

ATU

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5609 OF 2021

Rabia Khan

.. Petitioner

Versus

- 1. Union of India,**
Through Ministry of Personnel,
Public Grievances and Pensions,
Government of India,
North Block, New Delhi – 110 001.
- 2. Central Bureau of Investigation,**
Through its Special Crime Branch,
Mumbai, CGO Complex, 'A' Wing,
8 Floor, Belapur, Navi Mumbai – 400614.
- 3. The State of Maharashtra,**
Through Juhu Police Station,
V M Road, Near Kalaniketan,
Vile Parle West, Yamuna Nagar,
Nehru Nagar, Juhu, Mumbai – 400056.
- 4. Mr. Sooraj Aditya Pancholi,**

.. Respondents

Mr. Shekhar Jagtap a/w. Ms. Sairuchita Chowdhary, Ms. Rhea Francis,
Mr. Shubham Gade, Advocates i/by J. Shekhar & Co. for Petitioner.

Mr. H.J. Dedhia, APP for State.

Mr. Sandesh Patil a/w. Mr. Chintan Shah, Advocates for Respondent
Nos.1 and 2.

Mr. Subodh Desai a/w. Mr. Praful Soni, Advocates i/by Prasanna Patil
for Respondent No.4.

Mr. Vishwas Kumar Meena, Dy. Supdt. of Police, CBI present.

CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.
DATE : 12th September 2022.

JUDGMENT

1. Rule. Rule made returnable forthwith and by consent of learned Advocates for the parties herein, taken up for final hearing.

2. By this Criminal Writ Petition, Petitioner has prayed for the following reliefs:-

“A. Call upon the records and proceedings of the Special Case No.83 of 2014 pending before the Learned Special Judge, (CBI) for Greater Bombay, Bombay;

B. Issue a writ of certiorari and/or any other appropriate writ and/or direction and/or order and thereby quash and set aside the impugned common Order passed below Exhibit 204 and 209 by the Learned Special Judge (CBI) for Greater Bombay at Bombay in Special Case No.83 of 2014, dated 16.09.2021;

C. Issue a writ of mandamus and/or any other appropriate writ and/or direction and/or order and thereby direct the Respondent to formulate a Special Investigation Team headed by its Director or Joint Director, for further investigation in to the cause of death of the victim;

D. Issue a writ of mandamus and/or any other appropriate writ and/or direction and/or order and thereby direct the Respondent No.2 to carry out the necessary further investigation in the case based upon the Legal Review Report dated 01.05.2019.”

3. On 22.06.2022, after hearing the Petitioner's Advocate, this Court passed the following Order:-

“ The learned Counsel for the Petitioner states that in this Petition the Petitioner is not pressing prayer Clause ‘A’ and ‘B’ that challenges the order passed by learned Special Judge and will independently press for reliefs in prayer Clause ‘C’ and ‘D’.

2. *List the Petition under the caption “For Direction” on 29 June 2022.”*

4. Prayer Clause ‘C’ seeks a direction to the Respondents (to be read as “Respondent No.2”) to formulate a Special Investigation Team (for short “**SIT**”) for further investigation into the cause of death of the victim and prayer clause ‘D’ in furtherance thereof calls upon the Court to consider Legal Review Report dated 01.05.2019 for grant of the reliefs.

5. Before we advert to the facts of the present case, it will be apposite to state at the outset that by common Order dated 16.09.2021 passed by the learned Trial Court below Exhibit-204 and 209, Trial Court has not only considered the aforementioned two reliefs prayed for by the Petitioner but also adjudicated thereupon and passed a reasoned and cogent Order. The Order dated 16.09.2021, as seen, is challenged by Petitioner vide prayer clause 'B' above, however Petitioner has decided against pressing for the said relief. Respondent No.2 – CBI has filed its Affidavit-in-Reply dated 12.09.2022. Respondent No.4 - accused has also filed his Affidavit-in-Reply dated 26.08.2022. State is represented by learned APP.

6. We have heard the learned Advocates appearing for the respective parties and with their assistance perused the entire record.

7. It is common ground by Respondents that trial before the

learned Special Judge, (CBI) for Greater Bombay in Special Case No.83 of 2014 i.e. the Trial Court has commenced. It is seized of the matter. Across the bar, it is informed that evidence of some of the prosecution witnesses has been completed. Petitioner i.e. PW-16 being the prime witness is presently being cross examined before the Trial Court.

