

**IN THE SUPREME COURT OF INDIA**  
(CRIMINAL APPELLATE JURISDICTION)  
**CRL.M.P.NO. OF 2020**

IN

**WRIT PETITION (CRL.) NO. 177 OF 2020**

**IN THE MATTER OF:**

Ghanshyam Upadhyay

Petitioner

Vs.

State of U. P. & Ors.

Respondent

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THE PETITIONER IN PERSON:-**GHANSHYAM UPADHYAY**



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AN APPLICATION SEEKING REMOVAL OF SHRI JUSTICE (RETD.) B.S. CHAUHAN, SHRI SHASHIKANT AGRAWAL, SENIOR ADVOCATE AND SHRI K.L. GUPTA DGP (RETD.) FROM JUDICIAL COMMISSION AND SHRI RAVINDER J. GAUR DGP (RETD.) FROM SIT AND RECONSTITUTION OF THE COMMISSION/SIT AFRESH BY SUBSTITUTING ALL THE AFORESAID PERSONS WITH ANY OF FOUR PERSONS SUGGESTED/NAMED IN THE INTERIM APPLICATION NO.66097/2020 AND FURTHER INITIATING SUOMOT CONTEMPT PROCEEDING AGAINST STATE FUNCTIONERIS INVOLVED IN APPOINTING THE AFORESAID PERSONS BY SUPPRESSING THE TRUE AND CORRECT FACTS ABOUT THEM AND GETTING THEIR NAMES APPROVED FROM/BY THIS HON'BLE COURT BY PLAYING FRAUD UPON THIS HON'BLE COURT .



**To,**

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND  
HISCOMPANION JUSTICES OF THE SUPREMECOURT  
OFINDIA.

THE HUMBLE PETITION ON BEHALF OF THEPETITIONERS  
ABOVE NAMED.

**MOST RESPECTFULLY SHOWETH:**

1. "Bane hainahl-e-hawasmuddaibhimunsifbhi  
Kisemuddaikareinkis se munsifichaahen"penned by Fiaz  
Ahmed Fiaz and which has been quoted with the approval  
by this Hon'ble Court in the matter of Mehboob Batcha and  
Ors. V/s. State-(2011) 7 SCC 45 is squarely applicable in  
the matter of appointment of Judicial Commission and  
constitution of SIT by the State of Uttar Pradesh and  
appointment of Justice (Retd.) B.S. Chauhan, Shri  
Shashikant Agrawal, Senior Advocate and Shri K.L. Gupta,  
DGP (Retd.) as members of Judicial Commission and Shri  
Ravinder J. Guar, DGP (Retd.) as member in SIT and  
thereby the State of Uttar Pradesh/its concerned  
functionaries having practiced serious fraud upon this  
Hon'ble Court.



2. On 20.07.2020, after hearing parties/their counsels, this Hon'ble Court desired the State of Uttar Pradesh to include a retired Judge of this Hon'ble Court and retired police officer of the rank of DGP as members of Judicial Commission which State claims to have already constituted/appointed and thereby reconstitute the composition of Judicial Commission, and consequently, the State hesitatingly, agreed to the same. Resultantly, this Hon'ble Court was pleased to direct the State to place before this Hon'ble Court the draft of the reconstitution of Judicial Commission/SIT prepared by the State for perusal and approval of this Hon'ble Court.
3. Accordingly, on 22-07-2020 draft of notification with regard to appointment of two members i.e. one former judge of this Hon'ble Court, namely, Mr. Justice (Retd.) B.S. Chauhan and one former DGP namely, Shri K.L. Gupta came to be placed before this Hon'ble Court and



accordingly, the same was approved by this Hon'ble Court and eventually, an order came to be passed by this Hon'ble Court inter-alia, in this regard.

4. On 23.07.2020, the Petitioner through social media came to know about a debate/program conducted by one of the leading news channels by name "India Today TV" on 10.07.2020, wherein Shri K.L. Gupta was one of the panelists/participants/guests and in the said debate, Shri K.L. Gupta was found justifying the police encounter and he also supported the police versions in the case of encounter of Vikas Dubey. Similarly, leading newspaper "Indian Express" in its issue/publication dated 23.07.2020, published an article with regard to Shri K.L. Gupta having participated in the aforesaid debate of "India Today TV" and having supported the police theories/versions on encounter. The debate of "India Today TV" is available on YouTube <https://youtu.be/nLdY-vYH400>. Copy of the said news article is hereto annexed on marked as **Annexure- 'P1' (Pages 28-34)**.



5. Consequently, the Petitioner filed an application in this Hon'ble Court, being Cr. M.P. No. 68207/2020 thereby seeking removal of Shri K. L. Gupta and Shri Shashikant Agrawal from Judicial Commission and Shri Ravinder Guar from SIT and thus, reconstitution of Judicial Commission and SIT, however, this Hon'ble Court after hearing both the sides, dismissed the said application vide its order dated 28.07.2020. The Petitioner craves leave of this Hon'ble Court to refer to and rely upon the said order dated 28.07.2020, when produced.
6. Thereafter, on 29.07.2020 the Petitioner came across a news article published in one of the leading national News Website/WebPortal by name 'The Wire' titled as 'Family Ties of Former DGP, SC Judge Cast Conflict of Interest Shadow on Vikas Dubey Probe' After going through the said article, the Petitioner was shocked, surprised and at great dismay to find the fraud of high magnitude practiced upon this



Hon'ble Court not by the State Administration and its concerned functionaries, but also, by all other concerned. The aforesaid article has revealed sterling vital material facts/information with regard to two immediate/closerelatives of Justice (Retd.) B.S.Chauhan viz. his brother and 'samadhi' being legislators with Bharatiya Janata Party (BJP) which runs the government in Uttar Pradesh and consequently, has tremendous political stakes riding on the outcome of Judicial Commission's work/report. Similarly, the aforesaid article further revealed that Shri K.L. Gupta is related with IG, Kanpur Zone, Shri Mohit Agarwal, where the alleged encounter of Vikas Dubey took place and who is alleged to be involved in fake encounters and thus, is bound to come under the scanner of enquiry/probe.

