

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____/2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda (Husband of Ms. X and Father of
deceased child), Aged about 48 Years
S/O Sawariya Gujjar Famda,
R/O Village Moorie, Block Kalaroos, Tehsil and District
Kupwara,
J&K.

.....PETITIONER

VERSUS

1. State of Jammu & Kashmir
through its Commissioner/Secretary to Government,
Health and Medical Education Department,
Government of J&K
Jammu/Srinagar.
2. Divisional Commissioner Kashmir.
3. Divisional Commissioner Jammu.
4. Director Health Services Kashmir.
5. Director Health Services Jammu.
6. Senior Suprintendent Of Police, srinagar, J&K.
7. Principal Government Medical College, Srinagar,
Kashmir, J&K.
8. Principal Government Medical College, Jammu,
Jammu, J&K.
9. Suprintendant, Lal Ded Hospital, Srinagar, J&K.

.....RESPONDENTS

TO

THE HON'BLE CHIEF JUSTICE,
AND HER LORDSHIPS COMPANION JUSTICES
OF THE HON'BLE HIGH COURT OF J&K AT
SRINAGAR.

THE HUMBLE PETITION OF THE
PETITIONERS ABOVENAMED:

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA, READ WITH SECTION 103 OF THE CONSTITUTION
OF JAMMU AND KASHMIR, SEEKING WRIT IN THE NATURE
MANDAMUS COMMANDING THE RESPONDENTS TO HOLD A
TIME BOUND JUDICIAL ENQUIRY TO BE HEADED BY A
SITTING DISTRICT JUDGE INTO THE GRUESOME AND
INHUMAN INCIDENT WHICH HAPPENED ON 17TH OF
JANUARY 2019 AT L.D HOSPITAL SRINAGAR, WHEREIN THE
PETITIONER'S WIFE (MS. X) WAS DENIED THE ADMISSION
INTO THE RESPONDENTS HOSPITAL BY THE DOCTORS AS A
RESULT OF WHICH SHE DELIVERED A BABY ON ROADSIDE**

AND CONSEQUENTLY DUE TO THE CHILLING COLD, BABY DIED. PETITIONER ALSO SEEKS WRIT IN THE NATURE OF MANDAMUS COMMANDING THE RESPONDENTS TO PROVIDE THE SPECIALIST DOCTORS INCLUDING GYNECOLOGISTS, MEDICAL AND SURGICAL FACILITIES IN ALL THE DISTRICT HOSPITALS, SUB-DISTRICT HOSPITALS AND PRIMARY HEALTH CENTERS OF JAMMU AND KASHMIR. PETITIONER ALSO SEEKS WRIT IN THE NATURE OF MANDAMUS COMMANDING THE RESPONDENTS TO UPGRADE/AUGMENT THE INFRASTRUCTURE OF SUB DISTRICT HOSPITAL, KUPWARA TO DISTRICT HOSPITAL KUPWARA AND CONSEQUENTLY PROVIDE ALL THE FACILITIES INCLUDING THE SUPER SPECIALIST DOCTORS AND ADEQUATE STAFF 24X7 SO THAT THE PATIENTS ARE NOT PUT TO UNNECESSARY INCONVENIENCE AND EXTREME PERIL. DIRECTIONS ARE ALSO SOUGHT IN THE NATURE OF WRIT OF MANDAMUS COMMANDING THE RESPONDENT NO 6 TO REGISTER AN FIR AGAINST THE DOCTOR/S IN TERMS OF THE RELEVANT PROVSIONS OF RANBIR PENAL CODE AND ACT AGAINST THEM. FURTHERMORE, DIRECTIONS ARE

**SOUGHT IN THE NATURE OF WRIT OF MANDAMUS
COMMANDING THE RESPONDENTS TO PAY AN AMOUNT OF
RS. 50.00 LACS (FIFTY LAKH RUPEES) AS COMPENSATION
TO MS. X FOR CRIMINAL AND MEDICAL NEGLIGENCE.**

