

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.130 of 2017

Arising Out of PS. Case No.-443 Year-2014 Thana- LAKHISARAI District- Lakhisarai

Usha Sharma W/o Late Dr. Kumar Sharad Chandra, R/o Balika Vidyapeeth
Parisar, P.S.District- Lakhisarai.

... .. Petitioner

Versus

1. The State Of Bihar Through Home Secretary, Department Of Home, Bihar.
2. Director General of Police, Bihar.
3. Additional Director General, Criminal Investigation Department, Bihar.
4. Superintendent of Police, Criminal Investigation Department, Bihar.
All the above having correspondence-Old Secretariat, P.S.- Secretariat,
Patna-80001.
5. Superintendent of Police, District- Lakhisarai. PO and PS- Lakhisarai,
District- Lakhisarai.
6. Shambhu Saran Singh, S/o Late Rajeshwar Prasad Singh, R/o- Mohalla-
Bari Dargah, Purani Bazaar, PS and District- Lakhisarai.
7. Shyam Sunder Prasad, S/o Late Babu Dharamraj Prasad Singh, R/o- Punjabi
Mohalla, PS and District- Lakhisarai.
8. Rajendra Singhania, S/o Late Subhakaran Prasad Singhania, R/o Baro Durga
Asthan, Naya Bazaar, PS and District- Lakhisarai.
9. The Central Bureau of Investigation through its Director, New Delhi
... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Advocate Mr. Abhigyan Kumar, Advocate Mr. Jeetendra Narayan, Advocate
For the State	:	Mr. Md. Nadeem Seraj, GP-5
For Resp. No. 6	:	Mr. A.K. Thakur, Advocate Mr. Dr. Anjani Prasad Singh, Advocate
For Resp. Nos. 7 & 8	:	Mr. Ramakant Sharma, Senior Advocate Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 12-12-2022

Heard learned counsel for the parties.

2. The present writ application has been filed questioning the conduct of the Investigating Officer of the Criminal Investigation Department, (hereinafter referred to as 'C.I.D.')



Bihar in the matter of release of the accused on P.R. bond post issuance of non-bailable warrant of arrest by the competent court and the order of the Hon'ble Supreme Court in the Special Leave to Appeal (CrI) No(s). 269-271/2015 (Usha Sharma versus Shambhu Sharan Singh & Anr. Etc.Etc.) cancelling the privilege of anticipatory bail granted to the private respondent nos. 6 to 8 by the High Court of Judicature at Patna.

3. The petitioner has, while questioning the conduct of the investigating agency in keeping the investigation of the case pending for eight years, prayed for arrest of the respondent nos. 6 to 8 and also prayed for any other relief or reliefs for which the petitioner is found entitled to under the law.

Brief facts of the case

4. The husband of the petitioner was shot dead while he was sitting in the verandah of his residence and reading the newspaper on 02.08.2014 at 6:45 A.M. at Lakhisarai. Petitioner is the informant of the case who alleged that she heard sound of firing and when she went to the verandah, she found that her husband's head was injured with bullet and blood was oozing out from his left eye and a young person with a pistol in his hand was fleeing towards the main gate and another person was waiting outside on a black motorcycle. She identified both of them.



5. According to the petitioner, her husband was the Secretary of the Balika Vidyapeeth. In August, 2009 one Anil Sharma, MD Amrapali group had usurped the trust of Balika Vidyapeeth with help of Rajendra Prasad Singhanian (Respondent No.8), Dr. Praveen Kumar Sinha, Shyam Sunder Prasad (Respondent No.7) and Shambhu Sharan Singh (Respondent No.6). Her husband was removed forcibly and thereafter a dispute was going on between both the parties. She alleged that the income of Balika Vidyapith were being usurped by opening a personal account operated by Dr. Praveen Kumar Sinha and Dr. Shyam Sunder Singh. To take over the control of the school one Smt. Anita Singh was brought and given charge of the post of Principal. The deceased was making complaint against the unlawful manner in which the Balika Vidyapith was being run. She alleged that in past also her residential house was attacked, damaged and firings were made which were duly informed to the different authorities by her husband.

6. The informant alleged that her husband was being regularly threatened and being asked to leave Lakhisarai failing which there will be dire consequences. Her husband had succeeded from the Hon'ble High Court at Patna and his claim as Secretary was found legal, on that basis the Government of Bihar had given



recognition to the committee constituted by her husband. Her husband had lodged case against the opening of personal account in which the school money was deposited and in the said case the accused persons were likely to be convicted.