7. The aforesaid article has revealed that Justice (Retd.) B.S. Chauhan's younger brother Shri Virender Singh is currently a BJP member of the legislative council in U.P. Article further reveals that not only Shri Virender Sigh but also his



son switched loyalties to BJP last year from Samajwadi Party and Justice Chauhan's said brother now sits on the treasury benches in the upper house of the state legislature and is known to be among the front-runners for a berth in Yogi Adityanath's council of ministers whenever the next expansion takes place. From the said article, it is also found that Justice Chauhan's daughter is married to the son of BJP M.P. from Rajasthan, Shri Sukhbir Jaunpuria and thus, making Justice Chauhan and Shri Sukhbir Jaunpuria what is called 'samadhi'.

8. So far as Shri K.L Gupta is concerned, he is found to be related to IG Kanpur Zone, Shri Mohit Agarwal inasmuch as Shri Mohit Agarwal is son-in-law of the sister of Shri Gupta's wife. Thus, aforesaid twomembers of Judicial Commissions are disqualified from being part of the commission on account of conflict of interest and bias or likelihood of bias on their part. Mohit Agarawal being IG, Kanpur Zone is bound to be under cloud and scanner of being involved in fake encounter/killing of the accused and



hence, Shri K.L. Gupta under no circumstances, can be expected to fair in the matter.

9. What is of great astonishing is the conduct of aforesaid members and State administration/its functionaries instrumental/responsible in appointing them, of concealing the aforesaid vital material facts, which go to the very root of matter from this Hon'ble Court and thereby practicing fraud upon this Hon'ble Court, which needs to viewed very seriously by this Hon'ble Court. The names of aforesaid persons have been placed/recommended before this Hon'ble Court by filing an affidavit on oath to that effect and thereby suppressing the vital material facts from this Hon'ble Court and since these acts of omission and commission on the part of state administration/its concerned functionaries has resulted in interference with due administration of justice and also tantamount perjury and hence, this Hon'ble Court apart from directing reconstitution of Judicial Commission afresh by removing all the members thereof, may take serious judicial note of



their aforesaid acts and consequently, may initiate suo-moto contempt proceedings against all concerned.

10. Regard being have to the facts that article reveals that Justice Chauhan upon being asked by the reporter/journalist Shri Sharat Pradhan as to whether his brother has joined BJP, falsely denied the same and had audacity to still suppress the true facts in this regard by claiming that his brother is not an MLC of BJP, but he is with the Samjawadi Party, it is discernible that the aforesaid two members are in active collusion and connivance with the State administration in hushing up the issue of killing six accused in fake encounters and that being the case, only conclusion which can be drawn is that if the aforesaid members are allowed to be part of the Commission, then justice would be completely alluded. Since BJP is ruling party in U.P. and state administration itself including its Chief Minister is alleged to be involved in fake encounters of six accused and even central government is also run by BJP and appears to have



provided all support to U.P Government in contesting the present matter before this Hon'ble Court, which can be clearly seen from appearance of SGI for and on behalf of the State of Uttar Pradesh, Justice Chauhan on account of his aforesaid close relatives being legislatures from BJP, is having conflict of interest and there is likelihood of bias on his part. Copy of the said Article is hereto annexed and marked as **Annexure- 'P2' (Pages 35-39)**. Copy of the other two articles with regard to Justice Chauhan's brother Shri Virender Singh having left Samajawadi Party and having joined BJP is hereto annexed and marked as **Annexure-'P3' (Pages 40-42)**

11. Since, not only the aforesaid two members viz. Justice Chauhan and Shri K.L. Gupta but also Shri Shashi Kant Agrawal and Shri Ravinder Guar also need to be removed and from the overall conduct and manner in which, the state administration/its concerned functionaries have resorted to practice fraud upon this Hon'ble Court in the matter of appointment of the members of Judicial



Commission/SIT, the state administration cant not be trusted any more, and that being the case, not only the Judicial Commission/SIT need to be wholly reconstituted afresh and that too by this Hon'ble Court and by keeping the State completely away from choosing the members of Judicial Commission/SIT, but also enquiry by Commission and investigation by SIT now need to be monitored by this Hon'ble Court.

12. Since the aforesaid members on account of their conflict of interest and being likely to be biased, are disqualified from being members of the Judicial Commission and that being the case, it is not only desirable but also necessary in the interest of the justice, good conscious, equity and fair play that they are removed from the Judicial Commission/SIT and substituted with persons suggested/named by the Petitioner in the Interim Application No66097/2020.

13. The issue of bias is well settled by this Hon'ble Court and test of real likelihood of bias is whether a reasonable



person, in possession of relevant information, could have thought that the bias was likely. As to the tests of likelihood of bias, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, howsoever, honestly. "Am I biased?" but to look at the mind of the party before him. In the administration of justice, whether by a recognized legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration any person, who is to take part in it, should not be in such a position that he might be suspected of being biased. (See: Ranjit Thakur V/s Union of India & Ors. – 1987 AIR 2386). In view of the fact that despite the Petitioner having given/suggested 12 names of former Judges of this Hon'ble Court which includes two former Chief Justices and six names of former DGPs. who are believed/considered to be persons of unimpeachable



characters and extremely distinguished service record, yet the State ignored them and instead proceeded to choose the aforesaid persons knowing fully well that they are having conflict of interest and likely to be biased, it is clearly discernible that the act/decision of the State and its concerned functionaries/authorities involved in appointing Judicial Commission and Constituting the SIT, is just an eyewash and that being the case, this Hon'ble Court may consider to drop the idea of appointing Judicial Commission and instead, this Hon'ble Court may consider to constitute a SIT consisting two retired judges of this Hon'ble Court and three retired officers of higher rank from central investigating agency such as NIA, RAW, CBI etc. as requested/prayed by the petitioner in CrI. M.P No. 65283/2020 filed by him in this Hon'ble Court on 19.07.2020.