MOST RESPECTFULLY SHOWETH:-

1. That the present Writ Petition is being filed under article 226 of the Constitution of India, read with section 103 of the Constitution of Jammu and Kashmir, seeking writ in the nature mandamus commanding the respondents hold a time bound Judicial enquiry to be headed by a sitting District Judge, into the gruesome and inhuman incident which happened on 17th of January 2019 at L.D hospital Srinagar, wherein the petitioner's wife (Ms. X) was denied the admission into the respondents hospital by the doctors as a result of which she delivered a baby on roadside and consequently due to the chilling cold, baby died. Petitioner also seeks writ in the nature of mandamus commanding the respondents to provide the specialist doctors including gynecologists, medical and surgical facilities in all the district

hospitals, sub-district hospitals and primary health centers of Jammu and Kashmir. Petitioner also seeks writ in the nature of mandamus commanding the respondents to upgrade/augment the infrastructure of sub district hospital, Kupwara to District Hospital Kupwara and consequently provide all the facilities including the super specialist doctors and adequate staff 24x7, so that the patients are not put to unnecessary inconvenience and extreme peril. Directions are also sought in the nature of writ of mandamus commanding the respondent no 6 to register an FIR against the doctor/s in terms of relevant provisions of Ranbir Penal Code and act against them. Furthermore, directions are sought in the nature of writ of mandamus commanding the respondents to pay an amount of Rs. 50.00 lacs (fifty lakh rupees) to Ms. X as compensation for criminal and medical negligence.

2. That the Petitioner is a permanent resident of the State of J&K and a law abiding citizen of the Republic of India. Therefore, the petitioner being a responsible citizen has every right under law to invoke the Writ jurisdiction of this Hon'ble Court for vindication of his legal as well as

fundamental rights guaranteed to him under the Indian Constitution.

3. That the instant writ petition has been filed in response to the Respondent No. 1's refusal of admission to the Petitioner's wife (herein Ms. X) and failure to conduct institutional delivery which consequently resulted in death of baby, thereby violating the fundamental rights of petitioner's wife guaranteed under Part III of the Constitution of India.
4. That the Petitioner and his wife (Ms. X) who is a 35 year old are the residents of Village Moorie, Block Kalaroos, Tehsil and District Kupwara, J&K. The petitioner and his wife are both uneducated; while the petitioner works as a labourer, Ms. X is an housewife. They belong to the tribal community which is extremely backward and economically weaker section of the society. The petitioner lives in a place called "Moorie" which is a small clan consisting of people from tribal community; the village does not have the connectivity so far as road and electricity is concerned. The Petitioner's wife (herein Ms. X) has been deprived of her basic fundamental and reproductive rights to which she is entitled.

5. That the present writ Petition is being filed as against violation of Article 21 of the Constitution of India, section 21, section 22 (b) and section 24 of the constitution of Jammu and Kashmir, 1957.

Article 21 provides right to life and health.

section 22 (b). Rights Of women -- The state shall endeavour to secure all women :-

b. the right to maternity benefits as well as adequate medical care in all employments.

Moreover, this writ petition is being filed as a result of failure on the part of the Respondents in providing timely health care services to Ms. X, due to which she was forced to deliver her child on a roadside at Bemina and consequently as a result of which baby who was born alive, died.

6. That the Respondents herein are the government authorities who are responsible for guaranteeing the right to health to Ms. X, under Article 21 of the Constitution of India. The Respondents have failed to fulfill their obligations enunciated under the Constitution of India and constitution of J&K, 1957, therefore have infringed upon the fundamental rights of the

victim and her family guaranteed under the Constitution of India and more particularly the Right to Life under Article 21 of the Constitution. The Petitioner is a citizen of Republic of India and the cause of action has arisen within the jurisdiction of this Hon'ble Court.

FACTS

7. That the Petitioner's wife was pregnant with her third child and she had undergone regular antenatal checkups from time to time as advised by the doctors and ASHA workers. It is humbly stated and submitted that while Ms. X was in her 37-38th week of her pregnancy, it was on 17.01.2019 at around 11 am Ms. X was taken to Primary Health Centre (PHC) Kalaroos for institutional delivery and the medical staff present there told the petitioner to immediately take Ms. X to the Sub-District Hospital kupwara since PHC Kalaroos did not have the adequate staff and the doctors. The medical staff present at PHC Kalaroos told the petitioner that the delivery of Ms. X will not be normal one. An ambulance was provided to the petitioner and consequently the patient (Ms. X) was taken to the Sub-district hospital kupwara for institutional

delivery. At sub district hospital kupwara, USG test was conducted on Ms. X by the medical staff at around 11.45 am and the report also showed the fetus of Ms. X in 37th-38TH week. On the advice of doctor who was present at SDH Kupwara, Ms. X was again “referred” to the institute of respondent no 9 i.e. L.D Hospital for delivery. The petitioner along with other family members immediately took Ms. X to L.D Hospital Srinagar for institutional delivery and reached the hospital supra at around 3.30 pm. *Filed herewith and marked as **Annexure-I (coll.)** are the copies of USG report dated 17.01.2019 conducted on Ms. X at Sub District Hospital Kupwara and referral/discharge certificate dated 17.01.2019 duly issued by SDH Kupwara.*

