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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(201)

CRM-M-3736-2025 (O & M)
Reserved on: 26.05.2026
Date of Pronouncement:01.07.2026
Date of Uploading: 02.07.2026

Kusum Rani and anr. Petitioners

V/s

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aditya Sanghi, Advocate,
Mr. ManikMidha, Advocate,
Mr. Karan Duggal, Advocate,
for the petitioners.

Mr. Vipul Sherwal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 528 BNSS, 2023 is for the issuance of directions for further investigation in FIR No.283 dated 12.08.2024 under Sections 22(C) of the NDPS Act registered at Police Station Adampur, District Hisar, Haryana from the respondent No.7-CBI or any other investigating agency.

2. The brief facts of the case as emanating from the pleadings are that the investigating agency received secret information at about 9.00 p.m.

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on 11.08.2024 that Lovkesh Kumar son of Subhash was selling intoxicating tablets and could be apprehended. Based on the information, compliance of Section 42 of the NDPS Act was made and the police team reached the spot. On observing the police vehicle, the suspect attempted to flee away but was apprehended. He identified himself as Lovkesh Kumar son of Subhash and after due compliance of Section 50 of the Act, he was searched. The recovery of 900 tablets of of Diphenoxylate Hydrochloride and Atropine Sulphate was effected from him. The present FIR No.283 dated 12.08.2024 under Sections 22(C) of the NDPS Act, Police Station Adampur, District Hisar, Haryana (Annexure P-1) was registered at about 1.00 a.m. on 12.08.2024. Later, on the disclosure statement of Lovkesh Kumar, co-accused Deepak was apprehended. He (Deepak) disclosed that he had procured intoxicating tablets from Sanjay alias Baban Madan. Pursuant to the conclusion of the investigation, the report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) was submitted before the Special Court at Hisar against Lovkesh Kumar (petitioner No.2) and Deepak. A copy thereof is appended as Annexure P-2 to the petition.

3. Kusum Rani (petitioner No.1), the wife of Lovkesh Kumar made various representations to the senior authorities claiming that her husband had been falsely implicated in the aforementioned FIR. A copy of one such representation dated 22.10.2024 made to the Director General of Police, Haryana, is attached as Annexure P-3 to the petition. She claimed



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that Lovkesh Kumar was abducted by the CIA-II police officials on 11.08.2024 at 5.38 a.m. from their home in village Kabrel, District Hisar. The abduction was captured on CCTV cameras. She alongwith her mother-in-law, a friend of her husband alongwith the village Sarpanch visited the police station that morning at about 8.00 a.m. but the police officials provided no explanation and continued to detain Lovkesh unlawfully. They manipulated the records to show his arrest later. A prayer was made for the constitution of an SIT for fair investigation. The application was supported by CCTV footage, mobile tower data and other evidence.

4. On the basis of the representation, an enquiry into the allegations was initiated by the Superintendent of Police, Hisar. The statement of the petitioner No.1-Kusum Rani (Annexure P-4) was also recorded wherein she reiterated her version in her complaint. The statement of SI Inder Singh/respondent No.5 (Annexure P-5) who was the first investigating officer was also recorded wherein he supported the factum of the genuineness of the FIR and the investigation. He stated that, in fact, ASI Ram Mehar had brought Lovkesh Kumar to the Special Staff, Hisar at approximately 5.00-6.00 a.m. on 11.08.2024 for interrogation. The interrogation was concluded by 11.00 a.m. after which Lovkesh Kumar was released and the sequence of evidence was documented in *Roznamcha* reports No.03 and 08. The statement of ASI Ram Mehar/respondents No.6 (Annexure P-7) was also recorded wherein he sanctified the version of SI

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Inder Singh and further stated that Lovkesh Kumar was released from custody at approximately 11.00 a.m. and was handed over to his acquaintance Ramesh Kumar son of Jagdish who presented himself at the Special Staff, Hisar claiming to be a friend of Lovkesh Kumar. Both Lovkesh Kumar and Ramesh Kumar had provided written acknowledgment of the release by appending their signatures on the record. ASI Ram Mehar/respondent No.6 affirmed the investigation conducted. Similarly, the statement of Ramesh Kumar son of Jagdish was recorded wherein he vehemently denied the version that the custody of Lovkesh Kumar had been handed over to him at about 11.00 a.m. on 11.08.2024. On the contrary, he stated that he had gone to the police station alongwith the wife of Lovkesh on 12.08.2024 at about 8.30 a.m. with food where his signatures had been obtained on the premise that it was a formality to obtain signatures of anyone wishing to see a prisoner. He denied the factum of the custody of Lovkesh having been handed over to him. A copy of the statement of Ramesh Kumar is attached as Annexure P-8 to the petition.