8. In the above background, relief for seeking further investigation after the final chargesheet has been filed and trial of the case is already in progress, should not necessarily be granted but there are certain issues which need to be highlighted while adjudicating the present Writ Petition. The necessity for highlighting these issues assumes importance and significance since the grounds on which the present Petition has been filed need to be answered. Petitioner has openly expressed her skepticism in the criminal justice system and the investigating agency of our country and hence we find it necessary to deal with the same.

Broadly speaking the bane of the Petitioner is that the Petitioner is alleging that the trial has commenced before the Trial Court despite major flaws in the investigation which would lead to grave miscarriage of justice. In the facts and circumstances of the present case and more particularly what has transpired between 2014 and 2019 when the present Writ Petition was filed, we do not think so and for good reasons would like to deal with the aforementioned

notion of skepticism alleged by Petitioner.

9. It would be appropriate for us to note the following facts/list of dates and events which are germane for dealing with the petition before us.

9.1. Petitioner is the first informant to C.R. No.204 of 2013 dated 10.06.2013 registered at Juhu Police Station, Mumbai for offence punishable under Section 306 of the Indian Penal Code, 1860 (for short “IPC”) and subsequently re-registered as RC/7/S/2014 by Respondent No.2 – CBI. Section 306 IPC relates to abetment of suicide and states that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Respondent No.4 is the original accused in the said crime.

9.2. On 03.06.2013, Petitioner found her daughter hanging on the ceiling fan in her bedroom. An accidental death being ADR No.61 of 2013 was registered with Juhu Police Station under Section 174 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”). Respondent No.3 carried out initial investigation, prepared spot panchanama, inquest panchanama, sent the body for postmortem and obtained the postmortem report. After completing investigation, chargesheet came to be filed.

9.3. On 10.06.2013, Respondent No.3 registered CR under Section 306 IPC against Respondent No.4 on the basis of complaint of Petitioner.

9.4. On 01.10.2013, Petitioner filed Writ Petition No.3553 of 2013 in this Court seeking direction for transfer of the said CR to the Respondent No.2 – CBI.

9.5. By an Order dated 23.10.2013, this Court directed recording of statement of the Petitioner by the Investigating Officer and take into consideration the material referred to and relied upon by the Petitioner. This Court also recorded that, the Petitioner would be satisfied if this exercise was undertaken and did not press for transfer of investigation to any other agency. It was further held that since the criminal law had been set in motion, in the event if further investigation is carried out after recording statement of Petitioner it was always open to Petitioner to invoke appropriate powers of the competent criminal Court, including provisions of Sections 216 and 319 of Cr.P.C. The Writ Petition was accordingly disposed of.

9.6. Investigating Officer completed the investigation and on 16.01.2014 filed the final report under Section 173(2) of Cr.P.C. i.e. (first chargesheet) under Section 306 of IPC in the Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai. On the same day, the learned Metropolitan Magistrate, 10th Court took cognizance

and was pleased to commit the case to the learned Trial Court.

10. On 06.03.2014, Petitioner filed Criminal Writ Petition No.919 of 2014 in this Court, expressing dis-satisfaction with the chargesheet filed by Respondent No.3. In this Writ Petition, Petitioner prayed for the following reliefs:-

- a) *That this Hon'ble Court be pleased to issue writ of certiorari or mandamus or any other writ, order or direction calling for the record and proceedings of the Sessions Case no. 83 of 2014 filed by the Juhu Police Station in connection with the F.I.R. bearing no. 204 of 2013 and upon examining the legality, correctness, and propriety of the investigation conducted so far, be pleased order formation of a Special Investigating Team for conducting further/fresh investigation in the matter keeping in view a possibility of murder with direction that the investigation be reported to this Hon'ble Court;*
- b) *That in the alternative, this Hon'ble Court be pleased to issue writ of certiorari or mandamus or any other writ, order or direction calling for the record and proceedings of the Sessions Case bearing no. 83 of 2014 filed by the Juhu Police Station in connection with the F.I.R. bearing no. 204 of 2013 and upon examining the legality, correctness, and propriety of the investigation conducted so far, be pleased order further/fresh investigation at the hands of Central Bureau of Investigation keeping in view a possibility of murder with direction that the investigation be reported to this Hon'ble Court;*
- c) *That this Hon'ble Court be please to issue necessary directions so as to enable the Federal Bureau of Investigation, USA to assist the Indian Investigating Agency conducting the investigation in the present matter."*