8. That on reaching L.D Hospital Srinagar, the doctors present there directed to conduct afresh USG test on Ms. X and the attitude of staff and doctors towards Ms. X and the petitioner was hostile and absolutely discriminatory. It was at around 7.30 pm, the doctors together with the staff members started hurling invectives on the petitioner and his other relatives who were accompanying Ms. X. Despite the fact

that Ms. X was in her acute labour pain and her foetus was in 37th- 38th week, the petitioner was told to take Ms. X from the respondent's institute without assigning any reason. The USG test which was conducted on Ms X at L.D Hospital showed the foetus was in 34th week of pregnancy and the date of delivery was shown to be 22.02.2019. While as the USG test which was conducted earlier at SHD Kupwara showed the results as 37-38th week. In other words Ms X's due delivery was 17-20th January 2019 and not 22.02.2019. *Filed herewith and marked as **Annexure-II (coll.)** are the copies of OPD card dated 17.01.2019 and discharge certificate dated 18.01.2019 duly issued by respondent no. 9's institute.*

9. That the petitioner and other relatives who were present in the hospital, requested the doctors to allow Ms. X to stay in the hospital for a night since Ms. X was in acute labour pain and it was also not possible for them to go back to a place which is more than 150 kms from Srinagar. The petitioner humbly states and submits that the family members also

pleaded before the doctors that they did not have any relative or friend with whom they can stay for a night.

10. That on the same day at around 8.00 pm Ms. X started experiencing severe labour pain along with the rupture of membrane. Since the pain did not subside, the petitioner requested the doctor to admit Ms. X in the hospital for further examination. Despite repeated requests by the petitioner, the doctors told petitioner to leave the premises. The Petitioner therefore left with no option sought the help of people who were outside the hospital; one auto rickshaw driver who was waiting for his passenger outside the hospital premises came to the rescue of petitioner and took Ms. X and other family members to his place of residence i.e. to Bemina, Srinagar. While on the way to bemina, Ms X started crying and shrieking which prompted the auto driver to stop the auto half way near Bemina. Some female folks who were present there came forward and provided their shawls, stools etc to Ms X and she was forced to deliver her child enroute. Pertinently, the baby was born alive at the time of delivery but due to the freezing cold and due to the lack of medical

care facility, baby died. Ms. X was forced to undergo her delivery without the assistance of skilled personnel in an unsanitary environment which consequently resulted in baby's death. The petitioner's brother-in-law immediately thereafter rang Dr. Firdous (BMO Kalaroos) who subsequently called up Dr Shabir sidiqui; the repulsive administration sent an ambulance to Bemina and Ms X was brought back to the LD hospital.

11. That on 21.01.2019, in order to prescind the public anger and to shield the HOD and senior doctors, the respondent no 7 constituted 4 members enquiry committee on the directions of respondent no 2. It is pertinent to mention here that the said 4-member enquiry committee was headed by HOD of Obstetrics and Gynecology herself as the chairperson. The constitution of the said committee and the HOD being its chairperson goes against the principles of natural justice and settled position of law i.e. "*nemo judex in causa sua*". Consequently, the so called "enquiry committee" concluded its probe and in a hodge-podge manner indicted one 2nd year PG student who was pursuing

her MD (obstetrics and gynecology). Admittedly, the committee has conceded the fact that the Ms. X was denied the admission in the hospital as a result of which she delivered a baby on roadside. *Filed herewith and marked as **Annexure-III** is the copy of order of enquiry and suspension of PG 2nd year student dated 21.01.2019.*

12. That the petitioner was called to appear before the new “five member enquiry committee” on 02.02.2019. This new 5 member enquiry was headed by Dr Tassaduq and the findings of this second committee are not known as on date. Instead of thoroughly probing the whole incident, the newly constituted committee harassed the petitioner with irrelevant questions.

