

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
[Under Order XXII Rule 2(1) of S.C. Rules 2013]  
(Under Article 136 of the Constitution of India)

**SPECIAL LEAVE PETITION (CRL.) NO.                      OF 2017**

(WITH PRAYER FOR INTERIM RELIEF)

**IN THE MATTER OF:**

**POSITION OF PARTIES**

	Before High Court	Before This Court
Mehmooda      Mohammed      Salim Muchchale, age: 61 years, R/o House No. 460, Vijay Nagar, Nayee Zindagi, Majerewadi, Solapur. Maharashtra	Petitioner	Petitioner

Versus

- |   |                    |                    |
|---|--------------------|--------------------|
| 1. Union of India<br>Through Principal Secretary,<br>Secretariat, New Delhi.                          | Respondent<br>No.1 | Respondent<br>No.1 |
| 2. State of Madhya Pradesh through<br>its Principal Secretary, Home<br>Department,<br>Madhya Pradesh. | Respondent<br>No.2 | Respondent<br>No.2 |
| 3. Inspector General of Police,<br>Bhopal, Madhya Pradesh.  | Respondent<br>No.3 | Respondent<br>No.3 |
| 4. The Superintendent of Police<br>Bhopal, Madhya Pradesh.  | Respondent<br>No.4 | Respondent<br>No.4 |
| 5. The Principal Jail Superintendent<br>Central Prison, Bhopal, Madhya<br>Pradesh.                    | Respondent<br>No.5 | Respondent<br>No.5 |

[ All are contesting respondents]

To  
THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS OTHER COMPANION JUSTICES  
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE PETITIONER ABOVE-NAMED

**MOST RESPECTFULLY SHEWETH:**

1. This petition by Special Leave to Appeal seeks to assail the impugned final judgment and order dated 21.02.2017 passed by the Hon'ble High Court of Judicature at Jabalpur at Jabalpur in Criminal Writ Petition No. 18964 of 2016. Whereby the Hon'ble High Court has been pleased to dismiss of the writ petition holding that in view of these orders passed in various petitions at the instance of public spirited person and also at the instance of relative of the deceased and taking into consideration the relief sought vide present petition is similar to that sought in writ petition no. 18305/2016, W.P. No. 20370/16 and W.P. No. 19280/16 this court declined to grant relief as sought for by the petitioner.

1A. That no intra court appeal is maintainable against the impugned order. Hence the present SLP is being filed.

**2. QUESTIONS OF LAW:**

The following substantial questions of law arise for kind consideration by this Hon'ble Court:

- I. Whether the High Court has erred in not considering that the one man Commission has not permitted the petitioner and other relatives of the deceased under trial prisoners to participate in the proceeding and also not permitted the cross examine the version of the police official?
- II. Whether in the facts and circumstances of the present case the guidelines and directives issued by this Hon'ble Court in the case of

*PUCL Vs. State of Maharashtra & Ors (2014) 10 SCC 635* which says that these guidelines have mandatorily to be followed in all police encounter cases, and whether these directives of this Hon'ble Court has been properly followed in the present case?

- III. Whether the promotion and instant rewards given by the State Government to the police officials involves in the said encounter is against the spirit and directions of this Hon'ble Court judgment in the case of *PUCL Vs. State of Maharashtra and other (2014) 10 SCC 635* ?
- IV. Whether when a police encounter occurs, it is important that a complaint is registered; the evidence is preserved; independent and fair investigation takes place; victims are informed and inquest is conducted?
- V. Whether there is complete bar not to entertain a petition seeking directions including the similar directions which were earlier sought by the some person and their petition have been rejected on the ground that one man commission under the Commission of Inquiry Act has been appointed, so therefore no further petition can be entertained even though it raises some substantial question of law and produces the relevant materials which were earlier not before the court?
- VI. Whether in the facts and circumstances of the present case of killings in police encounters require independent investigation?

- VII. Whether the killings of under trial prisoners in police encounters affect the credibility of the rule of law and the administration of the criminal justice system?
- VIII. Whether in the facts and circumstances of the case the High Court was justified in not entertaining the petition and rejected only on the ground that earlier some petition has been dismissed by the High Court?
- IX. Whether the High Court ought not have examine the case on its merits when there is serious violation of the directives and guideline issued by this Hon'ble Court in the case of *PUCL Vs. State of Maharashtra and other (2014) 10 SCC 635*?
- X. Whether the one man commission which is formed only with a view to hush up the case, moreover when the petitioner and other relatives of the allegedly encountered SIMI under trial prisoners have filed documents and other electronics evidence before the Commission and the Commission is not bothered to hear them and not afforded any opportunity to their counsel to cross examine official witnesses who appeared before the Commission?
- XI. Whether the commission has examined the case in correct prospective and carried out fair investigation to the satisfaction of the relatives of alleged encountered SIMI members?
- XII. Whether the commission has carried out fair and impartial investigation and submitted fair report without hearing the relatives and their witnesses?

XIII. Whether in the facts and circumstances of the case the Commission report is sustainable when the commission has seriously flouted the principle of natural justice?