5. Based on the aforementioned statements and the record, the Superintendent of Police, Hisar recommended to the Superintendent of Police, Dabwali to take disciplinary action against ASI Ram Mehar/respondent No.6 but only to the extent that there was a lapse in not handing over Lovkesh to the members of his immediate family thereby violating established protocols for the detention and release of individuals.



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A copy of the aforesaid recommendation is attached as Annexure P-9 to the petition.

6. As no action was taken by the investigating agency other than disciplinary action recommended against ASI Ram Mehar/respondent No.6, the petitioners filed the instant petition seeking further investigation.

7. On the filing of the instant petition and notice being issued, two separate replies dated 26.05.2025 and 06.08.2025 by way of affidavits of Kishori Lal, HPS, Deputy Superintendent of Police, Agroha on behalf of respondents No.1 to 4 have been filed to the effect that the investigation has been conducted in a fair manner, that Lovkesh Kumar had been detained but released to Ramesh Kumar and that the show cause notice issued to ASI Ram Mehar/respondent No.6 was seen and filed by the Superintendent of Police, Dabwali.

8. Meanwhile, on 13.03.2026, this court passed the following order:-

The counsel for the State at the very outset submits that in view of the averments made in the petition and the findings arrived at by Higher Police Officials, an application for further investigation shall be moved before the appropriate Court within a period of three days. The further investigation will be concluded within a period of 4 weeks after which an appropriate report shall be submitted before the Court of competent jurisdiction.

Adjourned to 24.04.2026.

In the meantime, further proceedings shall remain stayed.



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A photocopy of this order be placed on the file(s) of other connected case(s).

9. Based on the aforementioned order, an application was moved for further investigation before the Trial Court on 17.03.2026 and was allowed on the same day. An SIT was constituted which submitted a report to the Trial Court on 15.04.2026. Thereafter, another SIT was constituted by the Superintendent of Police, Hisar comprising of Mayank Mudgil, IPS, ASP, Hisar, Kishori Lal, HPS, DSP Agroha, Inspector Vikash, Addl. SHO, PS Adampur and ASI Rohtash No.1104/HSR, PS Adampur. The said SIT concluded the investigation of the case on 22.05.2026 in compliance of the order dated 13.03.2026 passed by this Court. The relevant extract of the said report is as under:-

As per the directions of the Hon'ble Punjab & Haryana High Court and Office Order No. 7001-05 dated 01.05.2026 of SP Hisar, the SIT comprising Shri Mayank Mudgil IPS (ASP Hisar), Shri Kishori Lal HPS DSP Agroha, Inspector Vikas Kumar Additional SHO Adampur, and SI Rohtash Kumar conducted reinvestigation. During investigation, petitioner Kusum Rani and accused Lovkesh were examined on 20.05.2026. Pen drives and video footage were reviewed. Earlier SIT reports and seizure videos were thoroughly examined. The recovery of narcotic tablets from accused Lovkesh was found to have been made in the presence of Gazetted Officer Shri Ram Niwas Tehsildar Adampur. If the recovery had been false or doubtful, the accused could have informed the Gazetted Officer at that time, which he did not.



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The WhatsApp call recording produced by accused Lovkesh merely showed a call from mobile number 9050933333 appearing on the screen, but the accused did not confirm to any allegations made over the call. Therefore, the allegations made by the accused could not be substantiated. From the investigation conducted so far, the statements of petitioner Kusum and accused Lovkesh, and the material produced by them, no evidence has emerged to establish that the FIR was false, or that accused Lovkesh was falsely implicated. However, the SIT found the handing over of accused Lovkesh to his family members to be suspicious, though ASI Rammehar denied any negligence in this regard.