13. That this whole episode of denying the admission to Ms X into the hospital which resulted in delivery on roadside and baby dying thereafter due to the freezing temperature was widely reported by the electronic and national print media. A full fledged report was broadcasted on “News-18 Urdu” channel on 18th January 2019 morning, which narrated the

whole ordeal through which the whole family had to go. *Filed herewith and marked as **Annexure-IV (coll.)** are the copies of e-newspaper cuttings enunciating the fact that Ms. X was denied the admission by the respondents.*

SCHEMES AND GUIDELINES

I. National Health Mission (NHM)

a) In 2013, the Central Government launched the National Health Mission (NHM) as an umbrella program with two main prongs: the National Rural Health Mission (NRHM), first launched in 2005, and the National Urban Health Mission (NUHM). The purpose of these schemes is to improve health infrastructure and health outcomes in India's rural and urban areas.

b) A major focus of the NRHM is improving maternal and infant health, which is revealed in the NRHM Service Guarantees. In addition to the Service Guarantees, the NRHM houses numerous individual benefit schemes with a more targeted focus. Individual schemes that focus on

improving maternal and infant health are discussed below. They include the Janani Suraskha Yojana (JSY), Janani Shishu Suraksha Karyakram (JSSK), and Pradhan Mantri Matru Vadana Yojana (PMMVY).

II. Janani Suraskha Yojana (JSY)

The JSY scheme was implemented in 2005, providing financial benefits to mothers who give birth to their children in hospitals (institutional delivery). The scheme's objective is to increase the number of institutional deliveries to reduce maternal and infant mortality rate. In High Performing States (such as Delhi), the financial assistance is available to all BPL/SC/SCT women regardless of age and number of children and independent of whether they gave birth in a private or a government hospital. In an urban area the eligible women are entitled to a payment of Rs. 600 for institutional deliveries. BPL women can also receive Rs. 500 for a home delivery (regardless of age/number of children). [Indian Ministry of Health and Family Welfare, Directive No. Z.14018/1/2012-JSY, 13th May 2013.]

III. Janani Shishu Suraksha Karyakram (JSSK)

Through the NRHM, the government also coordinates the JSSK scheme, which it launched in June 2011 as a means of eliminating out-of-pocket expenses incurred by pregnant women and sick newborns, which are “without doubt, a major barrier” for pregnant women and children, many of whom “die on account of poor access to health facilities.” Therefore, the JSSK scheme provides that pregnant women seeking institutional delivery and sick newborns until 30 days after birth are entitled to absolutely free care in all government health facilities.”

JSSK services are available to all women who deliver in government health facilities, regardless of age, number of children or economic status. These free services include:

- a) free and cashless delivery
- b) free C-Section
- c) free treatment
- d) free drugs and consumables

- e) free diagnostics
- f) exemption from user charges
- g) free transport from home to health institution
- h) nutritious meals

These services are provided for the pregnant women.

LEGAL VIOLATIONS

IV. 'Right to Health' has been encapsulated as a fundamental, Constitutional guarantee in numerous cases. The social justice objectives that the Supreme Court has read into Article 21 that includes the Right to Health - and sets out a clear requirement of qualitative standards for the provision of healthcare facilities.

a) In *Francis Coralie Mullin v. Union Territory of Delhi & Ors.*, [1981 SCR (2) 6] the Supreme Court observed that the right to live with dignity and the protection against torture and cruel, inhuman or degrading treatment are implicit in Art. 21.

b) In *Consumer Education and Research Centre v. Union of India*, [1995 SCC (3) 43], the Supreme Court held that Article 21 of the Constitution of India includes a fundamental right to health, and that this right is a “most imperative constitutional goal”.

c) In *Devika Basu v. Union of India & Ors.*, the Supreme Court held unequivocally that Article 21 includes the “reproductive rights of a person.”

Reproductive rights were recognized as both part of the right to health and as an aspect of personal liberty by the Court under Article 21, and such rights were defined to include the right to “access a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free, and responsible decisions about their reproductive behaviour.”

d) In the cases of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.*, [W.P. (C) 8853/2008] and *Jaitun v. Maternity Home, MCD, Jangpura & Ors.*, a

landmark joint decision was issued by the Delhi High Court which concerned with two women who were denied maternal health care. held that an inalienable component of the right to life is “the right to health, which would include the right to access government health facilities and receive a minimum standard of care. In particular this would include the enforcement of the reproductive rights of the mother.”

e) In *Sandesh Bansal vs. Union of India & Ors.*, [W.P. (C) 9061/2008], the Madhya Pradesh High Court concluded that timely health care is of the essence for pregnant women to protect their fundamental rights to health and life as guaranteed under Article 21 of the Constitution of India. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

V. Besides natural justice principles and legal precedent, international law places obligations on States to

provide for quality healthcare. These international obligations have also been affirmed by the Supreme Court's Constitutional Benches over the years; further, the Supreme Court has recognized that International treaty obligations can well be enforced (unless in direct conflict with national legislation) as held by the apex court *Vishaka & Ors. v. State of Rajasthan* (1997) 6 SCC 241.

