been directed to investigate the cases pertaining to the police atrocities by the Hon'ble High Court.
8. Respondent No.3 is the Administrative Officer of the District Court, Dehradun. Respondent No. 4 is administrative officer of Muzaffarnagar District Court.

BRIEF FACTUAL BACKGROUND OF THE CASE FOR FILING OF THE INSTANT PETITION.

9. Prior to the formation of the present northern State of Uttarakhand, in the intervening night of 01.10.1994 & 02.10.1994, activists of the now established State of Uttarakhand had organized

a protest march against the reservation policy of the State Government and to press their demand for separate statehood.

10. The said protest march was lawful & peaceful, and infact the N.C.T Government of Delhi had even granted them permission to hold the rally, while banning the carrying of arms, spears, lathi or any other lethal weapon in the N.C.T Government of Delhi and had requested the Government of Uttar Pradesh to make arrangements for search and not to permit any of the participants in the march with the said weapons.
11. However, when the protest march reached Rampur Tiraha in Uttar Pradesh, the march was interrupted by the State Police Personnel and the participants were not permitted to proceed further and were dispersed with a lathi charge, shelling with tear gas and thereafter participants which included women and children were met with rubber bullets and then open firing, leading to loss of lives of the protesters and other atrocities committed against women.
12. On 07.10.1994 an association styling itself as "Uttarakhand Sangharsh Samity filed six Writ Petitions this regard, before the Hon'ble High Court of Judicature of Allahabad for the incident. The Writ Petitions being C.M.W.P. Nos. 32982 of 1994, 39919 of 1994, 39920 of 1994, 39921 of 1994, 40210 of 1994 & 40752 of 1994. The said Petitions were allowed by the Hon'ble Division Bench of the High Court vide its Common Order dated 09.02.1996, while issuing several directions including *inter alia* a CBI Inquiry and compensation to the victims.

13. On 06.12.1994 the High Court of Allahabad directed CBI enquiry and investigation in all matters of police atrocities in Uttarakhand including Khatima, Mussorie and Muzzafar Nagar.
14. On 11.10.1994 the then Director, CBI constituted three teams to inquire into 660 cases out of which CBI registered 68 cases.
 - i. Muzaffar Nagar police atrocities were investigated by Lucknow Zone headed by B.R Dube, D.I G, Lucknow Zone.
 - ii. Rape and molestation cases were investigated by Sri Atul, D.I.G, Ayodhya Cell-I
 - iii. All other police atrocities were investigated by Alexander Daniyal, D.I.G Ayodhya, Cell-II. *(subject matter of present Petition)*
15. On 19.01.1995 CBI took up investigation pursuant to the said directions and laid charge-sheet against certain officers on 19.01.1995 for offences under Sections 109 and 120-B read with Sections 341 and 342 of the Indian Penal Code. Sanction of the State Government was obtained for launching prosecution in respect of those offences. Some of the accused who were arrayed in the said charge-sheet filed Writ Petitions Nos. 3463 and 3515 of 1995 before the Lucknow Bench of the High Court of Allahabad, in challenge to the validity of the sanction order issued by the State Government for prosecuting them.
16. On 09.02.1996 the Division Bench of the High Court of Allahabad (Ravi S. Dhawan and A.B. Srivastava, JJ.) disposed of the first-mentioned writ petition filed by the Samity holding, inter alia, that no sanction of the Government is required under Section 197 of the Code of Criminal Procedure (for short "the Code") for prosecuting the officials for any of the offences committed by them while

resisting the rallyists. In view of the aforesaid stand adopted by the Allahabad Bench of the High Court, Writ Petitions Nos. 3463 and 3515 of 1995 were dismissed by the Lucknow Bench of the High Court on the premise that those writ petitions have become infructuous.

17. The said Common Order dated 09.02.1996 of the Division Bench of the Hon'ble High Court of Judicature of Allahabad was challenged by the State of Uttar Pradesh and the others accused therein, by filing the following Appeals and Petitions:

- i. SLP (C) No.12485 of 1996
- ii. SLP (Crl.) No. 1810 of 1996
- iii. Civil Appeal No. 329 of 1996
- iv. Criminal Appeal No. 3028 of 1996

18. By its Common Order dated 13.05.1999, this Hon'ble Court was pleased to quash the order dated 09.02.1996 of the Hon'ble Division Bench of the High Court of Judicature at Allahabad.