Challan against accused Lovkesh and Deepak had already been filed before the Hon'ble Court on 04.11.2024, and charges were framed against them on 13.11.2024.

Submitted for your kind perusal.

-sd-

(Insp. Vikas)

-sd-

DSP Agroha

-sd-

Mayank Mudgil (I.P.S.)

ASP, Hisar.

Dated: 16.05.2026

-sd-

ASI Rohtash 1104/HSR

10. The learned counsel for the petitioner contends that it is not in doubt that Lovkesh Kumar was apprehended from his village at 5.38 a.m. on 11.08.2024 but was shown to have been arrested only on 12.08.2024. The explanation that post his detention in the morning of 11.08.2024, he was

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released at 11.00 a.m. on the same day to Ramesh Kumar cannot be believed. Ramesh Kumar has categorically and unequivocally stated that he had only accompanied the petitioner No.1-Kusum Rani to meet her husband Lovkesh Kumar on the morning of 12.08.2024 to give him food and at that time certain signatures were taken on the premise that all visitors visiting a prisoner were to append their signatures. The factum of Lovkesh Kumar being taken away on 11.08.2024 at 5.38 a.m. is not denied as there is a CCTV camera recording of the same. All enquiry reports have unequivocally found that Lovkesh Kumar was picked up at 5.38 a.m. on 11.08.2024 but released on the say day by ASI Ram Mehar/respondent no.6 to Ramesh Kumar which is a violation of settled norms as the prisoner ought to have been released to his family member. The stand taken by the investigating agency is categorically denied by Ramesh Kumar. The DDR entries have been fabricated. It does not stand to reason that Lovkesh Kumar who was apprehended in the morning of 11.08.2024 and released on the same day at 11:00 a.m. would then, commit an offence under the NDPS Act on the same night. The petitioners have not sought quashing of the FIR but only pray for a further investigation by an independent agency since the allegations have been levelled against the police officials. If the CBI comes to the same conclusion of the *prima facie* culpability of Lovkesh Kumar, the consequences will follow. On the other hand, in case further investigation leads to the exoneration of Lovkesh Kumar, the Trial Court is



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at liberty to examine the inculpatory report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) (Annexure P-2) and the exculpatory report under Section 173(8) Cr.P.C. (Section 193(8) BNSS) and proceed to charge/discharge the accused in terms of the judgment in '*Vinay Tyagi versus Irshad Ali @ Deepak and others 2013(2) RCR (Criminal) 197*'. A conviction under the NDPS Act entails a minimum sentence of 10 years rigorous imprisonment and therefore, at the very least the investigating agency ought to conduct a fair investigation, which has not been done in the present case. He, therefore, prays that further investigation be ordered to be conducted by the CBI who would be at liberty to file an appropriate report under Section 173(8) Cr.P.C. (Section 193(8) BNSS) in Court. Reliance is placed on the judgment in the cases of *State of West Bengal & others Versus The Committee for Protection of Democratic Rights West Bengals & others, 2010(2) R.C.R. (Criminal) 141*, *Rubabbudin Sheikh Versus State of Gujarat & others, 2010(1) R.C.R. (Criminal) 738*, *State of Punjab Versus Central Bureau of Investigation & others, 2011(4) R.C.R. (Criminal) 152*, *E. Sivakumar Versus Union of India & others, 2018(3) R.C.R. (Criminal) 111*, *Disha Versus State of Gujarat & others, (2011) 13 SCC 337* and *Guru Nanak Vidya Bhandar Trust Versus State of Punjab & others, 2023 NCPHHC 137868*.