11. As can be seen, Petitioner as far back as in 2014 sought direction for further investigation by an independent agency such as Federal Bureau of Investigation (USA) and formation of Special Investigation Team (SIT) with a specific direction to reinvestigate the

case or to carry out further investigation and prove the matter from the point of view of homicidal death of her daughter (victim) rather than suicidal death and sought transfer of the said CR to the proposed SIT for further investigation in the case. Thus the grievance of the Petitioner for seeking the aforesaid reliefs started in 2014 in this Court.

12. On 03.07.2014, after hearing the parties at length this Court without expressing any opinion on the merits of the case and to seek independent investigation without being influenced by the observations made by the Court, directed Respondent No.2 – CBI to carry out further investigation and submit a report to the concerned Trial Court with a specific direction to the CBI, to consider whether the death of victim was a case of suicide or homicide and if CBI came to a conclusion that it was a homicidal death then, further investigation be held to trace the perpetrator of the crime and accordingly action be taken. Case was re-registered by Respondent No.2 – CBI as R.C.No.7/S/2014 and further investigation was carried out.

13. After completing investigation, on 09.12.2015 CBI filed Supplementary Final Investigation Report (supplementary chargesheet). Reading of this supplementary chargesheet takes us to the investigation carried out by CBI. *Prima facie* reading chargesheet, it is observed that a detailed investigation has indeed been carried out

by CBI from all possible angles to comply with the Order dated 03.07.2014 passed by this Court. The final conclusion in this supplementary chargesheet is reproduced below for reference:-

*“ Investigation revealed that, the note written by the deceased Jiah Khan established that the accused Suraj Pancholi ruined her live. The false promises given by the accused to the deceased as mentioned in the said note that **‘You promised me once we made it to one year we would get engaged’**, believing to be engaged made her an emotional attachment towards the accused. The wilful conduct of the accused drove the deceased to commit suicide. Hence, the accused is liable for his actions to be punished for the wilful conduct and abetment of suicide.*

Further, the charge-sheet filed by Juhu Police Station, Mumbai against the above said accused person U/s 306 of IPC, in this case may be treated as part and parcel of this Supplementary Charge-sheet.

*Hence, it is therefore prayed that this Hon’ble Court may kindly take cognizance of the **Supplementary Charge-sheet filed by CBI in this case against Suraj Pancholi S/o Aditya Pancholi U/s 306 of IPC.**”*

14. As seen above, Respondent No.2 – CBI after a through re-investigation concluded that it was a case of suicide under Section 306 IPC and filed the supplementary chargesheet in the Trial Court for trial.

15. On 12.02.2016, Petitioner for the second time on the same ground approached this Court by filing Writ Petition No.669 of 2016 and sought the following reliefs:-

“a) That this Hon’ble Court be pleased to issue writ or certiorari or mandamus or any other writ, order or direction calling for the record and proceedings of the Sessions Case bearing no. 83 of 2014 filed by the Juhu Police Station in connection with the F.I.R. bearing no. 204 of 2013 and upon examining the legality, correctness,

and propriety of the investigation conducted so far, be pleased order formation of a Special Investigating Team for conducting further/fresh investigation in the matter keeping in view a possibility of murder with direction that the investigation be reported to this Hon'ble Court;

- b) That this Hon'ble Court be pleased to issue necessary directions so as to enable the Federal Bureau of Investigation, USA to assist the Indian Investigating Agency conducting the investigation to the present matter;*
- c) During the pendency and hearing of this petition this Hon'ble Court be pleased to stay the further proceedings in the Sessions Case bearing no.83 of 2014 pending on the files of Court of Sessions at Mumbai, Court No.16."*

16. As seen, once again Petitioner approached this Court for seeking identical reliefs on identical/similar grounds as were stated in Criminal Writ Petition No.3553 of 2013. It was freshly allegedly that there was several lacunae in the investigation conducted by Respondent No.3 as well as Respondent No.2 - CBI and Respondent No. 2 had failed to consider the angle of investigation with respect to whether death of victim could be a homicidal death rather than suicidal death.