CBI CHARGE SHEET AND REPORTS

19. However as there was no direction passed by this Hon'ble Court with respect to the investigations already initiated by the CBI, in compliance with the judgment of the High Court CBI filed Chargesheet in Case No. 2(3) of 1995 and 3(3) of 1995 under section 304, 307, 324, 326 r/w 34 IPC before the Special Judicial Magistrate, CBI Dehradun.

20. The CBI had already constituted 3 teams to inquire 660 cases out of which CBI registered 68 cases. Various cells being filed Charge Sheet in the following cases in the District Muzaffar Nagar, being:

- i. Criminal Case No. 1060 of 2012 – C.B.I. v. Moti Singh and Ors., u/s 182/211 of the Indian Penal Code at Police Station Chappar.
- ii. Criminal Case No. 1067 of 2012 – C.B.I. v. S.P Mishra and Ors.
- iii. Criminal Case No. 1068 of 2012 – C.B.I. v. Rajbir Singh and Ors., u/s 193/120B of the Indian Penal Code at Police Station Chappar.
- iv. Criminal Case No. 1070 of 2012 – C.B.I. v. R.P. Singh and Ors., u/s 213/120B of the Indian Penal Code at Police Station Chappar.
- v. Criminal Case No. 1080 of 2012 – C.B.I. v. Brij Kishora and Ors., u/s 182 of the Indian Penal Code at Police Station Chappar.
- vi. S.T. No. 01 of 2004 v. Milap Singh and Ors., u/s 354/120B/372/392 of the Indian Penal Code at Police Station Chappar.
- vii. S.T. No. 02 of 2004 v. Radha Mohan and Ors., u/s 120B/376/354/392/323 of the Indian Penal Code at Police Station Chappar.
- viii. Criminal Case No. 10 of 1996 at CBI Court, Dehradun.
- ix. Criminal Case No. 25 of 1996 at CBI Court, Dehradun.
- x. Criminal Case No. 34 of 1996 at CBI Court, Dehradun.
- xi. Criminal Case No. 35 of 1996 at CBI Court, Dehradun.
- xii. Criminal Case No. 42 of 1996 at CBI Court, Dehradun.

21. In 1996 it is relevant to mention here that two transfer petitions were filed by the accused persons to transfer the case from Dehradun to Lucknow in the year 1996.
- (i) Transfer Petition No. 20/1996 by which criminal case no. 10/1996 of 13 accused persons were transferred to Lucknow.
- (ii) Transfer Petition No. 165 /1996 to transfer (i) Criminal Case No. 25/96, (ii) Criminal Case No. 34/96, (iii) Criminal Case No. 35/96 were transferred to Lucknow by the Hon'ble High Court.
22. On 22.04.1996 the Ld. Special Judicial Magistrate, CBI Dehradun took cognizance of the offences under Section 302, 307, 324,326 r/w Section 34 of IPC in Criminal Case No. 42 of 1996.
23. On 13.05.1999 this Hon'ble Court vide the judgment dated 13.05.1999 set aside the judgment delivered by the Allahabad High Court however was pleased to direct that if the compensation as directed by the High Court has been dispensed with should not be recovered by the State. It was also directed that if any person has not claimed the compensation or not received the compensation despite making claim should approach the competent authority. It is also pertinent to mention at this stage that although the judgment of the High Court was set aside by this Hon'ble Court however the CBI Enquiry based on which the directions in the judgment of the High Court were passed was not disturbed by this Hon'ble Court.
- True copy of the judgment dated 13.05.1999 reported in (1999) 4 SCC 476 passed by this Hon'ble Court in Civil Appeal No. 3027

of 1999 is annexed hereto and marked as **ANNEXURE P-1**

[Pg. 31-40]

24. On 22.07.2003 the accused Anant Kumar Singh filed a Petition before the Hon'ble High Court seeking quashing of the cognizance order dated 22.04.21996. The Hon'ble High Court allowed the Petition filed by the accused and quashed the order dated 22.04.1996 taking cognizance.

