

**IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION  
WRIT PETITION (Cr) NO. \_\_\_\_\_ OF 2020**

**IN THE MATTER OF:**

Anoop Prakash Awasthi

Petitioner in Person

VERSUS

State of Uttar Pradesh

Respondent

**REJOINDER AFFIDAVIT OF THE PETITIONER IN  
PERSON ANOOP PRAKASH AWASTHI TO THE REPLY  
AFFIDAVIT FILED ON BEHALF THE STATE OF UTTAR  
PRADESH.**

I, Anoop Prakash Awasthi S/o Sh. Keshava Ram , age 40 years, at B-32, New Rajinder Nagar, New Delhi-110060, Advocate on Record, CC 2441 do hereby solemnly affirm and declare as under:

1. That I am the petitioner in person in the aforesaid matter and am well conversant with the facts of the present case and as such am competent to swear this affidavit.

2. I state that the subject rejoinder affidavit amongst others covers the issues of (i) illegality in the constitution of Judicial Inquiry Commission in the matter (ii) institutional bias in the appointment of SIT and special investigation teams (iii) one juvenile killing in the police encounter (iv) illegality committed while taking custody of Vikas Dubey without approaching magistrate for any transit remand.
3. That it is submitted that in view of the order dated 14.06.2020 passed by this Hon'ble Court, the Petitioner in Person has served the copy of Petition via email to the official email of the Ld. Solicitor General of India, representing the State of Uttar Pradesh in the matter and the state has filed its reply affidavit and copy thereof has been served upon deponent via email on 17.07.2020. at 2.05 PM.
4. That in the Reply Affidavit filed by the State of Uttar Pradesh, they have tried to justify the genuineness of encounter of Vikas Debye on the basis that he was a hardened criminal involved in the massacre of 8 police

personnel. I however submit that no law provides justification of killing of even a hardened criminal in the custody of law enforcement agency. Apt to remember that even in post IInd world war, Nuremberg Trials were conducted by the Allied forces to punish for war crime done by Nazi Germany and no extrajudicial killing was done as the Rule of Law is the moral fabric of a just and equitable society and Rule of law is further the ethical code for the exercise of public power in any country including our country.

5. That the Hon'ble Chief Justice of this Hon'ble Supreme court of India in the backdrop of the Hyderabad rape-murder incident of the veterinary doctor and gunning down of the four accused in an alleged encounter, on Saturday December 7, 2019 said in Jodhpur that "justice can never be instant and loses its character when it becomes revenge" it is submitted that same thing has happened in the present matter though the state is denying any foul play in its reply.

6. ISSUE OF ILLEGALITIES/INFIRMITIES IN THE APPOINTMENT OF SINGLE MEMBER JUDICIAL INQUIRY COMMISSION:-

6.1. It is submitted as per point 8 of the Reply affidavit on 12.07.2020, State of U.P. has appointed a single member Judicial Inquiry Commission headed by Justice (Retd.) Shabsikant Agarwal to inquire into the incident of Kanpur Killings.

6.2. I state that para 1 & 2 the said notification (at page 54-55 of the reply affidavit of the State of U.P.) appointing judicial inquiry commission reads as follows "*NOTIFICATION No.997/P/VI-P-3—2020-82P/2020 Lucknow dated 12 July, 2020 Whereas the Governor is of the opinion that it is necessary to hold an enquiry with regard to matter of public importance in which incident on 02.07.2020-03.07.2020 and 10.07.2020 by Vikas Dubey and his associates and encounter*

*between police and criminal regarding this episode at various places during this period.*

*2. Now, therefore, in the exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952 (Act No. LX of 1952,) the Governor is pleased to appoint Justice (Retd.) Shri Shashi Kant Agarwal s/o Late Shri Ram Saran Agarwal, Resident J0-404, Aditya Maga City, Vaibhav Khand, Indirapuram, Ghaziabad as a single member of Commission of Inquiry with Headquarters at Kanpur."*

6.3. I state that constitution of above Judicial Inquiry Commission is completely illegal as it is not done in accordance with the section 3 of Commission of Inquiry Act, 1952 which mandates passing of a resolution by each house of state followed by gazette notification as required under the Section 3 of thereof which reads as follows "*The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a*

*resolution in this behalf is passed by 2[each House of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.”* It is submitted that aforementioned is not in consonance with, but in derogation of section 3 of the Commission of Inquiry Act, 1952.