14. At the cost of repetition, the petitioner states that even another member namely, Shri Ravinder J. Gaur is also



disqualified on account of he having tainted service record inasmuch as he being 'charge-sheeted' by CBI for fake encounter and therefore, even he is likely to be bias in the matter and hence, is disqualified from being member/part of SIT, on the basis of the principle of law lead down by this Hon'ble Court in the matter of Ranjit Thakur (supra). Likewise, even Shri Shashi Kant Agarwal, Senior Advocate (former judge of Hon'ble Allahabad High Court, who resigned) is not a retired judge as falsely claimed by the State and in fact, he has resigned on account of he being transferred from Hon'ble Allahabad High Court to Hon'ble Jharkhand High Court in controversial circumstances, is disqualified from being member of Judicial Commission. Since, the State of Uttar Pradesh/ and its concerned functionaries/authorities have made knowingly and palpably false and misleading statements before this Hon'ble Court in the context of all the aforesaid members of Judicial Commission/SIT, they have now no right to choose the members of Judicial Commission/SIT at any cost, as they



cannot be trusted any more.

- 15.Regard being have to the facts that there are serious allegations supported by more than prima-facie evidence that killings of six accused in the case, are cold-blooded murders under the guise of police encounters and theories of 'police encounters' propounded by police/State Administration are patently and palpably false and moreover, when not only police, but even people on the high echelon, including Chief Minister of the State seem to be deeply involved in killing of six accused, it is imperative that no person of even slightest tainted background/character is permitted to be member of Judicial Commission and SIT and that being the case, matter requires further interference and indulgence of this Hon'ble Court and this Hon'ble being ultimate savior of the rule of law, democratic structure of the country and constitutional ethos, would be justified in directing the State to reconstitute the composition of Judicial Commission and SIT as well by removing the aforesaid members and



substituting them with names suggested by the Petitioner in the Interim Application No. 66097/2020 and or by constituting an SIT as prayed by the Petitioner CrI. M.P No. 65283/2020.

16. The Petitioner most respectfully states that if the aforesaid members are permitted to be members of Judicial Commission/SIT, then it would lead to setting wrong/bad precedent for future and thus, would lead to disastrous and far reaching consequences in criminal justice delivery system and losing faith/confidence of the people in the system. If the best names/candidates as suggested/named by the Petitioner in the Interim Application No. 66097/2020, copy of which was already provided to the State, are available, then there is no reason as to why the State is hesitant in nominating choosing/selecting three out of them for being appointed as members of Judicial Commission/SIT. Failure/ignorance of the State/its concerned functionaries/authorities in selecting/nominating the persons, who are considered to be persons of highly



unimpeachable characters and instead, choosing the aforesaid persons who are presumed/alleged to be of controversial, tainted and blemished backgrounds, clearly demonstrate the mala-fide intention and hidden agenda of the State//its concerned functionaries/authorities in and/or behind appointing the aforesaid persons as members of the Judicial Commission/SIT.

17. There are hot debates by the people all over the country and on different forums which is made available on social media thereby doubting the fairness of enquiry/investigation to be conducted by Judicial Commission/SIT, if the aforesaid persons are permitted to be members of Commission/SIT and hence, in order to in order to instill confidence and faith of the people in the system, this Hon'ble Court's interference is imperative and accordingly, this Hon'ble Court be kind enough to drop the idea of appointing Judicial Commission and instead, may consider to constitute a SIT as prayed by the petitioner in



Crl. M.P No. 65283/2020 or alternatively this Hon'ble Court may consider to reconstitute the whole Commission/SIT afresh by appointing the persons from the list proved by the petitioner and keeping the State completely away in the matter reconstitution of the Judicial Commission/SIT and its functioning. In the matter of transfer of investigation from one investigating agency to another, this Hon'ble Court has consistently held that in a given case, transfer of investigation is necessary to take in account of the sentiment of public and thereby instill confidence of the people in the system.

18. Appointments of aforesaid persons/members in Judicial Commission/SIT, are against the basic tenets of Articles 14 and 21 of the Constitution of India and principle of natural justice, which is implicit in Articles 14 and 21 of the Constitution of India and thus, ultimately, violation of fundamental rights of the people of the country to have fair and impartial investigation/trial in the acts of omission and



Commission including killings six accused by the State/its instrumentalities under the guise of police encounter and thereby causing death of the rule of law, democracy and criminal justice delivery system of the country, which under no circumstances, can be countenanced.

19. The State administration/its functionaries and persons sitting on high echelon who have been instrumental and responsible for appointing the aforesaid persons as members of Judicial Commission/SIT and so also the aforesaid members themselves as well, have resorted to over reaching the process of this Hon'ble Court and sharp practice and thus, have made every attempt to hoodwink this Hon'ble Court, which cannot be countenanced and therefore, their aforesaid acts need to be dealt with by iron hands, failing which, people will lose faith in judicial system of the country and dishonest such unscrupulous people will develop tendency of hoodwinking even the highest court of the country.



20. Since from the statement given by Shri K.L. Gupta, it appears that the Chief Minister of the State himself is involved in appointing the aforesaid members of Judicial Commissions/SIT or at least, he appears to have played major role in such appointments and hence, he needs to be made personally liable for practicing fraud upon this Hon'ble Court and even upon the people who have raised their voices against the killing of six accused under the guise of police encounters and thus, are interested in fair probe and investigation in respect thereof.

21. During the argument on 22.07.2020 when the Petitioner raised doubt on the state as to why it has not chosen any of the 18 names provided/suggested by the petitioner in the application filed by him and consequently, this Hon'ble court asked Mr. Tushar Mehta, the Ld. SGI, as to whether, the state has contacted any one from the list provided by the Petitioner, however, Mr. Mehta submitted that they (State) has contacted only Justice Chauhan because Justice Chauhan agreed to act as head of Judicial Commission by



devoting his time and he can be made available/visit at Kanpur and hence, the State did not contact any one from the list provided by the Petitioner. Thus, it is axiomatic that Justice B.S. Chauhan despite being statutorily obliged to disclose the factums of his aforesaid two immediate/close relatives being legislatures from BJP, which is ruling party/running governments in the State of Uttar Pradesh as well in the Centre and thus, being very much concerned and affected with the outcome of enquiry by commission and resultantly there being conflict of interest and likelihood of bias, knowingly did not disclose the same.

22. In view of the provisions contained under Fifth Schedule of Section 12 of the amended Arbitration Act, all the aforesaid members of Judicial Commission ought to have disclosed their relations in terms of what have been stated hereinabove, however, instead of doing so, they concealed the same and hence, they seem to be in active collusion and connivance with State administration/its people on



high echelon with sole intention to coverup the killings/coldblooded murder of six accused under the guise of police encounters and render the enquiry by Judicial Commission as mere eyewash, and that being the case, they cannot be permitted to be members of Judicial Commission.