True copy of the judgment dated 22.07.2003 passed by the Hon'ble High Court of Uttarakhand in Writ Petition No. 467 (MB) of 2003 reported in (2003) 10 AIC 830 (Utt) is annexed hereto and marked as **ANNEXURE P-2 [Pg. 41-49]**

25. On 22.08.2003 on an Application filed for recall of the order/judgment dated 22.07.2003, the same bench of the Hon'ble High Court reviewed the judgment and restored the case to its original number and posted the matter before the different bench.

True and typed copy of the order dated 29.08.2003 passed by the Hon'ble High Court of Uttaranchal at Nainital in W.P. No. 467 (M/B) of 2003 is annexed hereto and marked as **ANNEXURE P-3 [Pg. 50-53]**

26. On 28.05.2004 the co-ordinate/another bench of the High Court without entering into the merits of the case dismissed the Petition on the ground of territorial jurisdiction.

True and typed copy of the order dated 28.05.2004 passed by the High Court of Uttarakhand at Nainital in W.P. No. 467 (M/B) of 2003 is annexed hereto and marked as **ANNEXURE P-4** [Pg. 54-56]

27. In 1996 one co-accused Subhash Giri, who was sole eye witness in the case was murdered in the train while he was travelling in Dehradun-Bombay Express near Gaziabad. The murder of the said witness was registered in GRP Gaziabad as Case No. 6 of 1996 under Section 302 of IPC. The said case was transferred to C.B.C.I.D Meerut and C.B.C.I.D has filed Final Report in this matter for unknown reasons however CBI is yet to take cognizance of the same nor has it taken any action or filed any report with respect to the same.
28. In 2018 the Petitioner herein made an enquiry from Trial Court to find out the status of the Trial in Case No. 42/1996 and confirm if the Trial is concluded. It was informed to the Petitioner that the documents/file pertaining to the case is not available in the record room.
29. On 17.02.2018 the Petitioner filed an Application seeking certified copy of the order dated 22.04.1996 in Case No. 42 of 1996 of the Special Judicial Magistrate Dehradun.
30. On 19.03.2018 by his letter, the Administrative Officer, District Court, Dehradun informed the Petitioner that the record of the concerned Case No. 42 of 1996 is not traceable.

31. In 2018 the Petitioner being aggrieved by the state of affairs and being constrained with the complete lackadaisical and careless approach of the CBI/Respondent No. 1 in pursuing the Case No. 42 of 1996 filed Criminal Writ Petition No. 734 of 2018 before the High Court of Uttarakhand at Nainital *inter alia* praying for the following reliefs:

- i. *"Issue a writ Order or direction in nature of mandamus commanding and direction the respondent no. 1, 2 and 3 and trace the missing file of the Criminal Case No. 42 of 1996 pending before the Special Judicial Magistrate, Dehradun and restart the trial proceeding and provide certified copy of cognizance order dated 22.04.1996 to the Petitioner.*
- ii. *Issue a writ order or direction in nature of mandamus commanding and directing the Respondent No. 2 to initiate high level inquiry in murder of accomplice sole eyewitness constable Subhash Giri in Criminal Case No. 42/1996 pending in Special Judicial Magistrate, Dehradun*
- iii. *Issue a writ order or direction in the nature of mandamus directing the respondent no. 2 to initiate inquiry against responsible person for negligence and not informing the Hon'ble High Court administrative side about case.*
- iv. *Issue any other/further order which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- v. *To award the cost of the petition in favour of the petitioner."*

True copy of the Writ Petition (Criminal) No. 734 of 2018 filed by the Petitioner before the Hon'ble High Court of Uttarakhand at Nainital dated NIL.04.2018 is annexed hereto and marked as

ANNEXURE P-5 [Pg. 57-74]

32. On 01.05.2018 The Hon'ble High Court of Uttarakhand at Nainital was pleased to direct the Ld. District and Sessions Judge, Dehradun to conduct an inquiry and submit its report regarding status of CBI Case No. 42 of 1996.