- 6.4. I further state that the Governor of any state as in the present case could appoint a Judicial Inquiry Commission by issuing ordinance under Article 213 of the Constitution of India (which is not done in the present case) as no session of the state assembly was convened for appointment of the Commission as such the

Constitution of Inquiry Commission is without any statutory peg as such it would have no foothold and will become still born as propounded by the Hon'ble Supreme Court in the matter of V. Sudeer v. Bar Council of India and (1999) 3 SCC 176.

6.5. I state that Shri Shashi Kant Agarwal head of the single member inquiry commission is not a retired judge of High Court of Allahabad. He cannot use the prefix Justice (retd) before his name as he resigned from the position of Judge of High Court of Allahabad upon his transfer from said court to the High Court of Jharkhand on 05.01.2005. I state that Shri Shashi Kant Agarwal, Ex. Judge of the High Court of Allahabad resigned in controversial circumstances information relating to which is available with the Hon'ble Supreme Court of India and need not be elaborated herein. I further state that Shri Shashi Kant Agarwal is

born on 15.11.1943 and he was appointed as judge of the Allahabad High Court on 05/02/1999 and demitted office upon resignation on 05/01/2005 and he is not receiving any retirement or service benefits of a judge. I state that Shri Shashi Kant Agarwal was designated as Senior Advocate by the Uttrakhand High Court on 28.07.2005 vide notification no. UHC/AdminA/2005 and he has been practicing as a Senior Advocate for last 15 years. I state that Shri Shashi Kant Agarwal is aged about 77 years as on date and as such not in any circumstances a suitable person to carry out the inquiry of the cumbersome and complicated issues regarding killing 8 police persons and 6 other encounters. True copy of the High Court of Allahabad profile of the Shri Shashikant Agarwal showing he was transferred to Jharkhand on 05.01.2005 is enclosed herewith as **Annexure RA-1** at page 23 and

true copy of High Court of Uttarakhand, Nanital, List of Designated Senior Advocates Designated by High Court of Uttarakhand in terms of section 16(2) of the Advocates Act, 1962, containing name of Sri Shashi Kant Agarwal at serial no. 14, notification no. 87/UHC/Admin.A/2005 dated 28.07.2005 is enclosed herewith as **Annexure RA-2** at page 24

6.6. I state that an Inquiry commission is merely a fact finding body appointed by the government for its information. This Hon'ble Supreme Court of India in the matter of Ram Krishna Dalmia v. Justice S.R. Tendolkar A.L.R. 1958 S. C. 538 has held as under "*The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may*

*become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called."*

- 6.7. I state that the findings and recommendations of a Judicial Inquiry Commission is not binding upon the appointing authority and it can as well be rejected by the government of the State of U.P. Even if accepted, the government of the State of U.P. may or may not take any further action thereon. This being the nature of the functions of the commission, the question with regard to investigation of the Kanpur incident by Central Bureau of Investigation or NIA or by a panel of judges appointed by this Hon'ble Court

remains relevant despite the appointment of a judicial inquiry commission.

## 7. ISSUE OF APPOINTMENT OF SPECIAL INVESTIGATION

### TEAM (SIT):-

I state that in para 7 of the reply affidavit, it is informed that a Special Investigation Team of (i) Sh. Sanjay Bhoosreddy (IAS), Adnl. Chief Secretary (Chairman) (ii) Shri Hari Ram Sharma (IPS), Adnl. Director General of Police (Member) and (iii) Shri J. Ravinder Gaur (IPS) Deputy Inspector General of Police has been constituted. It is submitted that as per information available in media, one of the members of the SIT namely Shri J. Ravinder Gaur (IPS) Deputy Inspector General of Police is an accused of a fake encounter of one Mukul Gupta a medicine dealer on 30<sup>th</sup> June 2007, who was killed in Bareilly, U.P. the said encounter was investigated by Central Bureau of Investigation, wherein CBI sought permission to Chargesheet Shri J. Ravinder Gaur

