

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.239 of 2018**

Arising Out of PS. Case No.-257 Year-2015 Thana- KISHANGANJ District- Kishanganj

The Central Bureau Of Investigation through H.O.B., Anti Corruption  
Branch, C.B.I., Patna

... .. Petitioner

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Superintendent of Police, Kishanganj, Bihar.
6. Amrendra Narayan S/o Sri Maheshwari Sharma, R/o Vill + Post- Mundera,  
P.S.- Konch, Distt.- Gaya.

... .. Respondents

**Appearance :**

For the Petitioner/CBI	:	Mr. Satyabir Bharti, Sr. Advocate Mr. Shivaditya Dhari Sinha, Advocate Mr. Bipin Kumar Sinha, Advocate Mr. Sanjay Kumar, SC, CBI
For the Resp Nos. 1 to 5 /State	:	Mr. Raghwanand, GA-11 Mr. Sanjay Kumar Tiwari, AC to GA-11
For the Resp. No. 6	:	None

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**CAV JUDGMENT**

**Date : 15-06-2026**

The present criminal writ petition has been filed by the  
Petitioner, Central Bureau of Investigation under Articles 226  
and 227 of the Constitution of India for issuance of writ of  
certiorari for quashing and setting aside the impugned order  
dated 26.09.2017 passed by learned Court of Sessions Judge,  
Kishanganj in A.B.P. No. 306 of 2017 (**Tejveer Singh and Ors.**  
**Vs. State of Bihar**) in connection with Kishanganj P.S. Case  
No. 257 of 2015, whereby learned Sessions Court has directed



the Petitioner to do independent investigation and send preliminary investigation report to the Court on or before 30.10.2017.

### **Factual Background**

2. The Kishanganj P.S. Case No. 257 of 2015 was registered on 06.07.2015 against unknown persons for the offence punishable under Sections 341, 323, 504, 506 and 307 of the Indian Penal Code on the written report of one Amrendra Narayan. Later on, Section 302 of the Indian Penal Code was also added in the FIR.

3. As per the written report of the Informant, his son Shyam Narayan @ Siku, 21 years of age had gone to Kishanganj BSF Camp on 01.07.2015 for participating in physical test being conducted by SCC GD and in the running test, he had fainted and fallen down. On contact, the Informant/father advised his son to return taking a vehicle. Thereafter, there was no contact of the Informant with his son. Next day, on 02.07.2015, when the son came to Patna, contact was again established and his son informed him that he had stomach pain and on inquiry, he disclosed to him weepingly that police has beaten him badly. He assured his father/informant that he would get treatment and he got treatment at P.M.C.H. but



next day on 03.07.2015, the condition started deteriorating and the friends of his son got him admitted to Chanakya Hospital, Kankarbagh, Patna and currently he was getting treatment in Ruban Hospital, Patna. In course of treatment, he died and Section 302 of IPC was added in the FIR.

4. It further transpires that in the said Kishanganj P.S. Case No. 257 of 2015, some of the accused persons, namely, Tejveer Singh and five others filed anticipatory bail petition in the Court of learned Sessions Judge, Kishanganj bearing A.B.P. No. 306 of 2017 wherein learned Sessions Court vide order dated 04.09.2017 directed Intelligence Bureau, Government of India to investigate the matter and send preliminary investigation report to the Court on or before 06.10.2017. However, one letter was sent by the Intelligence Bureau, Government of India to the Court of learned Sessions Judge, informing that the Intelligence Bureau has no jurisdiction to conduct investigation in any criminal matter, and hence, he prayed learned Sessions Court to modify the order dated 04.09.2017.

5. In view of the letter of the Intelligence Bureau, learned Sessions Court vide order dated 26.09.2017 modified its order dated 04.09.2017 and directed the Petitioner/Central Bureau of



Investigation to conduct independent investigation and submit preliminary investigation report on or before 30.10.2017. Hence, the Petitioner is before this Court.

6. A counter affidavit on behalf of Respondent No. 5/Superintendent of Police, Kishanganj, Bihar has been filed, as per which it transpires that subsequent to the filing of the FIR bearing Kishanganj P.S. Case No. 257 of 2015, the father of the victim moved this Court by filing C.W.J.C. No. 12190 of 2015 for direction of this Court for proper investigation, alleging that no action was taken by the police despite filing the said FIR. In this writ, Superintendent of Police, Kishanganj, had filed supplementary affidavit stating that six persons were found involved in the occurrence in question and Investigating Officer was directed to arrest those persons and do the needful. Hence, the writ petition was disposed of by learned Division Bench vide order dated 25.01.2017, hoping that Investigating Officer would take appropriate action and submit a report under Section 173 Cr.PC in accordance with law expeditiously, preferably within six months. In pursuance of this direction, the Investigating Officer completed the investigation in Kishanganj P.S. Case No. 257 of 2015 and submitted charge-sheet dated 27.06.2018 in the Court of learned C.J.M., Kishanganj. The



Investigating Officer has been also directed to obtain sanction order against the accused persons belonging to B.S.F. Jawans and submit the same in the Court.