**3. DECLARATION IN TERMS OF RULE 2(2):**

The Petitioner state that no other petition seeking leave to Appeal has been filed by them against the impugned Judgment and Final Order dated 21.02.2017 passed by the Hon'ble High Court of Judicature at Jabalpur at Jabalpur in Criminal Writ Petition No. 18964 of 2016.

**4. DECLARATION IN TERMS OF RULE 4:**

The Annexure P-1 to P- 6 produce along with the SLP are true copies of the pleadings / documents which formed part of the records of the case in the Courts below against whose order the leave to appeal is sought for in this petition.

**5. GROUND:**

The present special leave petition is being filed against the impugned judgment and final order dated 21.02.2017 amongst other grounds:

- A. Because the Hon'ble High Court has erred in not considering that the one man Commission has not permitted the petitioner and other relatives of the deceased under trial prisoners killed in the encounter to participate in the proceeding and also not permitted to cross examine the version of the police official. Therefore, grave injustice has occurred to them.

- B. Because in the facts and circumstances of the present case of killings in police encounters require independent investigation. That in order to impart a fair and impartial investigation, this Hon'ble Court has held in a series of judgment including *Rubabuddin Sheikh V/s. State of Gujarat & Ors ( 2010) SCC 200* "that when the accusation are directed against the local police personnel then it would desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matte and that would lend the final outcome of the investigation credibility.
- C. Because the High Court ought to have appreciated the materials produced before the Court and ought not to have dismissed the writ petition holding identical prayers have been rejected by the coordinate bench. It has to appreciated the facts and circumstances of the present case, whether the guidelines and directives issued by this Hon'ble Court in the case of *PUCL Vs. State of Maharashtra & Ors (2014) 10 SCC 635* which says that these guidelines have mandatorily to be followed in all police encounter cases. That the said directives of this Hon'ble Court have not been followed in the present case.
- D. Because the High Court ought to have appreciated that the promotion and instant rewards given by the State Government to the police officials involves in the said encounter is against the spirit and

directions of this Hon'ble Court judgment in the case of *PUCL Vs. State of Maharashtra and other* (2014) 10 SCC 635 .

- E. Because when a police encounter occurs, it is important that a complaint is registered; the evidence is preserved; independent and fair investigation takes place; victims are informed and inquest is conducted.
- F. Because there is no complete bar to entertain a petition seeking directions including the similar directions which were earlier sought by the some person and their petition have been rejected on the ground that one man commission under the Commission of Inquiry Act,1952 has been appointed, so therefore no further petition can be entertained even though it raises some substantial question of law and produces the relevant materials which were earlier not before the court.
- G. Because the killings of under trial prisoners in police encounters affect the credibility of the rule of law and the administration of the criminal justice system.
- H. Because the High Court has erred in not examining the case on its merits when there is serious violation of the directives and guideline issued by this Hon'ble Court in the case of *PUCL Vs. State of Maharashtra and other* (2014) 10 SCC 635.
- I. Because the one man inquiry commission is formed only with a view to cover up the case, moreover when the petitioner and other relatives of the allegedly encountered SIMI under trial prisoners have

filed documents and other electronics evidence before the Commission and the Commission is not bothered to hear them and not afforded any opportunity to their counsel to cross examine official witnesses who appeared before the Commission.

- J. Because the High Court ought to have appreciated that the commission has not examining the case in correct prospective and not carrying out fair investigation to the satisfaction of the relatives of alleged encountered SIMI members.
- K. Because in the facts and circumstances of the case the Commission report is not sustainable when the commission has seriously flouted the principle of natural justice.
- L. Because the High Court ought to have appreciated that this Hon'ble Court in the case of *PUCL Vs. State of Maharashtra and other (2014) 10 SCC 635 has held*; "Article 21 of the Constitution of India guarantees "right to live with human dignity". Any violation of human rights is viewed seriously by this Court as right to life is the most precious right guaranteed by Article 21 of the Constitution. The guarantee by Article 21 is available to every person and even the State has no authority to violate that right.

8. In *D.K. Basu (D.K. Basu v. State of West Bengal; [(1997) 1 SCC 416]*), this Court was concerned with custodial violence and deaths in police lockups. While framing the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, this Court issued certain directives as preventive measures. While doing so, the Court in para 29 (page 433 of the Report) made



the following weighty observations: 29. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation.

9. The observations made by this Court in *Om Prakash (Om Prakash and Ors. v. State of Jharkhand through the Secretary, Department of Home, Ranchi-1 and Anr.; [(2012) 12 SCC 72]*(para 42, page 95 of the Report) are worth noticing:

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-

sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

M. Because the High Court ought to have appreciated that the revised guidelines/procedures to be followed in cases of deaths caused in police action framed by NHRC read as under:

“ A. When the police officer in charge of a police station receives information about death in an encounter with the police, he shall enter that information in the appropriate/ register.

B. Where the police officers belonging to the same police station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigation agency, such as State CBCID.

C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out

a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialized investigation agency.