(IPS) but sanction of his prosecution was not given by the then Government of Uttar Pradesh and thereafter by the present one, as such he is continuing in service. It is further submitted that in the year 2014 father and mother of aforementioned Mukul Gupta who were pursuing the case before the High Court were also murdered. It is submitted that if said committee is permitted to continue the investigation, the entire process will suffer from an institutional bias. True copy of Indian Express journalism of courage, U.P. Govt. refuses prosecution sanction against IPS Officer J Ravinder Goud, dated 24.10.2014 is enclosed herewith as **Annexure RA-3** at page 25 and true copy of the Indian Express news caption "Couple pursuing son's fake encounter found murdered, IPS officer J Ravinder Goud posted now as Aligarh SSP, accused in 2007 case, CBI had sought prosecution sanction but was denied dated

10.04.2015 is enclosed herewith as **Annexure**

**RA-4** at page 26-28

8. ISSUE OF THE APPOINTMENT OF A SPECIAL TEAM FOR INVESTIGATING THE INCIDENT DATED 10.07.2020 BY A TEAM OF (I) DR. SURENDRA PRATAP SINGH, S.P.CRIME, KANPUR NAGAR (II) BRIJESH KUMAR, SPRA, KANPUR NAGAR, (III) MANOJ KUMAR GUPTA, CIRCLE OFFICER, CRIME (IV) AJIT KUMAR SINGH, CIRCLE OFFICER, SWARUPNAGAR AND INSPECTOR AND CONSTABLES INVESTIGATING THE CASES RELATED TO ALL FIRS.

8.1. I state that in reply affidavit para 10 of the reply of the State of Uttar Pradesh it is referred they have appointed a special team investigating the incident dated 10.07.2020. I state that such appointment of a Special Team of the Kanpur Police is in conflict of principle of natural justice. I state that the issue at hand is not that of an ordinary crime against society but a crime against a law enforcement agency at the initial

stage and then at later stage it has become a case of alleged crimes of fake encounters done by the law enforcement agency in which the entire system of Kanpur police is somehow involved either as victim or accused or aggressor and hence any investigation by them is likely to suffer from personal bias and same would be in conflict with the legal maxim 'Audi Alteram Partem' or rule against fairness at the time of investigation. I further state that respondent state cannot seek refuge in the judgment of this Hon'ble Court in the matter of Hari vs. Dy. Commissioner of Police, AIR 1956 SC 559, to counter the rule against bias as the factual contours of both are completely different.

8.2. I further state that India TV, a national hindi news broadcaster was running a footage atleast 12 hours before the encounter of Vikas Dubey in the evening of 9<sup>th</sup> July 2020 which was flashing as Vikas Dubey will be killed, time date and

place fixed (Annexure P-9 of the subject W.P. (Cr.) 178/2020 page 35-36) which is reproduced herein below "*India TV, Thursday, 19.41 Coming up Vikas Dubey will die, date, time place all fixed India TV, Thursday, 19.41 Coming up death is waiting for Vikas Dubey, it is confirmed:- 8 PM, India TV, Thursday, 19.43 Coming up Big news on Vikas Dubey soon India TV, Thursday, 19.51, Night eight O' Clock, order of Yogi Adityanath, Vikas Dubey will cross border, India TV, Thursday, 19.51 death is waiting for Vikas Dubey, India TV, Thursday, 19.51 , Night eight O' Clock, Vikas will die, Kanpur will see, date time place fixed*"

- 8.3. I state that since the prediction in the captioned footage of India TV came to be completely true as such, it is safe to presume that orders of the encounter came from the top level of the government of Uttar Pradesh as such investigation of the incident by any agency

appointed by the State of Uttar Pradesh shall run the reasonable risk of institutional bias and hence indulgence of this Hon'ble Court is needed for upholding the rule of law by appointing a central agency like CBI or NIA.

9. THE ENCOUNTER KILLING OF JUVENILE KARTIKEYA

@ PRABHAT MISHRA:

I state that as per information available in media, atleast one of the accused namely Kartikeya @ Prabhat Mishra was a juvenile, however he was also killed in an encounter in the same fashion and in the same contour of story of snatching the pistol of a police man and trying to flee. I state that any extra-judicial killing has to dealt with an iron hand howsoever grave the reason for anger of the law enforcement agency would have been behind that. The copy of the Adhar Card of Kartikeya Mishra @ Prabhat Mishra no. 9154 9015 2444 showing his date of birth as 27.05.2004 made

on dated 10.02.2020 with its true typed copy is enclosed herewith as **Annexure RA- 5** at page 29-30