It is, then alleged that her husband was having threat to his life and in this regard he was told that the accused persons may go to any extent to stop him. She alleged that to take control over the entire land and properties of the Balika Vidyapith, the accused persons have hatched a conspiracy whereunder her husband has been murdered. On 04.07.2014, to examine the complaint made by the husband of the petitioner, a team of CBSE was likely to visit to examine the illegalities and in order to stop them the accused persons killed her husband.

7. On the basis of the fardbeyan of the petitioner Lakhisarai P.S. Case No. 443 of 2014 was registered under Section 302, 34, 120B of the Indian Penal Code and Section 27 of the Arms Act. The materials available on the record would reveal that in course of investigation three persons were arrested, they were put to T.I. Parade in which this petitioner identified the accused who had fired upon her husband. About two and half months after lodging of the F.I.R., the investigation of the case was handed over



to the C.I.D. and one Sri Uday Prakash Singh, Dy.S.P., CID received all the documents and the materials from the earlier Investigating Officer. The Dy.S.P., C.I.D. took charge of the investigation in the light of Memo No. 3442/CR dated 23.10.2014 and only seven days thereafter he filed chargesheet no. 596 dated 30.10.2014 against Dr. Praveen Kumar Sinha who was earlier arrested, and charge-sheet No. 655 dated 06.11.2014 against Raushan Kumar, son of Rajeshwari Singh and Raushan Kumar, son of Ballam Singh.

8. Investigation of the case against all other accused were kept pending. During this period on the request of the Investigating Officer, the learned C.J.M., Lakhisarai had already directed for issuance of non-bailable warrant against four accused persons including respondent no. 8. It so happened that on 31.10.2014 even as the I.O. had filed a chargesheet only against accused Dr. Praveen Kumar Sinha but after going through the materials present in the case diary the then learned C.J.M. Incharge while taking cognizance of the offences held that there is a prima-facie case to proceed against other accused persons also including these private respondents and accordingly issued a non-bailable warrant for their appearance.



9. Since the chargesheet was not filed against the private respondents and some other accused, they moved the Hon'ble High Court challenging order taking cognizance and issuance of non-bailable warrant against them. The private respondent nos. 6 to 8 had also challenged the order of the learned C.J.M. and on finding that the investigation against them was still pending and there was no chargesheet, the Hon'ble High Court took a view that the order passed by the learned C.J.M. is liable to be set aside and the case against the private respondents shall proceed after submission of chargesheet.

Privilege of pre-arrest bail to the private respondents by the Hon'ble High Court

10. The private respondents sought privilege of anticipatory bail in Cr. Misc. No. 38299/2014, Cr. Misc. No. 42812/2014 and Cr. Misc. No. 45617/2014 respectively which were allowed by a learned Judge of this Court but the petitioner took the matter in appeal before the Hon'ble Apex Court giving rise to Cr. Appeal No. 682-684/2016. The Hon'ble Supreme Court, after taking note of the seriousness of the allegations, vide its order dated 22nd July, 2016 set-aside the order of this Court and directed the private respondents to surrender themselves in the concerned police station within four weeks' time. A copy of the



order of the Hon'ble Supreme Court is enclosed as Annexure '6' to the writ application.

First Direction to I.O. by S.P., C.I.D.

11. On 12.08.2016, the then Superintendent of Police (C) wrote a letter (Annexure 'D') to the Investigating Officer giving direction to the I.O. that if the private respondents surrender within four weeks in terms of the direction of the Hon'ble Supreme Court then their statement be recorded and they should be forwarded in judicial custody.

Subsequent Direction to I.O. by S.P., C.I.D.

12. It reveals from the record that the same officer of the CID wrote another letter as contained in Memo No. 1976 dated 19.08.2016 (Annexure D/1 to the counter affidavit of respondent no. 2 to 4) to the I.O. saying that if the private respondents surrender then their statements be recorded and if they do not surrender then the department be informed. In the said letter, it was further recorded that a decision as to accusation of these persons are yet to be taken. Thus, Annexure 'D' was modified to the extent that the earlier direction to forward the private respondents in judicial custody stood deleted. It is this conduct of the investigating agency which has been seriously questioned by the learned counsel for the petitioner. His submission is that



immediately after transfer of the case to the CID, the Officer-in-Charge of the investigation of the case indulged in favouring the accused persons and the private respondent nos. 6 to 8 are the direct beneficiary of the favours shown by the investigating agency. According to him, Annexure 'D/1' was written within seven days after Annexure 'D'. No reason is available in the case diary to show as to why despite the investigation being pending since October, 2014, till August, 2016 a decision as to accusation of Respondent nos. 6 to 8 was yet to be taken, what is stated in the letter (Annexure 'D/1') are not recorded in the case diary.