11. The learned counsel for the State, on the other hand, contends that the petitioner and his co-accused are habitual offenders. The petitioner



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No.2/Lovkesh Kumar was taken for interrogation on 11.08.2024 at about 5.38 a.m. but was released to Ramesh Kumar. *Roznamcha* reports No.03 and 08 bear testimony to the fairness of the investigation conducted which has culminated in the filing of a report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) (Annexure P-2) against Lovkesh Kumar. The investigation conducted so far by various police officials including by an SIT constituted pursuant to the order dated 13.03.2026 has found that, though, there is a procedural lapse in handing over of custody of accused/Lovkesh Kumar to Ramesh Kumar as against his family members, the allegations levelled by accused/Lovkesh Kumar that he was abducted and contraband planted have not been substantiated and no evidence has emerged to establish that the FIR or the consequential investigation was false or that Lovkesh Kumar was falsely implicated. He, therefore, prays that the present petition be dismissed.

12. I have heard the learned counsel for the parties.

13. The judgments referred to by the learned counsel for the petitioners as regards the different facets of a CBI investigation are discussed hereinbelow:-

In *State of West Bengal* (supra), the Hon'ble Supreme Court held that Courts had the power to direct the CBI to conduct an investigation into an offence and the consent of the State Government was not required. The relevant extract of the judgment is reproduced hereinbelow:-



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“44. 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,



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the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the 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 the 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 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 the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 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 2A 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, court would be



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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, the 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 the 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.

45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this



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Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. 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. In so far as the question of issuing a direction to the 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 extra-ordinary 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 the 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.”

(emphasis supplied)



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In **Rubabbudin Sheikh** (supra), the Hon'ble Supreme Court held that an investigation by the CBI could be ordered even after the report under Section 173(2) Cr.P.C. stood submitted. The relevant extract of the judgment is reproduced hereinbelow:-

“54. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”

(emphasis supplied)

In **State of Punjab** (supra), the Hon'ble Supreme Court held that an investigation by the CBI could be ordered even after the report under Section 173(2) Cr.P.C. stood submitted. The relevant extract of the judgment is reproduced hereinbelow:-

“13. Sub-section (1) of Section 173 of the Criminal Procedure Code provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of



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Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of Section 173, a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re- investigation in respect of an offence under sub-section (8) of Section 173 of the Criminal Procedure Code.

14. Section 482 of the Criminal Procedure Code, however, states that nothing in the Criminal Procedure Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Criminal Procedure Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Criminal Procedure Code do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Criminal Procedure Code, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Criminal Procedure



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Code for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

15. We find support for this conclusion in the following observations of this Court in Mithabhai Pashabhai Patel v. State of Gujarat (supra) cited by Mr. Dhawan :

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar, [(2008)5 SCC 413] opined as under : (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation."

"15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under



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Section 482 of the Code of Criminal Procedure or otherwise. The pre- cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Criminal Procedure Code have to exercise the powers within the four corners of the Criminal Procedure Code and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Criminal Procedure Code and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Criminal Procedure Code in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Criminal Procedure Code for securing the ends of justice.

16. This position of law will also be clear from the decision of this Court in Nirmal Singh Kahlon v. State of Punjab & Ors. (supra) cited by Mr. Raval. The facts of that case are that the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL under Article 226 of the Constitution passed orders on 07.05.2003 directing investigation by the CBI into the case as it thought that such investigation by the CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon



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challenged the decision of the High Court before this Court contending inter alia that Sub-section (8) of Section 173 of the Criminal Procedure Code did not envisage an investigation by the CBI after filing of a charge sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court. Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in Vineet Narain case that once the investigation is over and charge sheet is filed the task of the monitoring Court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons :

"63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India [(2007) 1 SCC 110], loses all significance".

Though the decision of this Court in Nirmal Singh Kahlon v. State of Punjab & Ors. (supra) is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 of the Criminal Procedure Code is exercised to direct investigation of a case by an independent agency to secure the ends of justice.

(emphasis supplied)



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In *E. Sivakumar* (supra), the Hon'ble Supreme Court held that an accused did not have a right of hearing before an investigation by the CBI was ordered. The relevant extract of the judgment is reproduced hereinbelow:-

“8. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat and Ors., 2014(2) RCR (Criminal) 19 : (2014) 4 SCC 626, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in the case of Narender G. Goel v. State of Maharashtra and Anr., 2010(5) RCR (Criminal) 616 : (2009) 6 SCC 65, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.