17. On 09.02.2017, this Court passed a detailed and reasoned Judgment and Order disposing of Criminal Writ No.669 of 2016 along with the companion Criminal Application No.459 of 2016 filed by Respondent No.4. We have perused the Judgment and Order dated 09.02.2017 and find that the reasons given in the said Judgment hold good. The Criminal Writ Petition filed by Petitioner was comprehensively dismissed with observations made for the purpose of

deciding the Writ Petition only. Paragraph Nos.48 to 54 highlight the conclusions arrived at by a co-ordinate bench of this Court for dismissal of the Petition. These paragraphs are reproduced below for reference:-

“48. Thus, the report of the investigation filed in the Trial Court and the affidavit filed in this Court on behalf of the CBI, clearly goes to show that they have again carried out fresh investigation and recorded further statements of the witnesses, including that of Anju Mahendroo, Moin Baig etc. They have also examined the Investigating Officer of the case Smt. Kalpana Gadekar and recorded her statement in respect of alleged lacunae and discrepancies in the investigation carried out by Police. They had also sent the alleged suicide note / letter of the deceased to the Handwriting Expert to re-examine the handwriting and it revealed that it was in the handwriting of the deceased, however, the age of the letter could not be established. According to the CBI, this letter gives reflection about the mind of the deceased inclined towards committing suicide, on account of betrayal in relationship with accused.

49. Even as regards the alleged blood-stains found on the clothes of the deceased and on the mattress from the second bed-room, DNA analysis was done. The affidavit of CBI also reveals the various steps they had taken in carrying out further investigation, so as to ascertain the relations between the deceased and the accused. They had also studied the scene of crime by re-visiting the spot again, particularly the distance between the ceiling and bed, the height of the top, edge of the cot etc., to ascertain whether it was a case of suicide or homicide. Thus, the affidavit detailing the various steps taken by the CBI show that they had carried out various angles of investigation in order to consider the possibility of homicidal death also.

50. In our considered opinion, in such situation, nothing further seems to be achieved by acceding to the request of the Petitioner for constituting Special Investigation Team. Now it will be for the Trial Court to arrive, on the basis of this material, at its own conclusion, as neither it can be the job of the police or of the CBI, nor that of the medical experts to give conclusive opinion whether the death is the result of suicide or homicide. Ultimately, everything depends upon the evidence, which will be brought before the Trial Court. For the present, it is clear that investigation from all the aspects appears to be mostly completed.

51. As regards the authorities relied upon by learned counsel for the Petitioner that of, Bharati Tamang (supra) and Dharam

Pal (supra), though it is true that it is the duty of the Constitutional Court to ensure effective investigation of the case, such duty, as held in the said authorities, is to be exercised only if deficiency in investigation or prosecution is visible or can be transpired by lifting the veil and such duty is to be exercised in exceptional circumstances in order to prevent miscarriage of criminal justice. Here in the case, on the basis of the material collected by both, the police and independent agency, like CBI, we do not find that any deficiency remains in the investigation, which can be removed by ordering further investigation by Special Investigation Team.

52. Now when after an independent agency has carried out thorough investigation, it would be futile to again appoint Special Investigation Team of the police personnel from the State Police Machinery; especially when the prayer to that effect made earlier was not acceded to. Merely because CBI, an independent agency, like the State Investigation Agency of Police has arrived at the same conclusion, after its re-investigation or fresh investigation, that of ruling out the possibility of homicidal death and that the Petitioner is not satisfied with the same, it cannot be accepted that one more agency, like Special Investigation Team, should be again directed to carry out further investigation. Needless to state, that there would be no end to such exercise until the Petitioner gets the result of her choice.