- VI. Arbitrary denial of health care services is illegal and amounts to violation of the Ms. X's fundamental rights to equality under 14 & 15 of the constitution of India. It was held in *Maneka Gandhi vs. UOI* (1978) 1 SCC 248 that it isn't enough that our provision under a legislative act be constitutionally valid-if, in the implementation of the provision, a state action is infringing on a person's fundamental right, that the state action is ultra vires. In the present case, the denial of admitting the pregnant patient and not offering timely delivery service is a violation of petitioner's right to life and right to equality.

VII. In the case of *Pashchim Banga Khet Mazdoor Samity v. State of West Bengal* [1996 (4) S.C.C. 37], Hakim Sheikh, a member of the Paschim Banga Khet Mazdoor Samity fell off a train and suffered serious head injuries. He was brought to a number of state hospitals, including both primary health care centers and specialist clinics, for treatment of his injuries. Seven state hospitals were unable to provide emergency treatment for his injuries because of a lack of bed space and trauma and neurological services. The Supreme Court held that Article 21 of the Constitution casts an obligation on the state to take every measure to preserve life. The Court found that it is the primary duty of welfare state to ensure that medical facilities are adequate and available to provide treatment and due to the violation of the right to life of the petitioner, compensation was awarded to him.

VIII. The land mark case of *Bandhua Mukti Morcha v. Union of India* [AIR 1984 SC 802]: held that "It is the fundamental right of every one in this Country,

assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of children of tender age..."

IX. The case of *Thangapandi Vs The Director of Primary Health Service*, DMS Teynampet, Chennai and Ors (2011(1) MLJ 1329) is crucial in this regard. In this case owing to medical staff and doctors refusing timely medical services to a pregnant woman in labour, the woman lost her life. The Hon'ble Madras High Court held that her family be paid compensation and that-

a) "Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount

importance. The Government Hospitals run by the State and the medical officers and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of the government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article:21”

b. “Article: 21 of the constitution of India guarantees right to life, which includes right to get meaning full health care, especially during maternity/delivery period..”

X. The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly in 1966, entered into force in 1976 - India acceded to it in 1979.

a. Article 12:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of

the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

b. General Comment No. 14: Adopted by the Committee on Economic, Social and Cultural Rights - it elucidates the contents and nature of the Right to Health. It examines the correlation between the Rights to Health and associated rights such as Right

to food, sanitation, safe drinking water etc. It also analyses the freedoms and non-discrimination inherently implied in the way Right to Health must be enforced.

XI. The Convention on Elimination of All Forms of Discrimination Against Women under Article 12: (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

XII. Universal Declaration of Human Rights (UDHR) under Article 25 clause (1) states that Everyone has the right

to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

GROUND

18. That the petitioners are filing the instant writ petition on various grounds, inter-alia taken in alternative without prejudice to each other.

a. BECASUE, the respondents were under a constitutional obligation to provide all the facilities to Ms X either at PHC Kalaroos or at Sub district hospital Kupwara for hygienic and safe delivery. Once the patient was being referred by the district hospital, the institute of

respondent no 9 was suppose to admit the patient and provide the facilities for smooth and hygienic institutional delivery. The USG report of SDH Kupwara in terms of which Ms. X was shown to be in her 37th- 38th Week of pregnancy is diametrically contradictory and opposite to the one conducted by respondent no 9's institute i.e. L.D. Hospital. The LD hospital showed the USG report Of Ms X in her 34TH week of pregnancy and the date of delivery was shown to be 22.02.2019. This gives glimpse picture of sorry state of affairs at LD Hospital where the whole staff during evening hours is incompetent and inexperienced resulting in disastrous consequences. Hence on this count writ deserves to be issued against the respondents.

b. BECAUSE, the denial of admission on the part of respondent no 9, on the ground that Ms X belongs to tribal community goes against the principles of Article 15, 21 of the Constitution of India and section 21, section 22 (b), section 24 of the constitution of Jammu and Kashmir, 1957.