True copy of the order dated 01.05.2018 passed by the Hon'ble High Court of Uttarakhand at Nainital in WPCRL No. 734 of 2018 is annexed hereto and marked as **ANNEXURE P-6 [Pg. 75-76]**

33. On 11.05.2018 by his report, the Ld. District and Sessions Judge, Dehradun submitted to the Registrar, High Court of Uttarakhand at Nainital, *inter alia* that the record of the CBI Case No. 42 of 1996, *CBI Vs S K Singh* has been sent to the Additional District and Sessions Judge, Court No.4, Muzaffar Nagar on 05.03.2003 in compliance with the directions of this Hon'ble Court vide order dated 22.04.2004 in Original Appeal No. 51-60/1998.

True and typed copy of the report dated 11.05.2018 of the Ld. District and Sessions Judge, Dehradun along with the true copy and typed copy of the order dated 22.04.2004 of this Hon'ble Court in Criminal Appeal No. 51-60 of 1998 is annexed hereto and marked as **ANNEXURE P-7 [Pg. 77-84]**

34. On 26.06.2018 By its order, the Hon'ble High Court of Uttarakhand at Nainital granted permission to the Petitioner to file objection to the report dated 11.05.2018 submitted by the Ld. District and Sessions Judge, Dehradun.

True copy of the order dated 26.06.2018 passed by the Hon'ble High Court of Uttarakhand at Nainital in WPCRL No. 734 of 2018 is annexed hereto and marked as **ANNEXURE P-8 [Pg. 85-86]**

35. On NIL.10.2018 the Petitioner filed its objection to the status report submitted by the Ld. District and Sessions Judge, Dehradun.

True copy of the objections filed by the Petitioner before the Hon'ble High Court of Uttarakhand at Nainital in W.P. (CRL.) No. 734 of 2018 dated NIL.11.2018 is annexed hereto and marked as **ANNEXURE P-9 [Pg. 87-100]**

36. On 11.03.2019 by its order, the Hon'ble High Court of Uttarakhand at Nainital disposed of WPCRL No. 734 of 2018 filed by the Petitioner, while granting liberty to the Petitioner herein to approach this Hon'ble Court for redressal of grievances.

True copy of the order dated 11.03.2019 passed by the Hon'ble High Court of Uttarakhand at Nainital in WPCRL No. 734 of 2018 [case number wrongly mention as WPMS 734 of 2018 in order sheet] is annexed hereto and marked as **ANNEXURE P-10 [Pg. 101-102]**

37. The Petitioner thereafter made enquiries from the District Court Muzaffarnagar however no positive response regarding pendency or status of the matter could be ascertained by the Petitioner despite several efforts.

38. That the Annexures to the Petition are true and correct copies of their respective originals.
39. That this Petition has been filed *bona fide* and in public interest and the Petitioner craves leave of this Hon'ble Court to amend/alter its ground at appropriate stage, as and when required.
40. The Petitioner, therefore, is preferring the present Writ Petition in Public interest seeking intervention and invocation of its writ jurisdiction on the following, among other grounds which are taken without prejudice to each other: -

GROUND

- A. BECAUSE the present Petition raises serious concerns over the handling of the cases pertaining to serious police atrocities and Human Rights Violations by the Police authorities and inaction and lapses on part of the CBI and State in protecting the witness and not conducting the investigation on murder/killing of the accomplice witness.
- B. BECAUSE the present Writ Petition under Article 32 is preferred to bring before this Hon'ble Court the lackadaisical state of affairs in conducting Trial and enquiry by the Respondents with regards to the several FIR's/Chargesheets filed by the CBI chargesheeting several police officers for committing five (5) murders, seven (7) gang rape and seventeen (17) molestation of women activists cases and killing of 28 agitators by the police and authorities

during State agitation which amounts to complete violation of Human Rights of Uttarakhand activists.