13. Learned counsel submits that respondent nos. 6 to 8 along with some other accused were allegedly involved in criminal conspiracy for the motives already indicated in the F.I.R., but the C.I.D. did not investigate the conspiracy angle, in a hurry the Dy.S.P. C.I.D. submitted a charge-sheet within seven days of taking over the investigation against one of the prime accused namely, Pravin Kumar Sinha against whom also there were allegations of active participation in hatching the conspiracy. Learned counsel submits that the charge-sheet was filed by the CID and in course of trial of the said case the same Dy.S.P. CID categorically stated that he had not made any investigation on the allegation of conspiracy.



14. Learned counsel submits that on a bare perusal of the order of the Hon'ble Supreme Court (Annexure '6' to the writ application) it would appear that the Hon'ble Supreme Court categorically held that the High Court was wrong in granting anticipatory bail to the accused – respondents at that stage without considering such facts which have been stated before the Court. The Hon'ble Supreme Court observed in it's order that the private respondents are specifically named in the F.I.R. and two of them were doubted by the husband of the informant during his life-time. It is for this reason that the Hon'ble Supreme Court was of the view that the private respondents do not deserve privilege of anticipatory bail. The impugned order of the High Court was set-aside with a direction to the private respondents to surrender within four weeks' time in the police station. Learned counsel submits that the four weeks' time granted by the Hon'ble Supreme Court was going to expire on or about 19th of August, 2016. The private respondents did not surrender until on the last day when the four weeks' time was going to expire the same officer of the CID came out with Annexure 'D/1' modifying his earlier memo no. 1976 dated 19.08.2016 issued to the I.O. Only thereafter the Respondent Nos. 6 to 8 made their appearance before the I.O. to complete a formality.



Investigation Dumped- No effort by C.I.D.

15. Learned counsel further submits that this Court has noticed in it's order dated 19.10.2016 that during the period ending 2016 to May 2019 the investigation of the case was dumped, the case diary was found blank for two and half years and even thereafter as nobody looked into the case diary during these periods. This goes a long way to show that the C.I.D. was not at all acting to bring out the truth.

16. It is only after getting themselves ensured by virtue of the letter dated 19.08.2016 (Annexure D/1) that they would not be arrested by the I.O., the private respondents are said to have gone to the police station on 20.08.2016 and 21.08.2016 where their statements were recorded and they were released by the I.O. on PR Bond. No effort whatsoever was made to investigate the case on the allegation of conspiracy.

17. Learned counsel further submits that the conduct of the investigating agency may be further found from the fact that on the one hand after taking charge of the investigation on 23.10.2014 the CID did not investigate into the allegation of conspiracy, in it's letter written on 19.08.2016 (Annexure D/1) in a completely vague word the Superintendent of Police (C) wrote that a decision as to accusation of respondent nos. 6 to 8 are yet to be taken. During all



these period of about two years no effort was made by the I.O. of the case to interrogate the private respondents. No notice was issued to them for their presence for purpose of recording of the statements. What the Hon'ble Supreme Court did not permit, has been allowed to happen by the officer-in-charge of the investigation of the case with sole intention to confer benefits to the Respondent Nos. 6 to 8. Even after releasing the private respondents on PR bond the investigating agency remained sitting idle and these aspects have been discussed by this Court in it's order dated 18.10.2022 and 19.10.2022.

18. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Amar Nath Chaubey Vs. Union of India and others reported (2021) 11 SCC 804; State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors. reported in (2010) 3 SCC 571 and K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors. reported in (2013) 12 SCC 480** to submit that in this case the very credibility of the investigating agency is under cloud of doubts. One of the prime accused Dr. Pravin Kumar Sinha has got advantage of the faulty investigation and the admitted statement of the then Dy.S.P. C.I.D. in course of trial that he had not investigated the case from



conspiracy angle has led to the same by the learned trial court with the end taking note of result of acquittal of the prime accused and all this raise a reasonable belief in the mind of the petitioner that the same fate is likely to happen in respect to the private respondents as well if this case is not duly investigated by an independent agency. It is submitted that in the present days circumstance the only independent agency will be the Central Bureau of Investigation (In short 'C.B.I.').