23. Since even from the conduct and acts of State administration, which are subject matter of present application, it is clearly discernible that State Administration have been leaving no stone unturned to coverup its most barbaric acts of murdering six accused which includes a minor boy of aged 16 years and which no civilized society/nation can permit to happen , it is imperative that the investigation/ enquiry by SIT/ Judicial Commission be monitored by this Hon'ble Court, as has been done in several such cases in the past, failing which, whole exercise undertaken by this Hon'ble Court in appointing Judicial Commission and constituting SIT, will be defeated and



frustrated. Now giving any latitude to State administration in reconstitution of SIT/Judicial Commission and function thereof, is bound to result in failure of justice and in covering up the whole issues which are of great public importance.

24. Since as per the order dated 22.07.2020, the Judicial Commission has to start functioning within one week and submit its report in two months and thus, procedures in this regard appear to be in progress, and therefore, it necessary that before the Judicial Commission Starts functioning in one week, the composition of the Judicial Commission needs to be reconstituted/ recomposed in terms of what have been stated/prayed in the instant interim application and thus, there is extreme urgency in the matter.

### **PRAYER**

It is, therefore most respectfully prayed that this

Hon'ble Court may graciously be pleased to:



- a) to scrape the Judicial Commission/SIT appointed/constituted by the State and instead, constitute a SIT as prayed by the Petitioner in Crl. M.P.No. 65283/2020 and direct the SIT so constituted by this Hon'ble Court to carry out investigation on all the issues raised by the petitioners in captioned writ petition and connected petitions, and to submit its report to this Hon'ble Court within such reasonable time, as this Hon'ble Court may deem fit and proper;
- b) in alternate, but without prejudice to prayer clause (a) above, this Hon'ble may be pleased to reconstitute the Judicial Commission/SIT afresh and wholly by removing all the aforesaid members viz. Justice (Retd.) B.S. Chauhan, Shri Shashi Kant Agrawal, Shri K.L. Gupta and Shri

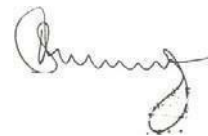


Ravinder J. Guar and substituting them with any of the retired judges of this Hon'ble Court and former DGPs. named/suggested by the Petitioner in Interim Application No. 66097/2020, as members of the Judicial Commission/SIT;

- c) 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 present case;

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

FILED BY:



FILED ON: - 30.07.2020  
PLACE: NEW DELHI

(GHANSHAYM UPADHYAY)  
THE PETITIONER IN PERSON

SETTLED BY: - THE PETITIONER IN PERSON



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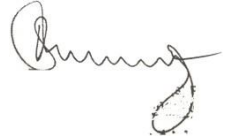
**AFFIDAVIT**

I, Ghanshyam Upadhyay, having my office at 506, Arcadia Premises, 195, NCPA Road, Nariman Point, Mumbai 400 021, (Maharashtra) do hereby solemnly affirm and state as under:

1. That I am the Petitioner in this case and as such I am well acquainted with the facts of the case. Hence, I am competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying Crl. Misc. Petitions and state that the averments made therein are true and correct to the best of my knowledge and belief.



3. That the contents of the aforesaid paras are true and correct to my knowledge.

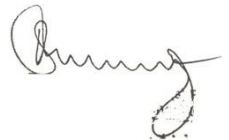


DEPONENT

### **VERIFICATION**

I, above named deponent, do hereby verify that the contents of para no. 1 to 24 of this my Affidavit are true and correct to my personal knowledge and belief and nothing has been concealed therefrom.

Verified at Mumbai on this 30<sup>th</sup> day of July, 2020.



DEPONENT





## SC clears UP govt's nominee for Dubey panel: ex-DGP who said why doubt police

Days ago, Gupta, who served as the DGP of UP from April 1998 to December 1999, mainly under the BJP government led by Kalyan Singh, said in a TV debate that it was not right to doubt the police over the encounter.

Written by **Ananthakrishnan G**, **Avaneesh Mishra** | Lucknow, New Delhi | Updated: July 23, 2020 9:19:23 am



from Ujjain, Madhya Pradesh, overturned on an isolated stretch of the highway on the outskirts of the Kanpur. (PTI)

The Supreme Court on Wednesday approved a draft notification by the Uttar Pradesh government recommending the names of retired Supreme Court judge B S Chauhan and ex-DGP K L Gupta for an expanded panel to probe the **killing of gangster Vikas Dubey** in an alleged encounter.

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## SC clears UP govt's nominee for Dubey panel: ex-DGP who said why doubt police

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Approving the names suggested by the UP government, the Supreme Court said the inquiry headed by retired judge Chauhan must look into how Dubey managed to get bail or parole despite 64 criminal cases against him. “We consider it to be the single most important factor,” the Bench, headed by Chief Justice of India S A Bobde and comprising Justices A S Bopanna and V Ramasubra-manian, said, adding that the role of the state authorities must be covered.

It also said that it would not monitor the probe. “Just because it has received so much publicity doesn’t mean the SC will now monitor a criminal investig<sup>25</sup>” the CJI said.



When Solicitor General Tushar Mehta, who appeared for the UP government, told the Bench that the terms of reference of the commission would include inquiry into the circumstances which led to the killing of Dubey, the CJI intervened to ask, “How can you refer to it as killed?” Mehta said they would modify it as alleged to have been killed.

ADVERTISEMENT







Asked about his remarks, on an India Today TV debate on the Dubey case, ex-DGP Gupta told [The Indian Express](#) on Wednesday, “Once we are made a part of the inquiry, we should not speak much on the process. Now we have to work more and speak less. We will be objective and fair to the inquiry.”

In the show, uploaded on YouTube a week ago, Gupta takes on the various questions raised over the alleged encounter, including how only police vehicles were allowed to cross tolls and barriers ahead of the “encounter” spot, how Dubey was made to shift from one vehicle to another, and how the SUV he was fired in met with an accident.