53. We are also satisfied that, it is not the case that merely because the police machinery or the CBI has filed Charge-Sheet, under Section 306 of IPC, Court is obliged to proceed only in accordance therewith. Nothing prevents the Petitioner from invoking the appropriate powers of the competent Criminal Court exercising such powers, including the powers under Section 216 so also 319 of Cr.P.C.. It is not as if the Charge-Sheet filed would conclude the matter and whatever alleged discrepancies or materials, which Petitioner has pointed out, would be shut out of the Court. She can still persuade the Trial Court for redressal of her grievances on the basis of the material produced on record before it. However, as rightly submitted by learned ASG, allowing this investigation to be dragged without any fruitful purpose and transferring it from one agency to another and again to third one is unnecessarily prolonging not only the trial but also the trauma of the Petitioner and the accused. Already more than three years had lapsed since the date of the incident and trial is yet to be opened. Speedy justice being the constitutional right of both the accused and the victim, from this angle also, in our considered opinion, no case is made out for the relief sought by the Petitioner of constituting the Special Investigation Team to further probe into the matter.

54. In this view of the matter, we hold that the Petition holds no merit and hence the same needs to be dismissed and, accordingly, stands dismissed.”

18. It is seen that this Court has categorically given a finding and held that CBI had carried out fresh investigation in compliance of the Order of this Court and recorded further statement of witnesses; that CBI had examined the Investigating Officer and recorded her statement in respect of the alleged lacunae and discrepancies in the investigation carried out by the Police Authorities; that CBI had called for expert opinion from the Handwriting Expert; that CBI had taken various steps in carrying out further investigation to ascertain the relations between the deceased victim and accused; that CBI had studied the scene of crime by revisiting the spot of incident and ascertained whether it was a case of suicide or homicide from various angles of investigation and thus the investigation from all aspects appeared to be mostly completed. This Court further held that it would now therefore be within the domain of the Trial Court to arrive at its own conclusion on the basis of the aforementioned material and all material that would be placed in evidence before the Trial Court. This Court indubitably held that it was satisfied about the *further investigation carried out by CBI* and that nothing would preclude the Petitioner from invoking the appropriate powers of the Criminal Court exercising such powers, include the power under Section 216 and 319 of Cr.P.C. This Court held that the conduct of the Petitioner has laid to unnecessarily prolonging the trial which was yet to be opened at the then time and that speedy justice being the constitutional right of both

the accused and victim, this Court comprehensively dismissed the Criminal Writ Petition.

19. Being aggrieved Petitioner approached the Supreme Court in Special Leave to Appeal (Crl.) No(s).2004 of 2017 and challenged the Judgment and Order dated 09.02.2017 passed by this Court. However on 20.03.2017 when the SLP was called out for hearing, Petitioner sought permission to withdraw the same and accordingly it was dismissed as withdrawn. Thus, effectively the Judgment and Order dated 09.02.2017 in Criminal Writ Petition No.669 of 2016 was upheld and has become final.

20. It is seen that the Petitioner does not stop at this. Despite the Order dated 09.02.2017 becoming final, the Petitioner continued her tirade of filing repeated and multifarious proceedings with respect to the same cause of action i.e. seeking further investigation. At this stage, at the cost of repetition, it needs to be mentioned that trial in the present case has commenced before the Trial Court.

21. Petitioner then filed Application under Section 173 of Cr.P.C. dated __ March, 2017 before the Trial Court for the following reliefs:-

“a. This Hon’ble Court be pleased to issue necessary Summons calling upon the Blackberry India to produce the information with respect to the BBM Communication which had taken place on the death of incident and prior thereof between the Accused and the Deceased;

- b. *This Hon'ble Court be pleased to take the Documents annexed at Exhibit C to H on record and the same be treated as part of charge sheet;*
- c. *This Hon'ble Court be pleased to, after calling for the BBM Communication, be pleased to conduct enquiry, if required, by leading the evidence for arriving at the conclusion as to what charges could be framed against the Accused."*

22. Petitioner desired certain documents to be considered as a part of the chargesheet and sought issuance of summons to Blackberry India to produce the chat/communication between the accused and victim before the incident.

23. By Order dated 20.01.2018, the learned Trial Court considered the aforementioned Application filed by a detailed and reasoned Order and partly allowed the Application. The Trial Court allowed the Petitioner production of documents as prayed for in prayer clause (b) of the Application but rejected the remaining prayers with reasons holding that the Court can consider the provisions of Section 216 of Cr.P.C. and there was adequate scope to call witnesses if required by the prosecution by invoking the provisions of Section 319 of Cr.P.C. during the course of trial.