7. It further transpires that by the impugned order dated 26.09.2017, passed by learned Sessions Judge, Kishanganj in anticipatory bail petition bearing A.B.P. No. 306 of 2017, Central Bureau of Investigation, Government of India has been directed to hold an independent investigation and to send preliminary investigation report to learned Sessions Court on or before 30.10.2017.

**Submission of the Parties**

8. I heard learned counsel for the Petitioner and learned G.A.-11, Mr. Raghwanand for the State and State Officials. However, the Informant, who is Respondent No.6 herein was not present, despite service of notice.

9. Learned counsel for the Petitioner submits that except the constitutional Courts like Hon'ble Supreme Court and High Courts, no other Courts like the Court of Sessions or Magistrate can change the Investigating Agency and direct the Central Bureau of Investigation to investigate any crime. He further refers to Delhi Special Police Establishment Act, 1946 to argue that the Central Bureau of Investigation has been established for



investigation into certain offences in the Union Territories and only by the Order of the Central Government, the Central Bureau of Investigation may investigate in the offences in a State not being a Union Territory, with the consent of the Government of the concerned State.

**10.** He also refers to and relies upon **C.B.I., Jaipur Vs. State of Rajasthan**, reported in **(2001) 3 SCC 333**.

**11.** He also submits that the impugned order has been passed by learned Sessions court while hearing a bail petition and hence, order is unsustainable also on the ground that it is beyond the scope of bail jurisdiction.

**12.** However, learned G.A.-11 for the State defends the impugned order submitting that there is no illegality or infirmity in the impugned order because Sessions Court and Judicial Magistrate have also power to direct the C.B.I. to investigate the cognizable offence.

#### **Position of Law**

**13.** Now question is whether the Sessions Court has power to direct Central Bureau of Investigation to investigate the crime as registered by Kishanganj P.S. Case No. 257 of 2015.

**14.** The question is not *res integra*. There is a long line of



judgments of Hon'ble Apex Court holding that the Constitutional Courts i.e. Supreme Court and High Courts, being guardians of the fundamental rights, have power to direct the investigation of cognizable offence by any Investigating Agency including the C.B.I., if so requires, for enforcement of fundamental rights as granted and guaranteed by the Constitution. However, Courts other than the Constitutional Courts have no such power to direct the C.B.I. to investigate the crime.

**15.** Here, the issues involved are separation of power and federal features of our Democratic polity. Parliament and the State Legislature have their own legislative fields as provided in **Schedule Seventh** to the Constitution. As per **Entry-2** of the **State List**, police is a State subject for legislation. However, **Entry-80** of the **Union List** provides for extension of powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the concerned State.

**16.** Section 6 of Delhi Special Police Establishment Act, 1946 provides for consent of State Government to enable any



member of Delhi Special Police Establishment to exercise powers and jurisdiction in area of any State.

**17.** As such, as per the Constitutional Scheme and Statutory Provisions of Delhi Special Police Establishment Act, 1946, any police force of Union Territory or any State cannot function as a police in any other State without the consent of that State Government.

**18.** However, the Constitutional Courts, being guardians of the fundamental rights and being possessed with constitutional power of judicial review under Article 32/ Article 226 of the Constitution, can direct the C.B.I. or any other Investigating Agency to take up the matter for investigation, if so requires, for protection of fundamental rights of the petitioner. However, District Courts, be it Sessions Court or Magisterial Court, who function within the four corners of the enabling statutes, cannot direct Central Bureau of Investigation (C.B.I.) to investigate any crime.

**19.** In **CBI v. State of Rajasthan, (2001) 3 SCC 333**, Hon'ble Supreme Court, dealing with similar question, has held that even with consent of State Government, Judicial Magistrate cannot direct C.B.I. to conduct investigation and it is only the Constitutional Courts who can order C.B.I. to investigate a



cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act, holding as follows:

“13. Section 5 of the Delhi Act enables the Central Government to extend the powers and jurisdiction of members of the Delhi Police Establishment to any area in a State. Section 6 of the Delhi Act says that:

“6. Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.”

A contention was made before us that when the State Government gives consent for CBI to investigate any offence within the area of the State it would be permissible for the Magistrate to direct the officer of CBI to conduct such investigation. What is envisaged in Sections 5 and 6 of the Delhi Act is not one of conferring power on a Magistrate to order CBI to conduct investigation in exercise of Section 156(3) of the Code.