Stand of the CID

Admission of the C.I.D. - Investigation did not progress

19. In course of hearing of the case, apart from filing of a counter affidavit, the Additional Director General, CID has himself appeared with the records. This Court has recorded in it's order dated 18.10.2022 and 19.10.2022 in detail the stand taken by the C.I.D. in course of hearing. Those are being reiterated. The ADG, C.I.D. has not come out with reasons apparent to justify writing of Annexure D/1 by the then S.P. C.I.D. whereby within seven days of the first letter dated 12.08.2016 (Annexure D) a direction was issued to the I.O. in some vague words saying only that the accusation against these private respondents are yet to be verified. This Court has recorded in it's order dated 19.10.2022 that "the ADG, C.I.D. has finally come out with stand that prima-facie such



letters should not have gone to the I.O.. He has submitted that after his taking over the charge of the department recently in September 2021, he has reviewed this case in July, 2022 and found that the investigation of the case had not progressed since the year 2016. He has submitted that in July, 2022 after reviewing the materials on the record, it has transpired that on records there are sufficient materials to proceed against private respondents nos. 6 to 8. This is mentioned in his report submitted to this Court today in paragraph 10(ix).”

Sufficient materials against the Private respondents.

20. In fact the ADG, C.I.D. has submitted in this Court that he would call upon the earlier I.Os. to show cause to explain as to why an appropriate action be not taken against them for keeping the investigation pending so long. The ADG, C.I.D. has submitted before this Court that once the Hon’ble Supreme Court had cancelled the privilege of pre-arrest bail of the private respondents and they were directed to surrender in the police station, there being sufficient materials against them, the I.O. could not have released them from the police station on their personal bond and in this regard he will seek explanation from the erring officials and shall take up this issue to it’s logical end.

(emphasis supplied)



21. In the hearing held on 07.12.2022, this Court has been informed by learned G.P.-5 that the I.O. has obtained a non-bailable warrant against Respondent nos. 6, 7 and 8 who are evading their arrest. Steps are being taken to get process issued under Section 82 Cr.P.C. It is further informed that after issuance of the letter dated 12.08.2016 (Annexure 'D') at the instance of the then S.P. (C) a fresh note was initiated on 17.08.2016 by the Inspector suggesting modification/amendment of the letter dated 12.08.2016. At this stage, show cause notices have been issued to the then S.P. (C) and the I.Os. and their explanation are under consideration.

Stand of the private respondents

22. The private respondents nos. 6 to 8 have filed their respective counter affidavits. Their plea is the same and one. It is their stand that they had complied with the direction of the Hon'ble Supreme Court by surrendering in the police station. It is for this reason that the miscellaneous petition filed by the petitioner in the Hon'ble Supreme Court was dismissed as having become infructuous because the private respondents had already surrendered in the police station in compliance of the order of the Hon'ble Supreme Court.

23. It is further stated that even though initially on the basis of the allegations made in the First Information Report I.O. had filed requisition for issuance of warrant of arrest against the FIR named accused persons but the learned CJM had not issued warrant of arrest against respondent no. 6. they have narrated the



story as to how the charge-sheet was filed on 30.10.2014 only against one of the accused, the then learned CJM had taken cognizance and issued warrant against all the other accused persons but at the instance of the other accused persons against whom the investigation was still pending and the charge-sheet had not been filed the order taking cognizance as against them had been set-aside by the Hon'ble High Court and it was held that the matter shall proceed in accordance with law if and when charge-sheet is filed.

24. In course of argument, on 19.10.2022, Mr. Ajay Kumar Thakur, learned counsel for the private respondent no. 6 submitted that in every case it is not necessary to arrest all the accused but after taking note of the stand of A.D.G, C.I.D. when this court called upon the learned counsel to take a stand as to whether after the cancellation of bail of private respondents by the Hon'ble Supreme Court in the facts and circumstances of this case, the I.O. of the case could have granted them the same privilege from police station by taking a bond from them and can it be said to be in exercise of their power under sub-section (2) of Section 437 Cr.P.C., Mr. Thakur, learned counsel very candidly submitted that he will not argue on that and would not go to support such action of the I.O. by any interpretation of law. The argument of Mr.



Thakur, learned counsel was endorsed by Mr. Sanjeev Kumar Singh, learned counsel for respondent no. 7 & 8 and these are recorded by this Court.