- c. BECAUSE the action of the Respondents have violated the fundamental rights guaranteed to the petitioner and Ms. X under Part III of the Constitution of India.
- d. BECAUSE, the Respondent no. 9 hospital denied institutional delivery to the Petitioner despite excruciating labour pain which forced her to deliver her child on the road side resulting in death of child and endangering the life of the Ms. X.
- e. BECAUSE, the intention of respondent can be gauged from the fact that on 21.01.2019, the respondent no 7 had constituted a four member enquiry committee on the directions of respondent no 2. Pertinently, the said 4-member enquiry committee was headed by HOD of Obstetrics and Gynecology herself as the chairperson. The constitution of the said committee and the HOD being its chairperson goes against the principles of natural justice and against the settled position of law i.e. *"nemo judex in causa sua"*. The purpose of constituting the 4 member committee was to shield the accused senior doctors and dilute the public anger.

Admittedly, the so called “enquiry committee” has conceded the fact that the Ms. X was denied the admission in the hospital as a result of which she delivered a baby on roadside.

f. BECASUE, the Petitioner’s wife was deprived of maternal benefits guaranteed to her under JSSK and JSY schemes.

g. BECAUSE, the action of the Respondents has caused grave physical and mental injury to the Petitioner.

19. That the Petitioner has no other alternative, efficacious and speedy remedy available to him but to approach this Hon’ble Court through the medium of the instant Writ petition for redressal of his genuine grievances and for enforcement of his fundamental rights.

20. That no other Writ petition dealing with the same subject matter have been filed by the Petitioner or any other family member before this Hon’ble court, nor have the Petitioner approached the Hon’ble Supreme Court of India or, in fact, any other court regarding the same subject matter.

PRAYER

In the above-mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. ISSUE a Writ of mandamus or any other appropriate writ, order or directions, directing the respondents to hold a time bound Judicial enquiry to be headed by a sitting District Judge, into the gruesome and inhuman incident which happened on 17th of January 2019 at L.D hospital Srinagar, whereby the petitioner's wife (Ms. X) was denied the admission into the respondents hospital by the doctors as a result of which she delivered a baby on roadside and consequently due to the chilling cold, baby died.
- b. ISSUE a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents to provide the specialist doctors including gynecologists, medical and surgical facilities in all the district hospitals, sub-district hospitals and primary health centers of Jammu and Kashmir.
- c. ISSUE a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to upgrade/augment the infrastructure of sub district

hospital, kupwara to District Hospital Kupwara and consequently provide all the facilities including the super specialist doctors and adequate staff 24x7, so that the patients are not put to unnecessary inconvenience and extreme peril.

- d. ISSUE a Writ of Mandamus or any other appropriate writ, order of direction directing the respondent no 6 to register an FIR against the doctor/s in terms of relevant provisions of Ranbir Penal Code and act against them.
- e. ISSUE a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to pay an amount of Rs. 50.00 lacs (fifty lakh rupees) to Ms. X as compensation for criminal and medical negligence.
- f. Any other Writ, order or direction which this Hon'ble court may deem fit and proper also be issued in favour of the Petitioner and against the Respondents.

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

Filed by:-

*Shah Faisal
Advocate for the Petitioner
Chamber 56, J&K High
Court*

*Srinagar-
190001*

DATE:

PLACE: Srinagar

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____ /2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda (Husband of Ms. X and Father of
deceased child), Aged about 48 Years
S/O Sawariya Gujjar Famda,
R/O Village Moorie, Block Kalaroos, Tehsil and District
Kupwara,
J&K.

.....PETITIONER

VERSUS

1. State of Jammu & Kashmir
through its Commissioner/Secretary to Government,
Health and Medical Education Department,
Government of J&K
Jammu/Srinagar.
2. Divisional Commissioner Kashmir.
3. Divisional Commissioner Jammu.
4. Director Health Services Kashmir.
5. Director Health Services Jammu.
6. Senior Suprintendant of Police, Srinagar, J&K.
7. Principal Government Medical College, Srinagar,
Kashmir, J&K
8. Principal Government Medical College, Jammu,
Jammu, J&K.
9. Suprintendant, Lal Ded Hospital, Srinagar, J&K.