9. Our attention was invited to the observations made in paragraph 73 in the State of Punjab (supra), which in turn adverts to the exposition in D. Venkatasubramaniam & Ors. v. M.K. Mohan Krishnamachari & Anr., 2009(4) RCR (Criminal) 318 : (2009) 10 SCC 488, wherein it has been held



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that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.

*10. The third contention urged by the petitioner, that neither special reasons have been recorded nor the status report of the investigation already done by the Vigilance Commission has been considered, also does not commend us. As noted earlier, the High Court in the impugned judgment has exhaustively analysed all aspects of the matter as can be discerned from paragraphs 84 to 87, 91 to 97, 100 to 107; and again in paragraphs 141-144 which have been extracted hitherto. In our opinion, in the peculiar facts of the present case, the High Court has justly transferred the investigation to CBI after due consideration of all the relevant aspects, which approach is consistent with the settled legal position expounded in the decisions adverted to in the impugned judgment, including the decision in *Subrata Chatteraj v. Union of India and Ors.*, 2014(3) RCR (Criminal) 419 : (2014) 8 SCC 768, which predicates that transfer of investigation to CBI does not depend on the inadequacy of inquiry/investigation carried out by the State police. We agree with the High Court that the facts of the present case and the nature of crime being investigated warrants CBI investigation.*



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11. In the case of Dharam Pal v. State of Haryana and Ors., 2016(1) RCR (Criminal) 926 : (2016) 4 SCC 160, this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in public at large and the investigating agency. The dictum in paragraph 24 and 25 of this reported decision is quite instructive which read thus:

"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.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without



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any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idie fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".



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(emphasis supplied)

In *Disha* (supra), the Hon'ble Supreme Court enumerated the circumstances in which an investigation by the CBI could be ordered. The relevant extract of the judgment is reproduced hereinbelow:-

“21. Thus, it is evident that this Court has transferred the matter to CBI or any other special agency only when the Court was satisfied that the accused had been very powerful and influential person or State authorities like high police officials were involved and the investigation had not proceeded with in a proper direction or it had been biased. In such a case, in order to do complete justice and having belief that it would lend the final outcome of the investigation credibility, such directions have been issued.”

(emphasis supplied)

In *Guru Nanak Vidya Bhandar Trust* (supra), this Court held as under:-

“12. In the considered opinion of this Court the shifting stand of investigating agency doesn't augur well that too when the matter is pending before this Court. It can't be taken lightly more so keeping in view the mode and the manner in which the process of law has been abused. This shows that neither the offence is routine nor the perpetrator can be taken lightly.

13. At the heart of the controversy lies a huge chunk of land owned by a Charitable Trust situated at the periphery of city of Chandigarh which has now become a prized



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possession keeping in view the exponential rise in prices of land in the area.

14. The Apex Court in the case of 'Pratibha Manchanda & Anr. v. State of Haryana Criminal Appeal No.1793 of 2023 arising out of SLP (Crl.) No.8146 of 2023, decided on 7th of July, 2023 echoed the same sentiment observing that :

"25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

26. While we do not wish to comment further on this issue, we believe it is necessary to foil any trace of organised crime perpetrated by land mafia, through an unimpaired and unobstructed investigation."

15. The present case which started as one of the same specie has attained alarming turn. The abuse of process of law calls for a detailed investigation in the present case so that the trust of the litigants in the system doesn't get eroded. The obtrusion that impinges upon the system needs to be nipped in the bud and the vigil needs to be on the high against any pollutant. Since an attempt has been made to misuse the



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process of law and to make the legal system a party to the misadventure, it doesn't merely remain an offence of simple forgery. The system can't afford self inflicted scars and thus a thorough and unimpaired investigation from an independent agency is required.

16. Constitution Bench in 'State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others' (2010) 3 SCC 571 while answering the question 'whether High Court in exercise of its jurisdiction under Article [226](#) of the Constitution of India can direct the Central Bureau of Investigation established under The Delhi Special Police Establishment Act, 1946 to investigate a cognizable offence, which is alleged have taken place within the territorial jurisdiction of a State without the consent of the State Government?', provided necessary guiding light while observing that :

"Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

17. The aforesaid observations came with necessary caution :

"This extra-ordinary 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



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may be necessary for doing complete justice and enforcing the fundamental rights."