14. True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to CBI to investigate in certain cases, (vide *Kashmeri Devi v. Delhi Admn.* [1988 Supp SCC 482] and *Maniyeri Madhavan v. Sub-Inspector of Police* [(1994) 1 SCC 536]. A two-Judge Bench of this Court has by an order dated 10-3-1989, referred the question whether the High Court can order CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.”

(Emphasis supplied)

**20. In *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409,**

Hon'ble Supreme Court has again held that Magistrate cannot order investigation by C.B.I., holding as follows :



“31. No doubt the Magistrate cannot order investigation by CBI vide *CBI v. State of Rajasthan* [(2001) 3 SCC 333] but 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.”

21. The question involved was dealt with by Hon’ble Supreme Court in **State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571**, at length and it was held as follows:

***Conclusions***

68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the



basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.



(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.”

(Emphasis supplied)

**22. In Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762,**

Hon’ble Supreme Court has again held that Constitutional Courts are vested with power of transferring investigation from one agency to another, holding as follows:

“43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.”

**23. Similar view has been held by Hon’ble Apex Court in**



**K.V. Rajendran v. Supt. of Police, (2013) 12 SCC 480,**

holding as follows :

“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 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.”

(Emphasis supplied)

**24. In Chandra Babu @ Moses v. State through Inspector of Police & Ors., (2015) 8 SCC 774,** Hon’ble Supreme Court has again reiterated that Chief Judicial Magistrate has no power to direct another agency to investigate, holding as follows:

“22. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.”



**25. In Dharam Pal v. State of Haryana, (2016) 4 SCC 160**, Hon'ble Supreme Court has again held the view that Constitutional Courts can direct for investigation or further investigation by any other agency. The relevant paragraph of the judgment reads as follows :

“**24.** Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.”

(Emphasis supplied)

**26.** Referring to and relying upon **Chandra Babu Case** (supra) and **Vinay Tyagi Case** (supra), Karnataka High Court in **State Vs. Smt. Padmavathamma C. @ Padmavathi** (CrI.P. No. 7813 of 2024) vide order dated 08.08.2024 has held that Judicial Magistrate has no power under Section 156(3) Cr.PC to direct any investigation by another agency.

**27.** In **Smt. Padmavathamma C. @ Padmavathi Case** (supra), Crime was registered for the offences punishable under Sections 302, 201, 120B read with Section 34 of the Indian Penal Code and Section 3(1)(s), 3(1)(r) and 3(2)(va) of SC & ST



(POA) Act, 1989. On application of mother of the deceased, learned Judicial Magistrate directed the CID to take up further investigation and make a report within the stipulated period. However, Karnataka High Court set aside the order of learned Judicial Magistrate holding as follows :

“22. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.”

**28.** However, **Gujarat High Court in Ashok Devendra Goyal Vs. State of Gujarat**, (R/SCR.A/8268 of 2019), vide order dated 03.09.2019 has held a contrary view, holding that under Section 156(3) Cr.PC, concerned Judicial Magistrate “has power to direct proper investigation to be done which includes in his discretion recommending change of investigation officer so that proper investigation is done in the matter”. The relevant



part of the judgment reads as follows:

“2. Having heard the submissions made at bar, it appears that the applicant has ventilated grievance in the present application that proper investigation is not done and therefore, made a prayer to entrust the investigation to any other independent investigating agency. Looking to the nature of grievance ventilated in the present application, the remedy of the aggrieved person is to approach the Magistrate concerned under Section-156(3) of the Criminal Procedure Code, 1973. Needless to say that the Magistrate concerned has power to direct proper investigation to be done which includes in his discretion recommending change of investigation officer so that proper investigation is done in the matter.”

(Emphasis Supplied)

29. However, I find that this order has been passed by Gujarat High Court without discussing the relevant statutory provisions and federal features of our Constitution. It has also not taken notice of the limitation of the power of the District Courts, whose power exists only within four corners of enabling statutes and is circumscribed by its language, purpose and legislative intent, whereas Constitutional Courts i.e. Supreme Court and High Courts derive their power not only from the statutes but also from the Constitution and the constitutional power is self sustaining and not contingent upon any act of the legislature, nor can it be abridged or extinguished except through constitutional amendment.

30. Moreover, the order passed by Gujarat High Court in **Ashok Devendra Goyal Case** (supra) is cryptic and contrary to binding judicial precedents.



**31.** However, the matter has now reached Hon'ble Supreme Court vide petition(s) for Special Leave to Appeal (Crl.) No(s). 9442 of 2019 and hence, it is pending consideration of Hon'ble Apex Court.