- C. BECAUSE the protection of witness is crucial in Criminal prosecution, and in the present case there are serious lapses and lacuna in protection of the sole eye witness.
- D. BECAUSE one co-accused Subhash Giri, who was sole eye witness in the case was murdered in the train while he was travelling in Dehradun-Bombay Express near Gaziabad. The murder of the said witness was registered in GRP Gaziabad as Case No. 6 of 1996 under Section 302 of IPC. The said case was transferred to C.B.C.I.D Meerut and C.B.C.I.D has filed Final Report in this matter. It is submitted that shockingly for unknown reasons CBI who is the investigating agency in the matter neither took cognizance of the same nor has undertaken any kind of investigation or enquiry till date.
- E. BECAUSE this Hon'ble Court in ***State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571*** has observed that Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim.

- F. BECAUSE the State and the investigating agency has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.
- G. BECAUSE in certain situations, even a witness to the crime may seek for and shall be granted protection by the State. (*see para 68 (ii) of the judgment*). It is submitted that in the instant case the let alone the protection of the witness, the Respondent (CBI) did not feel it critical to even investigate the murder of the witness to unearth the conspiracy behind killing of the witness.
- H. BECAUSE in view of the glaring facts in the present case from complete failure of the investigating agency in witness protection, improper conduct of trial and role of the investigating officers who have not even felt it apposite to conduct an enquiry of the murder of the accomplice eye witness raises serious lapses and irregularities by the authorities to help the accused persons and thus it becomes imperative that this Hon'ble Court ought to pass necessary orders to prevent the perfunctory trial and miscarriage of justice that is perpetrated upon the victims and their family members.
- I. BECAUSE this case is the best example where shoddy investigation (no investigation) has been done by the CBI in sensitive cases as such.

- J. BECAUSE there appears to be no supervisory role of any senior officer. Though the investigating officer remains in the center of the sphere in the entire probe, it appears that senior officers failed to supervise the investigation.
- K. BECAUSE the CBI has failed to conduct probe into his mysterious death thus delaying delivery of justice. It is submitted that the victims of the Uttarakhand movement have been waiting for justice for more than two decades.
- L. BECAUSE the Files/Record pertaining to Case No. 42/1996 pending before the Special Judicial Magistrate, Dehradun not traceable from the registry of the Court.
- M. BECAUSE this Hon'ble Court may take judicial notice of the fact that records pertaining to the case no. 42/1996 have gone missing (*purportedly wrongly transferred to State of U.P. without any order of this Hon'ble Court*) from the registry of the learned Special Magistrate on 2018 Petitioners herein made an enquiry from the Trial Court to find out the status of trial case no. 42/1996 and confirm if the trial is concluded as was informed to petitioner that documents/file pertaining to the case is not available in the record room.
- N. BECAUSE the administrative officer District Court Dehradun informed the petitioner that the record of the concern case no. 42/1996 is not traceable.

- O. BECAUSE the fact that the files pertaining to the CBI Case No. 42 of 96 goes missing from the Court and killing of the witness itself shows the no seriousness of CBI in prosecuting the serious and sensitive cases against the accused persons who are high officials of police department and other departments.
- P. BECAUSE the Petitioner apprehends mischief and foul play by the accused persons with concerned authorities to tamper with the records of the Court and non-action by the investigating agency like CBI to not register a case for murder of the witness.
- Q. BECAUSE the Ld. District Judge of the Dehradun in its report dated 11.05.2018 before the Hon'ble High Court has contended that the records of the CBI case No. 42 of 96 was sent to Additional District and Sessions Judge, Muzaffarnagar in compliance of this Hon'ble Courts order dated 22.04.2004 in Appeal No. 51-60/98. that the judgment/order dated 22.04.2004 of this Hon'ble Court has been clearly misinterpreted by the Ld. District Judge, since no such direction to transfer the case to Muzaffarnagar was passed by this Hon'ble Court.
- R. BECAUSE the Petitioner in this regard has made enquiries from the District Court Muzaffarnagar however no positive response regarding pendency or status of the matter could be ascertained by the Petitioner despite several efforts.