.....RESPONDENTS

TO

THE HON'BLE CHIEF JUSTICE,
AND HER LORDSHIPS COMPANION JUSTICES
OF THE HON'BLE HIGH COURT OF J&K AT
SRINAGAR.

THE HUMBLE APPLICATION OF THE
APPLICANT ABOVENAMED:

APPLICATION FOR EX-PARTE AD-INTERIM DIRECTIONS

MOST RESPECTFULLY SHOWETH

1. That the present application is being filed for certain ex-parte ad-interim directions to the Respondents herein in the facts and circumstances described in the accompanying Writ Petition filed by the applicant herein.
2. That the entire sequence of material facts and events leading to the accompanying Writ Petition are not being repeated here for the sake of brevity. The Applicant/Petitioner however craves leave to refer and rely upon the same for the purpose of this application.
3. That the balance of convenience also lies in favour of the applicant/petitioner.
4. That the present application is being filed bona fide and in the interest of justice.

PRAYER

In the abovementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Pass an ex-parte ad-interim order directing the Respondents to appoint a District Judge so that the whole episode of 17.01.2019 is thoroughly probed and those who violated the law with impunity are brought to book.
- b. Pass an ex-parte ad-interim order, directing the respondents to immediately release an interim amount of Rs 10.00 lakhs (Ten Lakh rupees) as compensation in favour of Ms. X for criminal and medical negligence.
- c. Pass such other and further order/s as this Hon'ble Court may deem fit and proper.

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

*Shah Faisal
Advocate for the Applicant
Chamber 56, J&K High
Court*

*Srinagar-
190001*

DATE:

PLACE: Srinagar

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____ /

2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda

.....**PETITIONER**

VERSUS

State of Jammu & Kashmir and Others
.....**RESPONDENTS**

AFFIDAVIT

I, Wazir Ahmad Gujjar Famda (Husband of Ms. X and Father of deceased child), Aged about 48 Years, S/O Sawariya Gujjar Famda, R/O Village Moorie, Block Kalaroos, Tehsil and District Kupwara, J&K do hereby solemnly affirm and state as under:

- a. That I am the applicant in the present application, therefore I am well conversant with the facts and circumstances of this case, and as such, I am competent to swear this affidavit.
- b. That I have gone through the contents of the accompanying application and understood them and state that the same are being filed under my instructions and the contents thereof are true to the best of my belief and nothing material has been concealed.

DEPONENT

VERIFICATION

Verified on solemn affirmation at Srinagar on this the ____ day of February 2019 that the contents of the above affidavit are correct, no part of it is false and nothing material has been concealed there from.

DEPONENT

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____ /2019

MEMO OF PARTIES

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda (Husband of Ms. X and Father of deceased child), Aged about 48 Years
S/O Sawariya Gujjar Famda,
R/O Village Moorie, Block Kalaroos, Tehsil and District Kupwara,
J&K.

.....**PETITIONER**

VERSUS

1. State of Jammu & Kashmir
through its Commissioner/Secretary to Government,
Health and Medical Education Department,
Government of J&K
Jammu/Srinagar.
2. Divisional Commissioner Kashmir.
3. Divisional Commissioner Jammu.
4. Director Health Services Kashmir.
5. Director Health Services Jammu.
6. Senior Superintendent Of Police, srinagar, J&K.
7. Principal Government Medical College, Srinagar,
Kashmir, J&K.
8. Principal Government Medical College, Jammu,
Jammu, J&K.
9. Suprintendant, Lal Ded Hospital, Srinagar,
J&K.**RESPONDENTS.**

Filed by:-

*Shah Faisal
Advocate for the Petitioner
Chamber 56, J&K High
Court*

Srinagar-190001.

Srinagar, J&K
Date .02.2019.

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____ /

2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda

.....**PETITIONER**

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State of Jammu & Kashmir and Others
.....RESPONDENTS