25. Mr. Ramakant Sharma, learned senior counsel assisted by Mr. Sanjeev Kumar Singh, learned Advocate appeared on behalf of respondent nos. 7 & 8 and he has once again submitted that he would not be able to legally support the action of the I.O. at the instance of the then Superintendent of Police (CID) in releasing the private respondents on PR bond and in the facts of the present case such privilege could not have been granted when the Hon'ble Supreme Court had categorically held that the privilege of pre-arrest bail granted by the High Court was wrong. In his submission, so far as these private respondents are concerned, they cannot be said to be absconder because they had surrendered and were released on PR bond. There is, however, no plausible answer to the query posed by this Court that having signed the bond to appear before the court as and when required why at this stage when C.I.D. is looking for them they are not putting their appearance in the court below.

26. In course of argument, learned senior counsel for the respondent no. 7 & 8 did not dispute that after taking over the charge of investigation, the CID did not go into the conspiracy



angle which were the allegations based on the motive as alleged and kept the investigation pending for eight years which cannot be justified. So far as respondent nos. 7 & 8 are concerned, they are agreeable to the transfer of investigation of the case to the Central Bureau of Investigation. The stand of the respondent nos. 7 & 8 have been recorded by this Court in it's order dated 16.11.2022 and 07.12.2022.

27. Learned counsel for the respondent no. 6, has, however, submitted that the investigation be allowed to be completed by the CID. By filing an interlocutory application, respondent no. 6 has sought modification of Paragraph '14' and '15' of the order dated 19.10.2022 passed by this Court. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **M. C. Abraham and another versus State of Maharashtra and other** reported in (2003) 2 SCC 649 to submit that this Court need not issue a direction to the C.I.D. to arrest the private respondents.

Consideration

28. Having heard learned counsel for the petitioner, private respondents, learned GP-5 as also the ADG, C.I.D., Bihar, this Court earlier passed two detail orders on 18.10.2022 and 19.10.2022. In its order dated 18.10.2022, this Court has noticed



the conduct of the investigating agency and the manner in which the investigation of the case has been kept pending for 8 years. In the foundation of facts available in the writ application complaining about the conduct of the C.I.D. in not investigating the case for all these years, this Court has found that in the counter affidavit of the CID, there is no whisper and/or an attempt to explain the reasons for the huge and inordinate delay in conduct of investigation in a murder case. This court, therefore, held that this Court is required to examine the grievance of the petitioner as regards her lost confidence in the Investigating Agency and as to why for the purpose of proper and fair investigation, the case be not handed over to an independent agency. The respondents were called upon to make their submission accordingly.

29. In its order dated 19.10.2022, after hearing the parties and A.D.G., C.I.D., this Court has recorded in paragraphs '10' to '15' as under:-

“10. The case diary has been produced before this Court and this Court is again not only disturbed on going through the same but finds itself reaching to almost a conclusion that the whole investigation of this case has been dumped and since 2016 after releasing the private respondents on personal bond without recording any reason. No progress at all has been made in course of investigation. The perusal of case diary reveals that in paragraph '203' it is recorded that the statement of Dr. Shyam Sundar Prasad has been recorded and as directed, he has been allowed to go on personal bond. On whose direction this has been done was a question before this Court. This has been answered by the ADG, CID saying



that it is Annexure 'D/1' to the counter affidavit of respondent nos. 2 to 4 which has been written by the then S.P., C.I.D. to the I.O. The further paragraphs would show that it contains the statement of other accused as and when they surrendered, got their statements recorded. In paragraph '255', it has come that during this period, the informant and her daughter had submitted an application in the office of the Superintendent of Police, CID requesting him to provide them security. What happened on that application is not mentioned in the case diary.

11. The case diary is totally blank for the period ending 2016 to May 2019 meaning thereby that for two and half years, nobody looked into the case diary. On 10.05.2019 and thereafter only some formal paragraphs were recorded which have no significant bearing upon the investigation. The case diary reveals that during 2019 to 2021 the I.O. did not take any further step as if either there was nothing more to be done on the point of investigation or the I.O. had instruction not to take up the investigation. The records speak for themselves.

12. On the point of transfer of a case to the Central Bureau of Investigation, the law is well settled, it is not to be done in a routine and mechanical manner. The parameters required to be considered for transfer of an investigation are such as a case where the transfer is required to instill confidence in the investigation and where the allegations are against the local police of connivance with the accused persons then to provide credibility to the investigation and to do complete justice and for enforcing the fundamental rights such transfer may be ordered. Reference in this regard may be made to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.** reported in **(2010) 3 SCC 571** and **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors.** reported in **(2013) 12 SCC 480**.