Speaking in Hindi, Gupta said, “First of all I thank the media that you people did such investigative journalism, you followed the vehicle from Ujjain (where Dubey was caught), his own family members probably did not do so. Now, at tolls and barriers, police vehicles are allowed to pass, everyone knows. Other vehicles are checked, also because of [coronavirus](#) these days, if someone is carrying something. People might have been stopped for 5-10 minutes, in that time itself the media started creating a ruckus. *Har ek cheez ko aap negativity pe mat dekhiye. Pehle dekhiye ki bechare aath maare gaye the, unke liye aap logon ne kuchch kiya kya?... Uske paas carbin an se aayi, kahan se usne woh hana rakha tha...*







ruckus. Har ek cheez ko aap negativity pe mat dekhiye. Pehle dekhiye ki bechare aath maare gaye the, unke liye aap logon ne kuchch kiya kya?... Uske paas carbine kahan se aayi, kahan se usne woh bana rakha tha bilkul ordnance factory ghar mein (Don't see everything negatively. First, see if any of you did anything for the eight policemen killed by his gang... Where did he collect so many arms from, how had he made his house an ordnance factory)?"



The ex-DGP added, "Aap har cheez ko doubt se shuru kar rahe hain, ke uski gaadi kyun badal di gayi. Arey surprise element ke liye gaadi bhi badli jaati hai, SUV turn hoti hai, aap roz dekho national highway mein ... Wo gaya tha surrender karne ke liye, ki mein judicial custody mein, judicial remand mein aaunga. Wahan ki police ne koi mukadma nahin kayam kiya... uske saamne pesh hone ya transit remand ki zarurat hi nahin padi... Ab suniye, woh bhagega hee... dekha ki yeh police ne hand over kar diya, ki mara na jaun, jahan palta toh bhagne ka prayas kar raha tha... Woh trained hai, itne aadmi ko maar chuka hai, agar goli saamne se chalayega... toh police maaregi, toh saamne seene pe



mara na jaun, jahan palta toh bhagne ka prayas kar raha tha... Woh trained hai, itne aadmi ko maar chuka hai, agar goli saamne se chalayega... toh police maaregi, toh saamne seene pe hi lagega na (You are starting with a doubt, that why was his vehicle switched, that's done for surprise element. SUVs overturn all the time on national highways... He had gone to surrender, thought he would stay in judicial custody, remand. But the police there had no case, there was no need for a remand... So it's natural he would run... seeing that police have taken me into custody, I might get killed. The moment the vehicle turned over, he must have tried to run... He was trained, he killed so many, if he fires from the front, police will fire





over, he must have tried to run... He was trained, he had killed so many, if he fires from the front, police will fire back, and he will get hit in the chest)."

Gupta added that anyway there would be an inquiry and the police would have to explain what happened. The police were not "*sarve sarva* (supreme)", he said.

Saying he was yet to receive any written order appointing him to the Dubey probe panel, Gupta told The Indian Express that his comments on the TV show were at "a different time and situation". "I might have said some things as a former policeman when asked by someone. But now I should not speak anything about it."



Now I am reportedly part of the inquiry commission and the police are also the subject matter in that inquiry. In fact, police conduct is more under the scanner. Therefore I do not have any comment at this point of time. The final report by us will go to the court in a sealed envelope."

The UP government had earlier set up a one-man commission under retired Allahabad High Court judge Justice Shashi Kant Agarwal. The Supreme Court had asked it to expand the panel including a former judge of the top court and an ex-police officer.

On the alleged encounters which led to deaths of five associates of Dubey, the Court said Wednesday, "We also direct



On the alleged encounters which led to deaths of five associates of Dubey, the Court said Wednesday, "We also direct that the Special Investigation Team already constituted by the state government will be free to inquire into any of the related incidents which are the subject matters of this case."

The Court said that the commission will sit in Lucknow and secretarial assistance would be provided by the Centre. When advocate Ghanshyam Upadhyay, one of the petitioners, said the commission should sit in Delhi, the Court rejected it, saying, "Why should the evidence be in Lucknow and commission sit in Delhi?"

When the petition was referred to other





When the petitioners referred to other encounters in the state, the CJI turned to Mehta and said, "You see that these incidents are not repeated in UP."

Advocate Anoop Awasthi, who has filed a separate petition in the Dubey case, alleged that the order to "finish" the gangster came from the Chief Minister's office. The CJI said, "We said circumstances which led to the killing of Dubey (will be investigated). It will include this."

A handwritten signature in black ink, which appears to be that of the Chief Justice of India, is centered on the page.

**(True Copy)**



**THE WIRE**   

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## Family Ties of Former DGP, SC Judge Cast Conflict of Interest Shadow on Vikas Dubey Probe

The brother and 'samdhi' of Justice B.S. Chauhan are BJP legislators while former DGP K.L. Gupta is related to the inspector general of police, Kanpur zone, where the controversial encounter took place.

Jul 29, 2020 | Sharat Pradhan



STF and forensic teams re-enact the events leading to the encounter of gangster Vikas Dubey as part of the investigation in Kanpur. Photo: PTI

**Lucknow:** Two members of the three-man commission set up by the Supreme Court to probe allegations that the death of gangster Vikas Dubey in a shootout with the Uttar Pradesh police was actually a custodial




**THE WIRE**   

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Vikas Dubey in a shootout with the Uttar Pradesh police was actually a custodial killing have family ties with either the ruling Bharatiya Janata Party or the Kanpur police which raise questions about potential conflict of interest.

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On Tuesday, the Supreme Court dismissed pleas by the petitioner in the case for retired director general of UP police K.L. Gupta to be taken off the commission, ruling that the views he had expressed on television supporting the police version of the July 10 encounter near Kanpur did not disqualify him. "Gupta had also made it clear in his

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director general of UP police K.L. Gupta to be taken off the commission, ruling that the views he had expressed on television supporting the police version of the July 10 encounter near Kanpur did not disqualify him. "Gupta had also made it clear in his statements that if any policemen will be found guilty, then they will be taken to task," PTI reported the bench saying.

The petitioners had pleaded that Gupta's comments on television justifying some of the police's claims meant he had made up his mind and was unlikely to probe the incident objectively.