24. Being dissatisfied with the Order dated 20.01.2018, Petitioner once again approached this Court by filing Writ Petition No.727 of 2018 seeking quashing of the said Order. Petitioner filed a companion Writ Petition being No.3116 of 2017 at the same time seeking challenge to the appointment of the Special Public Prosecutor

appointed on behalf of Respondent No.2 – CBI. By common Order dated 05.12.2018 the learned Single Judge of this Court dismissed the above Writ Petition. This Court while placing reliance upon the findings and directions of the Division Bench Order dated 09.02.2017 passed in Criminal Writ Petition No.669 of 2016 once again decisively held that the Division Bench in paragraph No.42 of the aforesaid Order had categorically considered the grievances of the Petitioner regarding the BBM chat history and rejected the same with reasons mentioned therein and further the SLP against the said Order having being subsequently withdrawn by the Petitioner, the Petition was dismissed.

25. The learned Single Judge reiterated that the Division Bench has observed categorically that nothing would prevent the Petitioner from invoking the appropriate jurisdiction of the competent Criminal Court exercising such powers, including the powers under Sections 216 and 319 of Cr.P.C. and that the Petitioner's grievance would not be shut out of the Court and further that the Petitioner could still persuade the Trial Court for redressal of her grievances on the material produced on the record before the Court during trial.

26. Being aggrieved by the said Order dated 05.12.2018, Petitioner filed Special Leave to Appeal (Cri.) No.1546 of 2019 the Hon'ble Supreme Court. The Supreme Court disposed of the said SLP with the following observations:-

“We are not inclined to interfere with the impugned order passed by the High Court especially keeping in view the observation made by the trial court in para 53 of its order dated 20th January, 2018. In other words, while giving effect to the order passed by the trial court in para 53, the observation made by the High Court shall not come in the way.”

27. At this juncture it is pertinent to note that, identical grounds and reliefs are prayed for by the Petitioner even in the present Writ Petition before us, despite there been an adjudication already on the above issues by this Court in the past.

It is pertinent to note that, in the present Writ Petition, Petitioner has suppressed this fact that she had approached the Supreme Court on 18.02.2019 and the Supreme Court had passed the aforesaid Order. It would be apposite to note and reproduce paragraph No.53 of the Order passed by the Trial Court which finds reference in the above Order of the Supreme Court:-

“53. In this matter, prayer for further investigation of the informant was already considered by Hon’ble High Court. Accordingly, investigation was conducted by CBI and filed chargesheet before the Court. Now, the stage is for trial and not for investigation. During the course of trial and while recording evidence of witnesses, if any evidence comes on record, if indicates the different charges against the accused, at this stage also, Court can consider the provision of section 216 of Cr.P.C. So far as the prayer of informant, to call the witness from Blackberry in respect of BMM message, is concerned during the course of trial, there is scope to call witnesses if require and the prosecution can invoke this provision of section 319 of Cr.P.C. during the course of trial.”

28. Thus, it can be seen that the Supreme Court has reiterated that nothing shall come in the way of the Petitioner during the course

of trial and while recording evidence of witnesses, if any such evidence comes on record which indicate different charges against the accused. The right for invoking provisions of Sections 216 and 319 of Cr.P.C. were reiterated by the Supreme Court Order.

29. Without disclosing the aforesaid facts and the Order passed by the Supreme Court, the present Writ Petition has been filed by the Petitioner. We note that it was the duty of the Petitioner to bring to the notice of the Court about the aforesaid Order and not to suppress the same.

30. Petitioner thereafter took a brief hiatus and approached a Law Firm by the name of SCARMANS in the United Kingdom for seeking their aid for legal review in the present criminal trial. It is pertinent to note that SCARMANS, a british Solicitor's firm is situated beyond the territorial jurisdiction of our country. It is further pertinent to note that after almost 14 months SCARMANS furnished a Legal Review Report dated 01.05.2019 to the Petitioner. This Legal Review Report is titled "LEGAL REVIEW INTO THE DEATH OF MS. NAFISA ALI RIZVI". This report forms the basis of the present Writ Petition.