13. In the present case, this Court at this stage and subject to further consideration of the submissions of the State would record its prima-facie view that the petitioners seem to be succeeding in impressing upon this Court that the manner in which private respondent nos. 6 to 8 were let off, no custodial interrogation was done despite the fact that at one stage the I.O. had himself sought warrant of arrest against them for custodial interrogation and then



their anticipatory bail was canceled by the Hon'ble Supreme Court and further the fact that the investigation has thereafter been dumped and they have been allowed to move freely which has resulted in influencing the investigation and it has remained pending for over 8 years and during this period the petitioner and her family has suffered threat, it seems to be a case which requires consideration for purpose of transfer to CBI.

14. Let the Central Bureau of Investigation through its Director be added as party respondent no. 9 in course of the day. Two copies of the brief be served upon Ms. Nivedita Nirvikar, learned Standing Counsel who appears for the CBI by 3rd November, 2022. Her name will appear in the cause list.

15. The ADG, CID has ensured this Court that he will act swiftly and without losing any time to take corrective measures which would be including taking action against the private respondent nos. 6 to 8 in accordance with law and issuance of show cause to the erring officials. He shall proceed to do that.”

S.L.P. (Crl.) no. 10981 of 2022

30. The private respondent nos. 6 to 8 preferred a Special Leave to Appeal (Crl.) No(s). 10981 of 2022 in the Hon'ble Supreme Court praying for setting aside of the judgment and order dated 19.10.2022 passed in this case. The Hon'ble Supreme Court dismissed the said special leave petition with liberty in the following terms:

“Upon hearing the counsel the Court made the following

O R D E R

Learned Senior Counsel appearing for the petitioners seeks leave to withdraw this Special Leave Petition with liberty to file an application before the High Court where the matter is still sub-judice.



The Special Leave Petition is dismissed as withdrawn with liberty as prayed for.”

31. After the aforesaid order of the Hon’ble Supreme Court, respondent no. 6 has alone filed the application for modification of the order dated 19.10.2022 specially paragraphs ‘14’ and ‘15’ but perusal thereof would show that the application is based on a complete misunderstanding of the order dated 19.10.2022 passed by this Court. This application has been taken up together with the hearing of the writ petition for final consideration.

Contentions of respondent no. 6 - answered

32. The first contention of respondent no. 6 is that a direction to investigate the case from a particular angle or by a particular agency in the midst of the ongoing investigation may invite some inherent danger in taking away the right of an accused. The another submission is that the direction to the ADG, C.I.D. to ensure that he will act swiftly and without losing time to take corrective measures which would be including taking action against respondent nos. 6 to 8 in accordance with law would be unwarranted and the Court cannot direct for the arrest of the accused persons. Reliance has been placed on the judgment of the Hon’ble Supreme Court in the case of M.C. Abraham (supra) respondent no. 6 has also stated in paragraph ‘8’ of his application that one of the accused Dr. Praveen Kumar Sinha who was charged with the aid of Section 120B of the I.P.C. has already been acquitted by the learned trial court. And the learned trial court has held



that the prosecution has failed to substantiate the charge under Section 120B of the IPC. This Court would refrain from making any observation on the judgment of the learned trial court in the case of Dr. Praveen Kumar Sinha. The submission of learned counsel for the petitioner has also been taken note of by this Court but this is not an appropriate proceeding to deal with the submission of either parties.

33. As regards the first contention, in course of argument, Mr. Ajay Kumar Thakur, learned Advocate assisted by Mr. Anjani Prasad Singh, learned Advocate for respondent no. 6 do not dispute that in this case the FIR has been lodged under Section 302, 34, 120B of the Indian Penal Code and Section 27 of the Arms Act, and the conspiracy has been alleged in the FIR, therefore, the investigating agency is obliged to go into that issue and for that purpose this Court need not issue any direction. In fact, in its order dated 19.10.2022, this Court has not directed the investigating agency to investigate the case from a particular angle.

34. Learned counsel has himself filed a copy of the judgment of the learned trial court in the case of Dr. Praveen Kumar Sinha in which it has been recorded that the Dy.S.P., CID who was the Investigating Officer of the case has stated that he had not made any investigation on the allegation of conspiracy. Without going into any discussion over the judgment of the learned trial court in the case of Dr. Praveen Kumar Sinha, this Court finds that the first contention as couched by and on behalf of Respondent no. 6 has no merit. An accused



has no right to choose an investigating agency of his choice and in an appropriate case a constitutional court may direct transfer of the investigation. Therefore, there is nothing wrong in Paragraph '14' in directing to add C.B.I. as a party respondent no. 9.