However, the court was not made aware of another potential conflict of interest that could make it difficult for Gupta to be independent: he is related to Kanpur zone Inspector General (IG) of police Mohit Agarwal, whose role in the Vikas Dubey encounter is bound to come under question during the course of the inquiry as the policemen accused of illegally shooting the

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## Former judge has close family ties in the BJP

Curiously, neither the petitioner nor the court seemed aware of the fact that former Supreme Court judge B.S. Chauhan – the commission’s designated head – might also face a conflict of interest in probing the role of the UP police and government in Dubey’s killing.

This is because at least two of Justice Chauhan’s close relatives are legislators with the Bharatiya Janata Party – which runs the government in Uttar Pradesh and has tremendous political stakes riding on the outcome of the commission’s work.

Interestingly, the names of Justice Chauhan and Gupta were both proposed as members of the commission by solicitor general Tushar Mehta in consultation with the UP government, following which the apex court decided to nominate them on the judicial panel.

Justice Chauhan’s younger brother, Virendra Singh, is currently a BJP member of the legislative council in UP. He began his political career in the Samajwadi Party and was a legislator during the chief ministership of Mulayam Singh Yadav and Akhilesh Yadav. However, he and his son switched loyalties to the BJP last year. Justice Chauhan’s brother now sits on the treasury benches in the upper house of the state legislature and is known to be among the front-runners for a berth in Yogi Adityanath’s council of ministers whenever the next expansion takes place.

In addition, Justice Chauhan’s daughter is married to the son of BJP MP from Rajasthan, Sukhbir Jaunpuria, making the former judge and the BJP Central legislator what are called ‘*samdhis*’ in Hindi.

*The Wire* asked Justice Chauhan whether he had disclosed these two relationships to the Supreme Court so that the bench could take a considered view on whether this would give rise to a conflict of interest. After all, the sworn affidavit submitted by the UP director general of police makes a number of astonishing claims about the July shootout. Even if one of them is proven to be false by the commission, the DGP runs the risk of being accused of perjury, not to speak of the political embarrassment this would cause the government and party to which Justice Chauhan’s brother and *samdhi* are senior members.





“If anybody wants to raise the issue before the Supreme Court, he is free to do so,” he said. “Let the apex court take a call on that.”

## Also read: UP Police Affidavit on Vikas Dubey Encounter Puts Supreme Court Between Rock and Hard Place

Curiously, Justice Chauhan also insisted his brother had not joined the BJP. “My brother is not an MLC of the BJP but he is with the Samajawadi Party,” he said. (After the judge’s denial, *The Wire* contacted the UP Vidhan Parishad Secretariat, which confirmed that Virendra Singh had indeed formally shifted allegiance to the BJP more than a year ago, on March 31, 2019.)

As for his relationship with Jaunpuria, Justice Chauhan said there was no need to disclose this. “I was a Supreme Court judge and everybody knows that my daughter was married to the son of this BJP MP from Rajasthan. Why should I be informing the Supreme Court?”



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### Former DGP denies conflict of interest

Asked about his relationship to IG Kanpur zone Mohit Agarwal, former DGP K.L. Gupta told *The Wire*, “Mohit is the son-in-law of my wife’s sister. But how does that matter? I do not think an IG has any direct role in any encounter. He only has a supervisory role so that should not be seen as any conflict of interest. But if people have such objections I will recuse myself from the commission.”

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Gupta added that he had not asked anyone to be included in the panel. “I got a call from the home department to say that the CM

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Gupta added that he had not asked anyone to be included in the panel. “I got a call from the home department to say that the CM wanted me to be member of the commission. I do not stand to gain anything. I have lived a full life and it does not add to my status that I am on a judicial probe panel.”

When asked whether he would be able to play the role of an open-minded, impartial investigator since he has already stated in the media that the Vikas Dubey encounter was genuine, Gupta said:

“I simply said that you should not dismiss the police version outright. And what I emphasised was that the magisterial inquiry will also go into the police version so media must not jump to conclusions and dismiss every word stated by the police. After all, you and I were not present at the time of encounter so you must give some credence to what the police says... I am being unnecessarily accused of pre-judging”.

“Mind you,” he added, “I also condemned





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“Mind you,” he added, “I also condemned the station officer who apparently tipped Vikas Dubey about the police raid. Such a man should be shot,” he said, oblivious of the fact that he has now been tasked with probing whether Dubey was killed in a genuine shootout or by the bullets of policemen who believed ‘such a man should be shot’.

Ironically, Gupta during his own days as DGP came under fire for the large number of questionable encounters in Uttar Pradesh on his watch. As *India Today* magazine reported on August 17, 1998:

**“Only hardened criminals have been killed. Had there been innocents involved, the judiciary would have taken us to task,” says a defensive DGP K.L. Gupta, adding that the 200 encounter deaths were those of hardcore criminals like Arvind Pandey, Surajpal Yadav, Jarnail Singh.”**

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Gupta’s 1998 words are a pre-echo of the justification heard for Dubey’s killing – that he was a dreaded gangster – but the former DGP today denies there was any controversy in his day: “I was praised by everyone for carrying out those encounters,” he told *The Wire*. The then chief minister Shri Kalyan Singh lauded me. You can see old media files to confirm that. There was no controversy.”

### Justice Chauhan faced conflict charge as HC judge

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This is not the first time Justice Chauhan has encountered questions of conflict of interest.



*The Wire* asked Justice Chauhan whether there was any conflict of interest involved in his adjudication of the matter. "I do not see any conflict of interest," he replied. "My brother was not an applicant. His wife had applied. But let me tell you that this whole issue was raised before the Supreme Court when someone filed a PIL after the cancellation of the plots. The SC upheld the order through which, as a high court judge, I had ordered a CBI inquiry into the allotments. Mind you, my brother was a full fledged cabinet minister in the then Mulayam Singh Yadav government but he could not get a plot allotted to his wife."

#### **SC backs original member of commission**

The petitioners in the Vikas Dubey encounter case had also asked the Supreme Court to remove former Allahabad high court judge Shashi Kant Agarwal from the commission because of questions about his integrity. Agarwal was the Adityanath government's





This is not the first time Justice Chauhan has encountered questions of conflict of interest.