D. A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably, within three months. The relatives of the deceased, eye witnesses having information of the circumstances leading to encounter, police station records etc. must be examined while conducting such enquiry.

E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/police investigation.

F. 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 officer is established beyond doubt.

G. (a) All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police/Superintendent of Police of the District within 48 hours of such death in the following format: 1. Date and place of occurrence 2. Police station, district 3. Circumstances leading to death : (i) Self-defence in encounter (ii) In course of dispersal of unlawful assembly (iii) In the course of effecting arrest (iv) Any other circumstances 4. Brief facts of the incident 5. Criminal case No. 6. Investigating

agency (b) A second report must be sent in all cases of death in police action in the state by the Sr. Superintendent of Police/Superintendent of Police to the commission within three months providing following information: 1. Post mortem report 2. Inquest report 3. Findings of the magisterial enquiry/enquiry by senior officers disclosing: (i) Names and designation of police official, if found responsible for the death: (ii) Whether use of force was justified and action taken was lawful: (iii) Result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and (iv) Report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.

Affording the victim's family and legal representative the right to request that an independent qualified representative be present during the autopsy of the victim's body (Provision 16). 6. Calling for the prompt submission of a written report on the investigation specifically detailing the methods utilized as well as the findings of fact and law resulting from the inquiry. It further requires that such reports be released to the public (Provision 17).

Recognizing that those undertaking these investigations must "have at their disposal all the necessary budgetary and technical resources for effective investigation" into police killings.). The principles so framed by the UDHR are intended to guarantee independence while investigating police killings and help in preventing potential for abuse, corruption, ineffectiveness and neglect in investigation

**6. GROUND FOR INTERIM RELIEF:**

- I. Because of the grounds enumerated hereinabove in the main petition, which are not being repeated herein for the sake of brevity petitioner crave leave of the Hon'ble Court to refer and rely upon the same at the time hearing.
- II. Because the impugned order is legally and factually unsustainable in the eyes of law laid down by this Hon'ble Court in plethora of judgments.
- III. Because the killings of under trial prisoners in police encounters affect the credibility of the rule of law and the administration of the criminal justice system.
- IV. Because the High Court has erred in not examining the case on its merits when there is serious violation of the directives and guideline issued by this Hon'ble Court in the case of *PUCL Vs. State of Maharashtra and other (2014) 10 SCC 635*.
- V. Because the one man enquiry is formed only with a view to cover up the case, moreover when the petitioner and other relatives of the allegedly encountered SIMI under trial prisoners have filed documents and other electronics evidence before the Commission and the Commission is not bothered to hear them and not afforded any opportunity to their counsel to cross examine official witnesses who appeared before the Commission.
- VI. Because the High Court ought to have appreciated that the commission has not examining the case in correct prospective and not carrying out fair investigation to the satisfaction of the relatives of alleged encountered SIMI members.

**7. MAIN PRAYER:**

In view of the facts and circumstances of the case, it is most humbly prayed that this Hon'ble Court may be pleased to:

- (a) Grant Special Leave to Appeal against the impugned final judgment and order dated 21.02.2017 passed by the Hon'ble High Court of Judicature at Jabalpur at Jabalpur in Criminal Writ Petition No. 18964 of 2016.
- (b) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**8. PRAYER FOR INTERIM RELIEF:**

In view of the facts and circumstances, it is therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

- (a) ex-parte direct the respondents to investigate under its own supervision by forming S.I.T. and or by C.B.I to conduct investigation in the alleged encounter;
- (b) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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

DRAWN ON: .05.2017  
FILED ON: .06.2017

Drawn & Filed by:

**(FARRUKH RASHEED)**  
Advocate for the Petitioner

**IN THE MATTER OF:**

Union of India & Ors. .... Respondents

**(FARRUKH RASHEED)**  
Advocate for the Petitioner

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**SPECIAL LEAVE PETITION (CRL.) NO.                      OF 2017**

**IN THE MATTER OF:**

Mehmooda Mohammed Salim Mucchhale .....Petitioner

## Versus

Union of India &amp; Ors. ....Respondents

# AFFIDAVIT

I, Mubin Shaikh, S/o. Mr. Mohammad Sadiq Shaikh, aged about 25 years,  
R/o. Postal Colony, Block B-2/2 Civil Lines, Hotgi Road Solapur,  
Maharashtra do hereby solemnly affirm and declare as under:-

1. That I am complainant in the aforesaid matter and I am fully conversant with the facts & circumstances of above mentioned case, hence competent to swear this affidavit.
2. That the accompanying Synopsis and List of Dates ( B to ), Special Leave Petition Paras 1 to 8 ( pages \_\_\_\_ to ), and accompanying applications CRLMPs have been drafted under my instructions. I have understood the contents therein which are true to my knowledge.
3. That the annexure P-1 to P- 4 are the true copy of their respective originals.

**DEPONENT**

**VERIFICATION:**



I, the deponent above named do hereby verify that the contents of paras 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Verified at Solapur on this 18<sup>th</sup> day of January, 2017

**DEPONENT**