- S. BECAUSE the Petitioner in this regard is filing separate Transfer Petition seeking transfer of CBI case No. 42 of 96 and other such cases from Additional District and Sessions Judge, Muzaffarnagar to Special Judicial Magistrate Dehradun, Uttarakhand.
- T. BECAUSE the activists, including the Petitioner herein have face long legal battle and despite the passage of nearly 25 years the Trial effectively yet to start. It is submitted that the missing court records not only cause inordinate, delays, but also lead to acquittals.
- U. BECAUSE the disappearance of the case files from court amounts to a travesty of justice and if such lapse results in acquittal of the accused will clearly lead to miscarriage of justice.
- V. BECAUSE the report of the Ld. District judge is completely misplaced and unwarranted to say the least. It is submitted that the Ld. District judge in its report dated 11.05.2018 submitted before the Hon'ble High Court that the records of the CBI case No. 42 of 96 was sent to Additional District and Sessions Judge, Muzaffarnagar in compliance of this Hon'ble Courts order dated 22.04.2004 in Appeal No. 51-60/98. It is submitted that aforesaid explanation of the Ld. District Judge is completely misplaced, hypothetical and unsubstantiated to say the least. The relevant portion the report reads as below:

"...As directed in the above Writ Petition, it is informed that record of CBI Case No. 42 of 96, C.B.I Vs. S.K.Singh & others was sent to Additional District & Sessions Judge, Court No. 4, Muzaffarnagar on 05.03.2005, in compliance of the Hon'ble Supreme Court's order dated 22.04.2004 in Appeal No. 51-60/98...."

W. 'BECAUSE the judgment/order dated 22.04.2004 of this Hon'ble Court has been clearly misinterpreted by the Ld. District Judge, since no such direction to transfer the case to Muzaffarnagar was passed by this Hon'ble Court. The order dated 22.04.2004 passed by this Hon'ble Court reads as follows:

"...The new State Uttaranchal has come into existence in 2000 and allegation regarding the surcharged atmosphere and the apprehension regarding the fair trial are not in existence. Having regard to the facts and circumstances of the case, we are of the view that the trial can be held in accordance with law under the provision of Cr.P.C. and courts having the jurisdiction on the basis of the provisions of the Cr.P.C. can start the trial of these cases. The incident happened within the jurisdiction of Muzaffarnagar. As there is no Special Judge at Muzaffarnagar to try the cases investigated by the CBI, the High Court of Allahabad shall pass appropriate direction either to empower one of the Additional District Judges/Fast Track Courts for trial of these cases wherein CBI has filed the final report. The records available with the Registry shall be sent to the Principal District Judge, Muzaffarnagar, who shall make available the records to the Judge who is appointed for this purpose..."

X. BECAUSE from the above that this Hon'ble Court had categorically observed that that the trial can be held in accordance with law under the provision of Cr.P.C. and courts having the jurisdiction on the basis of the provisions of the Cr.P.C. can start the trial of these cases. It is infact submitted

that this Hon'ble Court had directed the High Court of Allahabad to empower one of the Additional District Judges/Fast Track Courts for trial of the cases in the jurisdiction of Muzaffarnagar having categorically noting the fact that there is no Special Judge at Muzaffarnagar to try the cases investigated by the CBI.

- Y. BECAUSE there is no direction whatsoever to transfer the CBI Case No. 42 of 96 to Muzaffarnagar. It is submitted that the Petitioner apprehends mischief and foul play by the accused persons with concerned authorities to send the records of the said case to Muzaffarnagar.
- Z. BECAUSE this Hon'ble Court had categorically observed that that the trial can be held in accordance with law under the provision of Cr.P.C. and courts having the jurisdiction on the basis of the provisions of the Cr.P.C. can start the trial of these cases. It is infact submitted that this Hon'ble Court had directed the High Court of Allahabad to empower one of the Additional District Judges/Fast Track Courts for trial of the cases in the jurisdiction of Muzaffarnagar having categorically noting the fact that there is no Special Judge at Muzaffarnagar to try the cases investigated by the CBI.
- AA. Because the Petitioner in this regard has made enquiries from the District Court Muzaffarnagar however no positive response regarding pendency or status of the matter could be ascertained by the Petitioner despite several efforts. It is submitted that the

Petitioner in this regard seeks liberty to file separate Transfer Petition seeking transfer of CBI case No. 42 of 96 and other such cases from Additional District and Sessions Judge, Muzaffarnagar to Special Judicial Magistrate Dehradun, Uttarakhand.