35. The another submission of Respondent no. 6 is equally misconceived. This Court has recorded the stand of A.D.G., C.I.D. hereinabove. He had reviewed the case and took a definite stand before this Court that there are sufficient materials to proceed against the private respondents. The A.D.G., C.I.D. did not approve the action of the then S.P. C.I.D. and I.O. in releasing the private respondents on P.R. bond. Having said so, the A.D.G., C.I.D. ensured the Court that he will act swiftly and take corrective measures. This stand of the A.D.G., C.I.D. has been thoroughly misconstrued by respondent no. 6 saying as if this Court has issued a direction to the agency to arrest the private respondents. The judgment of Hon'ble Supreme Court in **M. C. Abraham** (supra) would not be applicable in present set of facts and circumstances. In the said case, the High Court, having found no case for anticipatory bail, had directed for arrest of the accused and submission of chargesheet. The Hon'ble Supreme Court held that while rejecting the application for pre-arrest bail, ordinarily no mandatory order or directions for arrest be issued and such an aspect is required to be left for the investigating agency.

36. This Court finds that there is no quarrel with the aforesaid proposition.



37. The facts of the present case and the procedure adopted by the 'C.I.D.' are to be carefully looked into. There is a categorical stand of A.D.G., C.I.D. that there are sufficient materials to proceed against the private respondents and in the nature of this case the I.O. should not have released the private respondents.

38. So far as this Court is concerned, this Court is though sitting in its extraordinary writ jurisdiction, still this Court has not issued any independent direction to the C.I.D. to arrest the private respondents. The Court has, of course, recorded how the two letters were written one after another by the then C.I.D. whereafter only after expiry of four weeks time granted by the Hon'ble Supreme Court the private respondents appeared and were allowed to go on P.R. Bond, thereafter the investigation was dumped. This Court has then recorded the stand of A.D.G., C.I.D. as stated above. These are the circumstances which speak against the manner in which the investigation of this case has progressed so far. In result, this Court finds no merit in the application preferred by Respondent No. 6.

Abnormal delay in completion of investigation

39. The petitioner in this case has prayed for a direction to arrest the accused nos. 6 to 8 as a consequence of redressal of her grievance against the conduct of the Investigating Agency as noticed above. The C.I.D. has obtained warrant against them and this court has been informed that appropriate steps in accordance with law is being taken, therefore, this Court need not say anything more than that the



investigating agency must proceed to take all such steps which are required in course of investigation and no discrimination may be made on this score.

40. The petitioner has prayed for any other relief/reliefs to which she may be entitled to under the law. To this Court, it appears that there are sufficient foundation of facts in the writ application justifying the grievance of the petitioner against the abnormal delay on the part of C.I.D. in investigating into the allegations. It is in this background that this writ application is to be considered. A delay of over 8 years in conduct of investigation and the fact that the case diary has not at all been written during the period 2016 to 2019 for about two and half years and then from 2019 to 2021, the I.O. did not take any significant step are only supporting the grievance of the petitioner against the conduct of the Investigating Agency.

Duty of the Court if Police is not investigating a case properly:-

41. The Hon'ble Supreme Court has, in the case of **Amar Nath Chaubey Vs. Union of India and others** reported (2021) 11 SCC 804 observed in paragraphs '11' and '12' as under:-

“11. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the



court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

12. In *Manohar Lal Sharma v. Union of India* [*Manohar Lal Sharma v. Union of India*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] , this Court observed as follows : (SCC pp. 552-53 & 556, paras 24-26 & 39)

“24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. Lord Denning [*The Due Process of Law*, First Indian Reprint 1993, p. 102] has described the role of the police thus:

‘In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust : and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.’



26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

39. ... In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.”

Principles governing transfer of investigation to the C.B.I.