Before getting elevated as a judge of the Allahabad high court, he was counsel for the NOIDA administration. However, as judge he did not hesitate to hear cases related to NOIDA. And in one matter, he went to the extent of ordering a CBI probe into the allotment of plots.

At the time, his brother, Virendra Singh, was rumoured to be among the unsuccessful applicants for special plot allotments made by the Mulayam Singh Yadav government in 2005. However, since there was many allegations of nepotism by the Mulayam-Amar Singh duo, who had allegedly made the allotments bypassing the laid down rules, the cancellation was ordered.

*The Wire* asked Justice Chauhan whether there was any conflict of interest involved in his adjudication of the matter. "I do not see any conflict of interest," he replied. "My

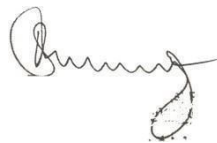


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Shashi Kant Agarwal from the commission because of questions about his integrity. Agarwal was the Adityanath government's original choice for the one-man probe panel set up right after the Dubey shootout. However, the court said it would not allow the petitioner to "cast aspersions" on the commission's members.

Agarwal had resigned as a judge of the Allahabad high court soon after he was transferred to Jharkhand High Court following serious complaints against him. Subsequently, he started practicing in the Uttarakhand high court , where he continues even now. And that seems to be held against him as it is again unusual for a practicing lawyer to be asked to head a judicial commission – which is what the Adityanath government initially did.



**(True Copy)**



## Former SP minister Choudhury Virendra Singh joins BJP

*The joining of Choudhury Virendra Singh, a prominent Gujar leader of west UP, has serve a big blow to the Mahagathbandan in west UP, which goes to polls in the first two phases.*



Published: 30th March 2019 03:20 PM | Last Updated: 30th March 2019 03:20 PM

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Image of BJP flags used for representational purpose

**By UNI**

LUCKNOW: The ruling BJP has once again dent into the citadel of the Samajwadi Party and Mahagathbandan in western Uttar Pradesh when a former minister and MLC

LUCKNOW: The ruling BJP has once again dent into the citadel of the Samajwadi Party and Mahagathbandan in western Uttar Pradesh, when a former minister and MLC Choudhury Virendra Singh joined the party in presence of state chief minister Yogi Adityanath and party president Mahendra Nath Pandey on Saturday.

Along with Choudhury Virendra Singh, a six-time MLA and minister in the previous Mulayam Singh Yadav government joined the BJP along with his close associates Shamli District Panchayat chairman Manish Chauhan and Kandhla Block pramukh Harminder Chauhan.

The new BJP leader is presently MLC of SP and his term expires on January 30,2021.

The joining of Choudhury Virendra Singh, a prominent Gujar leader of west UP, has serve a big blow to the Mahagathbandan in west UP, which goes to polls in the first two phases.



With this joining, the BJP also got a major relief in view of the recent Gujar unrest following denial of ticket to late Hukum Singh's daughter Mriganka Singh from Kairana and shifting of another Gujar leader, though from Haryana, Avtar Singh Bhadana to Congress.

Choudhury Virendra Singh, in his brief speech, said that there is no condition of his joining the BJP and his main effort would be to support to party to win all the 16 seats of west UP going to polls in the first two phases.

Chief minister Yogi Adityanath, welcoming the SP leader in the BJP fold, said that joining of Choudhury Virendra Singh will boost the party's prospect in west UP.

When asked about if Nishad Party too was joining the BJP, the CM just gave a surprise smile and said just wait.

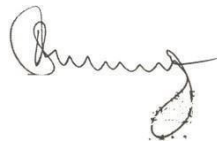
"BJP is not weak and will fulfill the target to win 74 seats in UP," he said.

When asked about if Nishad Party too was joining the BJP, the CM just gave a surprise smile and said just wait.

"BJP is not weak and will fulfill the target to win 74 seats in UP," he said.

UP BJP president Mahendra Nath Pandey too welcomed the leader in the party fold and gave him the party membership slip.

Earlier it was speculated that Nishad Party could join the BJP fold along with former Congress MP from Jhansi, Pradeep Jain Aditya, who has been denied ticket by the Congress this time.



**(True Copy)**



हिंदी न्यूज़ > उत्तर प्रदेश > सपा को झटका, MLC वीरेंद्र सिंह बेटे मनीष के साथ भाजपा में शामिल

## सपा को झटका, MLC वीरेंद्र सिंह बेटे मनीष के साथ भाजपा में शामिल



लाइव हिन्दुस्तान टीम, नई दिल्ली | Published By: Mohan  
Updated: Sat, 30 Mar 2019 09:43 PM

आखिरकार सपा एमएलसी वीरेंद्र सिंह और उनके बेटे मनीष चौहान ने भाजपा का दामन थाम ही लिया। लखनऊ में भाजपा कार्यालय पर मुख्यमंत्री योगी आदित्यनाथ एवं भाजपा प्रदेशाध्यक्ष महेंद्रनाथ पांडेय के समक्ष पिता-बेटा ने भाजपा की सदस्यता ग्रहण की। इससे भाजपा ने साथ कई निशाने साधने का प्रयास किया है।

सपा एमएलसी वीरेंद्र सिंह कैराना लोकसभा से सपा के दावेदारों में शामिल थे, लेकिन पार्टी मुखिया अखिलेश यादव द्वारा उनके बजाय तबस्सुम हसन को

कांग्रेस ने सिर्फ नारा दिया, गरीबी नहीं हटाई: स्मृति ईरानी

इसके साथ ही वीरेंद्र सिंह और उनके बेटे मनीष चौहान का भाजपा में शामिल होने का समय भी कुछ टल गया। बताया जा रहा है कि वीरेंद्र सिंह भाजपा के बड़े नेता के समक्ष ही सदस्यता ग्रहण करना चाहते थे। चुनावी व्यस्तता के कारण सही मौका नहीं मिल पा रहा था। शनिवार को सपा एमएलसी वीरेंद्र सिंह और उनके बेटे मनीष चौहान ने लखनऊ में मुख्यमंत्री योगी आदित्यनाथ और प्रदेशाध्यक्ष महेंद्र नाथ पांडेय के समक्ष भाजपा की सदस्यता ग्रहण की है।