BB. Because it is implored upon this Hon'ble Court exercising its wide powers under Article 32 be pleased to call for the report from the administrative officer of the both District Court Muzaffarnagar and Dehradun regarding the status of the matter and transfer *Case No. 42 of 1996* and all the other matter connected to the present case purportedly pending before Additional District & Sessions Judge, Court No. 4, Muzaffarnagar to the jurisdiction of competent court being Ld. Special Judicial Magistrate, CBI Dehradun in the interest of justice.

CC. Because for the convenience of the victims, witnesses who are from Uttarakhand and larger of interest of the society it is incumbent that the aforesaid matters are transferred to the Court of competent jurisdiction in Dehradun. Further it is convenient to the prosecution to conduct the case, as it has a well-equipped office and a court of competent jurisdiction exists in State to try, in order ensure speedier and expeditious trial. (see **Abdul Nazar Madani Vs. State of Tamil Nadu AIR 2008 SC P.2293**)

DD. Because the activists, including the Petitioner herein have face long legal battle and despite the passage of nearly 25 years the Trial effectively yet to start. It is submitted that the missing court

records not only cause inordinate delays, but also lead to acquittals. It is submitted that of the disappearance of the case files from court amounts to a travesty of justice and if such lapse results in acquittal of the accused will clearly lead to miscarriage of justice.

EE. Because the Petitioner has no efficacious remedy other than approaching this Hon'ble Court.

PRAYERS

In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to issue necessary writ, order or direction to:-

- (a) Issue appropriate writ, order or direction in the nature of mandamus or any other writ commanding and directing the respondent no. 2 to initiate High Level Inquiry in murder of accomplice eye witness constable Subash Giri, in criminal case no. 42/1996 pending in Special Judicial Magistrate to Dehradun; and
- (b) Issue appropriate writ, order or direction in the nature of mandamus or any other writ and directing the respondent no. 1, 2 & 3 to trace/locate the missing file (wrongly transferred) of the Case No. 42 of 1996 pending before Special Magistrate Dehradun and issue a direction to

- restart the trial proceeding and provide certify copy of cognizance order dated 22.04.1996 to the petitioner; and
- (c) Issue appropriate writ, order or direction in the nature of mandamus or any other writ commanding and directing the Respondent No. 3 and 4 the Administrative officer/ Registrar to submit a report pertaining to file of Criminal Case No. 42 of 1996; and
- (d) Constitute a Special Investigating Team "SIT" comprising of retire judges of this Hon'ble Court or of any High Court as this Hon'ble Court may deem fit and direct the team to conduct an inquiry on the missing files of Case No. 42/1996 pending before Special Judicial Magistrate Dehradun because this matter relates with inter State Criminal Case; and
- (e) Issue appropriate writ, order or direction Transferring Case No. 42/1996 purportedly pending before the Additional District and Sessions Judge, Muzaffarnagar to Special Judicial Magistrate Dehradun, Uttarakhand; and
- (f) Issue appropriate writ, order or direction transferring all the criminal cases matter relating to Uttarakhand agitation from Allahabad High Court including Lucknow Bench of U.P. to Uttarakhand High Court and the Trial Court to its competent subordinate Court, so that life and liberty of

victim and witness be saved and Uttarakhand victim may get just, fair and free trial in the interest of justice; and

(g) Issue appropriate writ, order or direction in the nature of mandamus or any other writ directing the Respondent No. 1 to submit the status report of all the 12 cases as mentioned in para 19 above registered by CBI in Police Atrocities case in Uttarakhand; and

(h) Pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND, FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn by:
MR. RAJESH INAMDAR,
ADVOCATE

FILED BY:

(AMARJEET SINGH)
ADVOCATE FOR THE PETITIONER

PLACE: NEW DELHI
DRAWN ON :18.07.2019
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