18. Gazing at the facts of the present case from the aforesaid guiding light and the caution, this Court finds that the seriousness of the allegations levelled in the present case, the manner in which legal process has been employed to serve the illegal designs of the troublemakers and the conduct of the investigating agency in shifting its stand every now and then, this is one of those cases which calls for a thorough and detailed investigation from an independent agency. In the words of Supreme Court no offender can be left with the feeling that he can get away with any crime which tarnishes the image not only of the investigating agency but judicial system as well (Shahid Balwa v. Union of India (2014) 4 SCC 687).

19. In view of above, respondent No.2 (Central Bureau of Investigation) is directed to conduct investigation in the present case and FIR No.133 dated 10th of March, 2022 ibid.

20. This Court is quite sanguine that Central Bureau of Investigation shall conclude the investigation expeditiously preferably within six months.

21. Till the investigation is concluded, Trial Court is directed not to proceed further.

22. The present petition is disposed off accordingly.

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23. This is an application seeking impleadment filed by the accused.



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24. As per settled law accused have no locus so far as the transfer of investigation/inquiry is concerned.

25. Resultantly, the application is dismissed.”

(emphasis supplied)

14. The judgments referred to by the learned counsel for the petitioners leave no doubt whatsoever that this Court can order an investigation by the CBI even after a report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) is submitted and the accused need not be heard before such an order is passed. All that the Court is required to examine before issuing such directions is that the accused party/complainant party were powerful and well-connected and that the investigation had been conducted in a biased manner so as to weaken the prosecution case, demolish it or falsely implicate the accused. Such directions could also be issued in cases where there are interstate ramifications. Further, ordering of such an investigation by the CBI would not amount to monitoring of the same as the CBI is free to conduct such an investigation in accordance with law.

15. In the present case, further investigation by the CBI is sought by the accused claiming false implication. It is the admitted position that Lovkesh Kumar was taken away for interrogation in the early hours on 11.08.2024. However, his arrest has been shown only post mid-night on 12.08.2024. The explanation given by the investigating agency that Lovkesh Kumar had been released at 11:00 a.m. on 11.08.2024 to one Ramesh Kumar



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and thereafter, arrested at night, has itself been found to be in violation of settled procedure by various police officers including an SIT constituted post the order of this Court dated 13.03.2026. However, the findings of various police officers including the SIT which while holding that the release of Lovkesh Kumar to Ramesh Kumar amounted to a procedural violation but the investigation itself was conducted in a fair and impartial manner cannot be accepted at its face value in view of the categorical statement of Ramesh Kumar that the custody of Lovkesh Kumar was never handed over to him and he had signed certain papers only on the morning of 12.08.2024 when he alongwith Kusum Rani (petitioner No.1), wife of Lovkesh Kumar had gone to visit Lovkesh Kumar at the police station. Therefore, the prosecution version appears to be somewhat doubtful. In fact, where any person appears to have been falsely nominated as an accused by the police in a case where the minimum sentence is 10 years rigorous imprisonment then, for a fair and impartial investigation to take place it is imperative that the investigation should be handed over to an independent agency for the unvarnished truth to surface.

16. In view of the above, I find considerable merit in the present petition. Therefore, the order framing charges dated 13.11.2024 is quashed. Further investigation of the present case is handed over to respondent No.7/CBI. The investigating agency shall conduct a further investigation and make an endeavour to conclude the same within a period of 03 months.



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Pursuant thereto it is at liberty to file a supplementary report under Section 173(8) Cr.P.C. (Section 193(8) BNSS). The first report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) (Annexure P-2) and the supplementary report under Section 173(8) Cr.P.C. (Section 193(8) BNSS) submitted by the CBI shall both be considered by the Trial Court which shall, thereafter, proceed in accordance with law while keeping in view the dictum of law laid down in '*Vinay Tyagi versus Irshad Ali @ Deepak and others 2013(2) RCR (Criminal) 197*'.

17. The present petition stands disposed of in the above terms.

18. The pending application(s), if any, shall stand disposed of accordingly.

July 01, 2026
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No