छह बार विधायक रहे चुके वीरेंद्र सिंह सपा नेता वीरेंद्र सिंह विधानसभा परिसीमन से पूर्व कांधला विधानसभा सीट से छह बार विधायक रहे हैं। वर्ष 2002 में कांधला से उन्होंने आखिरी बार जीत दर्ज की थी। इसके बाद 2007 के विधानसभा चुनाव में बसपा प्रत्याशी बलबीर किवाना के आगे वह चुनाव हार गए थे। इसके बाद वह रालोद छोट सपा में शामिल हो गए थे। परिसीमन में कांधला सीट खत्म होकर शामली सीट अस्तित्व आयी। वर्ष 2012 में शामली से सपा के टिकट पर चुनाव लड़ा, लेकिन कांग्रेस प्रत्याशी पंकज मलिक के आगे वह चुनाव हार गए। वीरेंद्र सिंह वर्ष 2014 के लोकसभा चुनाव में मुजफ्फरनगर से सपा के टिकट चुनाव लड़े, लेकिन जीत दर्ज नहीं करा सके। इसके बाद सपा ने इन्हें एमएलसी बनाया।

राहुल गांधी से मिलना चाहते हैं तो बस करना होगा ये एक काम

सपा एमएलसी वीरेंद्र सिंह कैराना लोकसभा से सपा के दावेदारों में शामिल थे, लेकिन पार्टी मुखिया अखिलेश यादव द्वारा उनके बजाय तबस्सुम हसन को तवज्जो दी। तब से ही वीरेंद्र सिंह पार्टी से खफा चल रहे थे। हालांकि पार्टी छोड़ने के संकेत तो उन्होंने उसी समय से दे दिए थे। उन्होंने अपने पैतृक गांव जसला में समर्थकों की पंचायत भी बुलाई थी, तब से ही उनके भाजपा में शामिल होने के कयास शुरू हो गए थे।

वीरेंद्र सिंह और उनके बेटे मनीष चौहान कई दिनों तक दिल्ली में रहे। भाजपा ने लोकसभा चुनाव के प्रत्याशियों की पहली लिस्ट जारी की थी तो उसमें कैराना सीट को होल्ड कर देने से भी मृगांका सिंह के साथ वीरेंद्र सिंह को भी प्रबल दावेदार माना जा रहा था, लेकिन 21 फरवरी को पार्टी हाईकमान द्वारा जब कैराना से प्रदीप चौधरी का प्रत्याशी घोषित कर दिया गया तो इन सब कयासों पर विराम लग गया।

जात दज नहा करा सका। इसके बाद सपा ने इन्हें एमएलसी बनाया।

राहुल गांधी से मिलना चाहते हैं तो बस करना होगा ये एक काम

2017 में बेटे मनीष चौहान ने की थी सपा से बगावत वर्ष 2017 के विधानसभा चुनाव में कांग्रेस सपा गठबंधन में शामली सीट कांग्रेस में खाते में आ गयी। कांग्रेस से पंकज मलिक चुनाव लड़े, जबकि इनके बेटे मनीष चौहान से पार्टी विरोध के बावजूद निर्दलीय प्रत्याशी के रूप में चुनाव लड़ा। इस पर पार्टी अध्यक्ष अखिलेश सिंह ने सख्त नाराजगी जतायी थी। उन्होंने मनीष चौहान को पार्टी से निष्कासित भी कर दिया था। इस चुनाव न तो मनीष चौहान जीत सके और नहीं कांग्रेस प्रत्याशी पंकज मलिक। मनीष चौहान शामली से जिला पंचायत अध्यक्ष भी रह चुके हैं। वर्तमान में वह जिला पंचायत पंचायत सदस्य भी हैं।

(True Copy)



**IN THE SUPREME COURT OF INDIA**  
(CRIMINAL APPELLATE JURISDICTION)

**CRL.M.P.NO. OF 2020**

IN

**WRIT PETITION (CRL.) NO. 177 OF 2020**

**IN THE MATTER OF:**

Ghanshyam Upadhyay

....Petitioner

Vs.

State of U. P. & Ors.

....Respondent

**AN APPLICATION FOR EXEMPTION FROM  
FILING ATTESTED AFFIDAVIT OF THE  
PETITIONER**

**To,**

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

THE HUMBLE PETITION ON BEHALF OF THE PETITIONERS  
ABOVE NAMED.

**MOST RESPECTFULLY SHOWETH:**



1. The Petitioner is a citizen of India and domiciled in the State of Maharashtra. The Petitioner is a practicing advocate in the Hon'ble High Court, Bombay and the Hon'ble Supreme Court of India and has been duly enrolled with the Bar Council of Maharashtra and Goa, having registration No. MAH/5167/1999. While the Respondent No.1 is the State of Maharashtra, the Respondent No.2 is the Superintendent of Police, Kanpur, State of Uttar Pradesh, the Respondent No.3 is the officer- in-charge of Chaubeypur Police Station, Kanpur, State of Uttar Pradesh and the respondent No.4 is the Central Bureau of Investigation. The Respondents are 'State' within the meaning of Article 12 of the Constitution of India and hence, all the Respondents are amenable to the writ jurisdiction of this Hon'ble Court.
2. That the Petitioner says that he has already explained all the fact and circumstances of this case in present Writ Petition and the same shall be read as part and parcel of this application.



3. That the Petitioner says that the above said matter has some urgency to be filed before this Hon'ble Court and due to COVID-19 LOCKDOWN situation, it is not possible to file notarized attested affidavit of the Petitioner in support of this petition/interim application and hence the Petitioners may be exempted from filing affidavit accordingly.

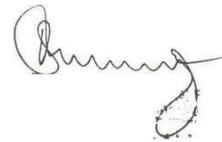
### **PRAYER**

It is, therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) exempt the Petitioner from filing notarized attested affidavit of the Petitioner in support of this petition and order accordingly.
- 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 present case.



AND FOR THIS ACT OF KINDNESS, THE  
PETITIONER AS DUTY BOUND SHALL EVERPRAY  
FILED BY:

A handwritten signature in black ink, appearing to read 'Ghanshaym Upadhyay', with a stylized flourish at the end.

FILED ON: - 30.07.2020  
PLACE: NEW DELHI

(GHANSHAYM UPADHYAY)  
THE PETITIONER IN PERSON