10. NO TRANSIT REMAND OF VIKAS DUBEY WAS TAKEN IN COMPLETE DEFIANCE OF SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE, 1973:

10.1 I state that as per the para 5 of the reply affidavit filed by Uttar Pradesh Police, it is clear that the UP police had taken custody of the accused Vikas Dubey directly from the M.P. Police without obtaining the necessary transit remand from a magistrate as mandated under section 167 of the Code of Criminal Procedure, 1971 as such intention for pre-meditated encounter killing by UP police is very clear. The news paper The Hindu reported on 10.07.2020 that Vikas Dubey was being taken to Kanpur without transit remand quoting M.P. Police. True copy of the Hindu, other states, Dubey was being taken to Kanpur without transit remand:

M.P. Police dated 10.07.2020 is enclosed herewith as **Annexure RA-6** at page 31 to 32

10.2 I state that the SHO, Thana Mahakal, Ujjain directly given custody of accused/deceased Vikas Dubey to UP STF headed by Dy. SP Shri Tej Bahadur Singh at 8.10 PM on 09.07.2020 and they drove towards UP in vehicle No. UP 32 BG 4485 which was a tata vehicle. I state that visual media was continually following the Police Convoy with live on air camera reporting since inception and no change of Vehicle was made within media view up till Kanpur and then the story of accident of a different vehicle of Mahindra make UP 70 AB 3497 (TVU 300) and shootout of the criminal in custody was planted like a C grade crime movie where the criminal is hit at heart despite firing from a very long range and police personnel are hit only in arm or leg despites fired upon from very close range. It is submitted that the post mortem report of Vikas

Dubey is not enclosed with the Reply Affidavit of Respondent State.

11. I state that killing of the police personal and the violence shown in the photographs attached to the Reply is a very big crime but same requires to be judicially redressed in a legal way and not by revenge or instant justice in staged encounters. I state that though the counters are attempted to be justified as portrayed as genuine in the reply, no reasonable person can believe the version of UP police. I further state that while fighting a lawless the state cannot go to the extent of becoming lawless. Fighting almost like a gang war by the state with a gangster is not permissible in a democratic civil society. I state the law enforcement agencies have to enforce the rule of law in legal way and not otherwise.

12. I state that justification for dismantling of the house of Vikas Dubey is completely farce as the reply is completely silent about any specific recovery of arms and ammunition at the time of demolition of the

house and despite entire demolition covered by media, no demonstration of recovered weapons were made by the Police immediately or soon thereafter at the time of demolition which police normally do in other cases. I state that there is absolutely no justification for damaging the vehicles parked at the crime scene. I state that by demolishing the crime scene police may be accused of having done an offence of destruction of evidence punishable under section 201 of the Indian Penal Code and same attracts punishment up to 7 years as it is relating to destruction of evidence relating to the crime of murder/killing of policemen inviting upto capital punishment.

13. I state that there is no justification in killing a person in custody by staging an almost identical film story each time. It is submitted that an accused, a hardened criminal, accused of mass murders of policemen is required to kept handcuffed and ankle cuffed while being transported. It is difficult to believe

that the persons encountered in police custody tried to snatch pistol from a police personnel (who as per protocol always keeps pistol tied to his waist with a very strong nylon string) and successfully snatched pistol from trained policeman like superman and fled after freeing himself with the handcuff and ankle cuff (Vikas Dubey as per police version was without hand & ankle cuff) and ran like Usain Bolt despite having limp caused due to steel rods in both legs and indiscriminately fired upon police party like Jason Statham and killed by Police in a mission impossible series looks like a crime thriller or movie scene than a real encounter.

14. Thus I pray to the Hon'ble Court that investigation by Central Bureau of Investigation or NIA be ordered in the matter and in case my lords please to appoint a committee of retired judges of this Hon'ble Court in the matter then that should be in addition to the Investigation to be carried out by CBI or NIA.

15. I state that due to hardships created by the spread of pandemic Covid -19, the affidavit could not be attested and same may be permitted to be taken on record without attestation.

16. Prayed accordingly.

DEPONENT

VERIFICATION

I deponent above named state that this is my name and signature, and what is stated in paragraphs 1 to 16 are true and correct as of my knowledge and belief. No material facts have been concealed.

*Subscribed  
ScW  
3*

Verified at new Delhi on this 18<sup>th</sup> day of July, 2020. 

DEPONENT