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May 1, 2006

Mr. Vijay Shanker
Director
Central Bureau of Investigation
Block No. 4, 6th Floor,
CGO Complex
Lodi Road
New Delhi 110003

Re: K.P.S. Gill

Dear Mr. Shanker,

In early December 2005, Mrs. Paramjit Kaur Khalra wrote to you requesting that you initiate an independent investigation and bring charges against former Director General of Police (DGP) K.P.S. Gill for his alleged role in the murder of her husband, Jaswant Singh Khalra in October 1995. Over ten years ago, members of the Punjab police operating under Mr. Gill abducted, tortured, and murdered human rights defender Jaswant Singh Khalra because of his courageous work in exposing the “disappearances,” custodial deaths, and secret cremations of thousands of Sikhs in Punjab. On November 18, 2005, Additional Sessions Judge Bhupinder Singh convicted and sentenced six Punjab police officers for their roles in the murder. Though long overdue, these convictions were an important milestone in Mrs. Khalra’s search for justice.

Mrs. Khalra has campaigned tirelessly for justice despite severe police harassment. Her request for your intervention is based on testimony that emerged during the trial of the six police officers. On September 11, 1995, five days after Punjab police abducted Mr. Khalra, the Supreme Court issued formal notice and service to DGP Gill of a habeas corpus petition filed on behalf of Mr. Khalra. The testimony of Special Police Officer (SPO) Kuldeep Singh established at trial that Mr. Gill ignored the pending habeas corpus petition and personally interrogated Mr. Khalra in October 1995, while Mr. Khalra was illegally detained at the residence of Senior Superintendent of Police (SSP) Ajit S. Sandhu.

Evidence from the trial also indicates that Mr. Gill authorized the abduction and murder of Mr. Khalra. SPO Kuldeep Singh testified that, according to his superior, during the interrogation Mr. Gill gave Mr. Khalra a choice between life and death. In order to live, Mr. Khalra simply had to follow Mr. Gill’s advice and stop his human rights work.

The police murdered Mr. Khalra in late October 1995. On November 15, 1995, the Supreme Court issued another order on the habeas corpus petition, ordering the CBI to inquire into Mr. Khalra’s “disappearance” because the police investigation had not yielded any results. The Supreme Court further directed Mr. Gill to “render all assistance and help to the CBI.”

At a minimum, Mr. Gill failed to take necessary and reasonable measures to prevent Mr. Khalra's murder. Mr. Gill also ignored court orders. Despite receiving formal service in September 1995 about an active habeas corpus petition before the Supreme Court, Mr. Gill failed to disclose Mr. Khalra's whereabouts while he was alive. At the time that Mr. Gill interrogated Mr. Khalra, Mr. Khalra allegedly could barely move from the torture he had experienced at the hands of Mr. Gill's subordinate officers. At that time, Mr. Gill was legally required to order Mr. Khalra's release, thereby ending his illegal detention and further torture, and preventing his murder.

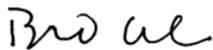
In its November 1995 order, the Supreme Court explicitly identified Mr. Gill's subordinate officers as alleged to be involved in Mr. Khalra's "disappearance," and directed a copy of its order to DGP Gill. The court ordered Mr. Gill to provide assistance in locating Mr. Khalra. Mr. Gill thus had well-publicized information in his possession that put him on notice about his subordinates' illegal activities. Yet Mr. Gill ignored the Supreme Court's order. He further failed to punish any officers after the murder of Mr. Khalra, despite his personal knowledge of the officers who illegally detained, tortured and murdered Mr. Khalra.

Given the weight of the evidence available in the public domain about Mr. Gill's role in this case, the CBI must undertake an impartial and thorough inquiry as soon as possible and then refer the case for appropriate prosecution. Both Indian and international law provide a clear framework to prosecute the kinds of acts and omissions described in this case (please see the Appendix for a short discussion of relevant international law).

We are therefore disappointed that the Central Bureau of Investigation has yet to respond to Mrs. Khalra's letter of December 2005. We urge you to address this matter on an urgent basis, not just because justice has already been inordinately delayed, but also because Mr. Gill is continuing to act as a governmental advisor on counter-insurgency operations. His recent appointment as Security Advisor to the Chattisgarh government provides every reason to fear the advice he will offer to the state police in their efforts to counter the Naxalites.

Thank you for your consideration.

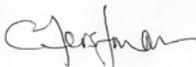
Sincerely,



Brad Adams
Executive Director, Asia Division
Human Rights Watch



Jaskaran Kaur
Executive Director
ENSAAF



Carla Ferstman
Director
REDRESS



Smita Narula
Faculty Director
Center for Human Rights and Global Justice

CC: Paramjit Kaur Khalra

Appendix on Relevant International Law

Under international law, there is a clear legal case to be made against K.P.S. Gill. If Mr. Gill ordered or authorized his subordinates to commit these crimes against Jaswant Singh Khalra, he is directly liable for the crimes. Even if Mr. Gill did not give direct orders, as a superior officer, he may still be held liable under the well-established principle of superior responsibility. Based on the evidence, the CBI has ample basis to investigate Mr. Gill for his direct role in these crimes, as well as Mr. Gill's superior responsibility for the crimes of his subordinates.

In *Prosecutor v. Mucic et. al* (“*Celebici*”), the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) traced the development of the concept of superior responsibility from its first international judicial recognition in the Nuremberg and Tokyo trials of World War II. The Trial Chamber broke down the principal of superior responsibility into three essential elements:

- (i) the existence of a superior-subordinate relationship;
- (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.¹

The *Celebici* Chamber held that people in positions of superior authority, with either *de jure* or *de facto* command, and with the power to discipline those under their control, can be held responsible for human rights violations committed by their subordinates.²

The *Celebici* judgment determined that a superior possessed the requisite *mens rea*, or culpable mental state, for the imposition of criminal liability when he knew or had reason to know that his subordinates were committing crimes.³ A superior's actual knowledge was “established through direct or circumstantial evidence.”⁴ In the case of Mr. Khalra's murder, according to the testimony of SPO Kuldip Singh, DGP Gill himself interrogated Mr. Khalra during his illegal detention at the private residence of subordinate police officer SSP Sandhu. Mr. Khalra's body bore the marks of torture. Mr. Gill, thus, had direct knowledge of the illegal detention and torture of Mr. Khalra.

The *Celebici* Trial Chamber held that the second type of knowledge—“had reason to know”—required the superior to remain informed about the activities of his subordinates; he could not willfully blind himself.⁵ The superior could be liable if he possessed any information that should have put him on notice of crimes committed or about to be committed by his subordinates. Once again, there is evidence that Mr. Gill can be held responsible under this precedent.

In its discussion of the third prong regarding the legal duty of superiors to take preventative measures or punish the perpetrators, the Trial Chamber cautioned that the superior could not be expected to “perform the impossible,” but would be held criminally liable for failing to take actions within his “material possibility.” The lack of formal legal competence did not preclude responsibility.⁶

¹ *Prosecutor v. Zdravko Mucic, Hazim Delic and Esad Landzo* (“*Celebici*”), Case No. IT-96-21-T (Nov. 16, 1998), *Id.*, ¶ 346.

² *Id.*, ¶ 354, 370.

³ *Id.*, ¶ 383.

⁴ *Id.*

⁵ *Id.*, ¶ 387.

⁶ *Id.*, ¶ 395.

The torture and murder of Mr. Khalra by persons under the command of Mr. Gill cannot be ignored. National and international courts around the world are holding superior as well as subordinate officials accountable for their crimes. India must also join the movement against impunity for grave crimes in violation of international law and send the message that it does not tolerate torture and murder.