**Present Case**

**32.** Coming to the case on hand, I find that Kishanganj P.S. Case No. 257 of 2015 was initially registered for offence punishable under Section 307 and other minor Sections of the I.P.C. However, on account of death of the victim subsequently, Section 302 of I.P.C. was also added in the F.I.R.

**33.** It further transpires that another writ petition bearing C.W.J.C. No. 12190 of 2015 was also filed by father of the victim before this Court for proper investigation alleging inaction on behalf of the police. Here, the concerned Superintendent of Police had filed supplementary affidavit stating that six persons had been found to be involved in the commission of the alleged offence and Investigating Officer had been directed to arrest those persons and to take needful steps. Accordingly, the writ petition was disposed of by learned Division Bench of this Court vide order dated 25.01.2017, hoping that Investigating Officer would take appropriate action and submit a report under Section 173 Cr.PC in accordance with



law expeditiously, preferably within six months and in pursuance of this direction, Investigating Officer completed the investigation and submitted charge-sheet dated 27.06.2018 in the Court of learned Chief Judicial Magistrate, Kishanganj.

**34.** It further transpires that the impugned order dated 26.09.2017 was passed by learned Sessions Court while hearing anticipatory bail petition bearing A.B.P. No. 306 of 2017 filed by some of the accused persons. By the impugned order, the petitioner/Central Bureau of Investigation was directed to do independent investigation and sending preliminary investigation report to the Court on or before 30.10.2017.

**35.** From the aforesaid facts and circumstances, it clearly transpires that the impugned order has been passed by learned Sessions Court in complete violation of binding judicial precedents as discussed above. No District Court, be it Sessions Courts or Magisterial Court, has power to change Investigating Agency. It is for the State Government to entrust the investigation to any of the Investigating Agencies or it is only the Constitutional Courts i.e. Hon'ble Apex Court and High Courts, who can, under constitutional power, direct the change of the Investigating Agency or direct Central Bureau of Investigation to take up the matter for investigation or for



further investigation.

**36.** District Courts exercise their power as per enabling statutory provisions. But Section 6 of the Delhi Special Police Establishment Act clearly provides that the consent of the State Government is required to enable any member of Delhi Special Police Establishment to exercise power and jurisdiction in area of that State. However, the constitutional power of Supreme Court and High Courts are not circumscribed by such statutory provisions of Delhi Special Police Establishment Act and hence, exercising constitutional power under Article 32/ Article 226 of the Constitution, Supreme Court/ High Courts can direct the Central Bureau of Investigation for investigation or further investigation, if the situation so requires. Hence, the impugned order is not sustainable and is liable to be set aside.

**37.** The impugned order is not sustainable also on the ground that learned Sessions Court cannot pass order like the impugned one while exercising bail jurisdiction, which is limited to adjudicating the question whether the petitioner is entitled to get released on bail or not.

**38.** Here, it would be profitable to refer to **Rambalak V. State of U.P., 2026 INSC 511**, decided by Hon'ble Supreme Court on 19.05.2026, wherein Hon'ble Apex Court has set aside



the direction of Allahabad High Court, issued by the Court while hearing regular bail petition under Section 439 Cr.PC.

**39.** In the said case, Allahabad High Court had directed the trial Court to issue summons under Sections 62 and 69 Cr.PC and also take coercive measures as against those persons who delayed or impeded the proceedings.

**40.** In the **State of Uttar Pradesh v. Anurudh and Anr. (AIROnline 2026 SC 105, 2026 SCC OnLine SC 40)** also Hon'ble Supreme Court had set aside the judgment of Allahabad High Court which was passed by the Court while hearing a bail petition. In that judgment, Allahabad High Court had adjudicated issue regarding age of the victim, besides granting bail to the accused. Here, Hon'ble Apex Court held that the constitutional power cannot overshadow the statutory power, enlarging its scope beyond what has been envisaged by the statute. Expressing in other words, Hon'ble Apex Court held that while both powers - constitutional and statutory rest with the High Court, one power cannot usurp the ambit of another, unless otherwise permitted by law.

**41.** In **Union of India v. Man Singh Verma (2025 SCC OnLine SC 456)** also Hon'ble Supreme Court had set aside the order of Allahabad High Court granting compensation of



Rs.5,00,000/- for wrongful confinement as the order was passed while exercising bail jurisdiction, and not writ jurisdiction.

**42.** Hence, the impugned order dated 26.09.2017 passed by learned Sessions Court, Kishanganj in A.B.P. No. 306 of 2017 in connection with Kishanganj P.S. Case No. 257 of 2015, is set aside allowing the writ petition.

**43.** However, the legal representatives of the victim are at liberty to pursue legal remedy for change of Investigating Agency for further investigation/reinvestigation as per law by filing appropriate proceeding before competent Court.

**(Jitendra Kumar, J.)**

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