42. In the case of **State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.** reported in **(2010) 3 SCC 571**; in paragraph ‘70’ and ‘71’ the Hon’ble Supreme Court has held as under:-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*³¹ this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”

31 [(2002) 5 SCC 521 : 2002 SCC (L&S) 775]



43. In the case of **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors.** reported in **(2013) 12 SCC 480**, the Hon'ble Supreme Court has reiterated the views expressed in *Committee for Protection of Democratic Rights (Supra)*., and observed in paragraph 15, 16 and 17 which are being reproduced hereunder for a ready reference:

“15. In *State of W.B. v. Committee for Protection of Democratic Rights*¹² a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. (See also *Ashok Kumar Todi v. Kishwar Jahan*¹³)

16. This Court in *Sakiri Vasu V. State of U.P.*¹⁴ held:

“31 ... this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done only in some rare and exceptional case, otherwise, CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”

17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high

12. (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

13. (2011) 3 SCC 758 : (2011) 2 SCC (Cri) 75: AIR 2011 SC 1254

14. (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440



officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

Conduct of the S.P. (C) and I.Os.- Stand of A.D.G.-C.I.D.

44. In the given facts and circumstances of the case, which have been discussed in detail hereinabove, the conduct of the Investigating Agency is to be appreciated in the light of a categorical stand of the ADG, C.I.D. saying that prima-facie the then Superintendent of Police, C.I.D. should not have written the letter dated 19.08.2016 (Annexure ‘D/1’ to the counter affidavit). Even as the C.I.D. has taken a stand at this stage otherwise, the facts remain that the Hon’ble Supreme Court canceled the privilege of anticipatory bail, despite there being sufficient material to proceed against the private respondents, they were allowed to remain free on a P.R. bond. The investigation of the case was virtually dumped, the case diary remained gathering dust in the office of the C.I.D. as the I.O. of the case did not touch the diary for years together. The stand of C.I.D. at this stage is that there are ample materials against the private respondents to proceed against them. This Court would have no hesitation in coming to a conclusion that the C.I.D. has failed to perform its statutory duty to conduct a free, fair and impartial investigation in this case. The fact that neither after taking charge of the investigation on 23.10.2014 and



before releasing the private respondents on PR bond nor after releasing them on PR bond any effort was made by the Investigating Officer to proceed with the investigation on the allegations made in the FIR raises a big question mark against the conduct of the Investigating Officer(s). The ADG, C.I.D. has taken up this issue at his level and he is examining the conduct of the then Investigating Officers and Superintendent of Police, C.I.D. and has ensured this Court that he would deal with this issue sternly and fix responsibility. This Court, would, refrain itself, at this stage, from directing an inquiry into the conduct of these officers by an another agency. The ADG, C.I.D. is obliged to take up the issue seriously and proceed to examine and inquire into the conduct of the then S.P., C.I.D. and the Investigating Officer(s) on various aspects during these eight (8) years in the matter of investigation of this case and bring it to a logical end within a reasonable time. If ADG, C.I.D. would fail to do it within a reasonable time, it will be open for the petitioner to bring it to the notice of this Court for an appropriate direction.

(Reasons justifying transfer)

45. A proper, fair and impartial investigation is the heart and soul of the criminal justice system. It has been recognised as a part of fundamental right embodied under Article 21 of the Constitution of India.

46. In this case, the petitioner is the widow of the deceased who is looking for justice. She is fighting for this as the investigation



has been kept pending all these years and there are prima-facie materials which justify her belief that the accused persons who are perhaps highly influential persons have succeeded in keeping the investigation pending at the end of C.I.D. so long without any progress. Doubts have been raised against the conduct of the then S.P., C.I.D. and the I.Os. and in support thereof circumstances have been shown, therefore, to this Court it appears that it is a fit case in which an investigation through an independent agency is a must. Situated, thus, this Court is of the considered opinion that to instil confidence in the investigation of the case and to do justice, the investigation is necessarily required to be transferred to the C.B.I. (Respondent No.-9) and this Court orders so accordingly.

47. Let the C.I.D. hand over the entire documents/materials connected to this case to the C.B.I. (respondent no. 9) within two weeks from today. The Director, C.B.I. shall depute competent investigating officer(s) to conduct proper and fair investigation into the allegation, submit a report in the learned court below and take all such steps which are required to be taken in accordance with law. There is already a delay of over 8 years in completion of investigation, hence this Court expects some expeditious action on the part of the C.B.I.

48. Respondent nos. 7 and 8 have taken a stand that they have no objection to the handing over of the investigation to the C.B.I. The respondent no. 6 has, though, not consented for the same but this



Court is of the opinion that an accused has no right to choose the Investigation Agency.

49. It is made clear that this Court has not at all gone into the merit of the allegations and no part of this order shall be taken as any opinion of this Court on the merit of the accusation against the private respondents. The investigation must be fair, proper, impartial and independent.

50. The writ application as well as pending interlocutory applications, if any, stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/vats-

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