SYNOPSIS

The instant Writ Petition is being filed under article 226 of the constitution of India, read with section 103 of the constitution of Jammu and Kashmir, seeking writ in the nature mandamus commanding the respondents hold a time bound Judicial enquiry to be headed by a sitting District Judge, into the gruesome and inhuman incident which happened on 17th of January 2019 at L.D hospital Srinagar, wherein the petitioner's wife (Ms. X) was denied the admission into the respondents hospital by the doctors as a result of which she delivered a baby on roadside and consequently due to the chilling cold, baby died. Petitioner also seeks writ in the nature of mandamus commanding the respondents to provide the specialist doctors including gynecologists, medical and surgical facilities in all the district hospitals, sub-district hospitals and primary health centers of Jammu and Kashmir. Petitioner also seeks writ in the nature of mandamus commanding the respondents to upgrade/augment the infrastructure of sub district hospital, kupwara to District Hospital Kupwara and consequently provide all the facilities including the super specialist doctors and adequate staff 24x7, so that the patients are not put to unnecessary inconvenience and extreme peril. Directions are also sought in the nature of writ of mandamus commanding the respondent no 6 to register an FIR against the doctor/s in terms of relevant provisions of Ranbir Penal Code and act against them. Furthermore, directions are sought in the nature of writ of mandamus commanding the respondents to pay an amount of Rs. 50.00 lacs (fifty lakh rupees) to Ms. X as compensation for criminal and medical negligence.

Hence the Present Writ Petition.

Filed by:-

*Shah Faisal
Advocate for the Petitioner
Chamber 56, J&K High
Court*

*Srinagar-
190001.*

Srinagar, J&K
Date .02.2019.

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

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2019

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LIST OF DATES

17.01.2019	Petitioners wife Ms X was brought to the PHC kalaroos for institutional delivery. Thereafter Ms x was referred to SDH Kupwara, J&K.
17.01.2019	At SDH Kupwara after USG was conducted on petitioners wife Ms X, she was again referred to LD Hospital for institutional delivery.
17.01.2019	Instead of admitting Ms X, the respondent no 9 after short examination threw her out from the premises.
17.01.2019	Petitioners wife Ms X delivered a baby on roadside at bemina. Subsequently, baby died due to the cold.
21.01.2019	Report of the 4 members committee came out.
22.01.2019	Petitioner was called to appear before the newly formed 5 member committee.
-02-2019	Hence the present Writ petition.

Filed by:-

*Shah Faisal
Advocate for the Petitioner
Chamber 56, J&K High
Court*

*Srinagar-
190001.*

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____ /

2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda

VERSUS

State of Jammu & Kashmir and Others

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Sl. No.	Particulars	Page No's	Details
1.	Urgency Memo	1	
2.	Memo of parties		
3.	List of Dates/Events and Synopsis		
4.	Writ petition and Affidavit in support		
5.	Annexure-I(Coll.)		<u>17.01.2019 Annexure-I (coll.)</u> are the copies of USG report conducted on Ms X at Sub District Hospital Kupwara and referral/discharge certificate duly issued by SDH Kupwara.
6.	Annexure-II(coll.)		<u>17.01.2019 Annexure-II (coll.)</u> are the copies of OPD card and discharge certificate dated 18.01.2019 duly issued by respondent no. 9's institute.
7.	Annexure-III		<u>21.01.2019 Annexure-III</u> is the copy of order of enquiry and suspension of PG 2 nd year student
8.	Annexure-IV		<u>Annexure-IV (coll.)</u> are the e-copies of newspaper cuttings enunciating the fact that Ms. X was denied the admission by the respondents.
9. 7	Interim Application and Affidavit in support.		
10.	Meta Data Form		
11.	Power of attorney		

Filed by:
Advocate for the Petitioner

Shah Faisal

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIR AT SRINAGAR**

OTHER WRIT PETITION NO. ____/2019

IN THE MATTER OF:-

Wazir Ahmad Gujjar Famda

.....**PETITIONER**

VERSUS

State of Jammu & Kashmir and Others

.....**RESPONDENTS**

URGENCY MEMO.

MOST RESPECTFULLY SHOWETH:

1. That the above titled writ petition has been filed in response to the Respondent No. 1's refusal of admission to the Petitioner's wife (herein Ms. X) and failure to conduct institutional delivery which consequently resulted in death of baby, thereby violating the fundamental rights of petitioner's wife guaranteed under Part III of the Constitution of India.
2. That the respondents constituted two committees as on today but nothing concrete has been done so as to punish the guilty. The petitioner has reason to believe that the respondents are shielding the real accused doctors and senior administration under the guise of so called enquiries.
3. The matter is of urgent nature and in case the same is not listed and heard today, will cause irreparable loss to the appellant and the delay in hearing the above titled writ would make the same as infructuous.

PRAYER

In the above mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the instant application in the interest of justice, thereby directing the registry to list the matter today before this Hon'ble Court.

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

Shah Faisal
Advocate for the applicant
Chamber 56, J&K High Court
Srinagar-190001