31. On the basis of the aforesaid report, Petitioner made a representation dated 12.08.2019 to the Director of Respondent No.2 - CBI and called upon the CBI to take notice of the detailed discrepancies and lacunae in investigation carried out by the

investigation agency as stated in the report. It is alleged by Petitioner that Director of Respondent No.2 - CBI had a meeting with Petitioner and realized the glaring mistakes in the investigation already carried out. This is however vehemently denied by the learned Advocate appearing for CBI. Infact in the reply of CBI it is categorically stated that in the representation dated 12.08.2019 made to the Director, CBI, the Petitioner had repeated similar facts which needed no further investigation. It is further responded by CBI that the alleged Legal Review Report dated 01.05.2019 does not contain any new facts which need further investigation.

32. However from the record it appears that, on 21.11.2019, Respondent No.2 - CBI made an application before the learned Trial Court for further investigation on two aspects, viz; (a) the analysis of the dupatta from which the body of the victim was hanging and which was the cause of asphyxia of victim; and (b) the analysis of BBM messages required to be sent to Forensic Unit of FBI, USA. This application was marked as Exhibit-204. At the same time, Petitioner filed another application dated 19.12.2019 for seeking further investigation by forming an SIT under the Director, Respondent No.2 - CBI. This application was marked as Exhibit-209. Both these applications were heard together by the Trial Court. On 16.09.2021, the learned Trial Court passed a common Order rejecting both

applications. Petitioner has challenged this Order dated 16.09.2021 in the present Writ Petition.

Record of present petition discloses that, on 22.06.2022 the learned counsel had stated before this Court that, the Petitioner is not pressing prayer clauses 'A' and 'B' that challenges the Order passed by the learned Special Judge and will independently press for reliefs in prayer clause 'C' and 'D'. Prayer clauses 'A' and 'B' are reproduced hereinabove in para No.2 for convenience.

33. Respondent No.2 – CBI has filed its Affidavit-in-Reply dated 12.09.2022 and stated that, as per the directions of this Court, CBI has investigated the present case for ascertaining the homicidal angle, however on completion of investigation, it has arrived at the conclusion that this is a suicidal case and hence the need for formation of SIT within the said agency does not arise; that the Legal Review Report dated 01.05.2019 authored by SCARMANS and furnished by Petitioner cannot be a ground for further investigation as sought by the Petitioner.

34. Respondent No.4 has also filed Affidavit-in-Reply dated 26.08.2022 to oppose the present Writ Petition.

35. Before we give our findings, we would like to delve upon one aspect of this matter which is critical and needs to be dealt with sternly. As can be seen from the above quoted Orders passed by this

Court, the investigation by Responded No.2 - CBI has been completed. This investigation was directed to be completed by Order dated 09.02.2017 passed a co-ordinate Bench of this Court. It is seen that the Petitioner has repeatedly approached the Trial Court and this Court by various proceedings as can be seen from hereinabove. The Supreme Court has upheld the Judgment and Order dated 09.02.2017 passed by this Court while directing the Respondent No.2 - CBI to complete the investigation. Investigation has been completed and the trial is now underway. It is informed across the bar that deposition of 15 prosecution witnesses in the present case before the Trial Court is over. At present recording of evidence of prosecution witness No.16 i.e. the Petitioner herself is underway. Her examination-in-chief commenced on 17.08.2022. Her cross-examination commenced on 22.08.2022 and now stands deferred till the next date which is not fixed by the Trial Court. It is further informed across the bar that Petitioner has returned back to UK for personal work.

36. In the Legal Review Report dated 01.05.2019 by SCARMANS, it is stated that a number of issues relating to the investigation into the victim's death have raised questions about its objectivity and rigor and there are basic errors and omissions on the part of the investigating authorities leaving open the possibility that the victim's death was not suicide. Six failures on the part of

investigation agency have been noted as under:-

- a) *failing to properly secure and search the scene;*
- b) *failures relating to recognition, preservation and forensic testing of physical evidence, including the ligature, duvets, bolsters and blood found at the scene;*
- c) *failures relating to obtaining critical evidence from Jiah Khan's mobile telephone;*
- d) *failure to request immediate DNA testing of blood and tissue found under Jiah Khan's finger nails and blood found at the scene;*
- e) *failure to take proper consideration of expert forensic reports, specifically in relation to the ligature marks on Jiah Khan's neck and chin and injuries on her forehead, lips and arm; and*
- f) *failure to take or record witness statements, or delay taking witnesses statements from material witnesses."*

37. We are aghast and shocked to read the said report and most importantly what is stated therein. In the first place, it is not understood as to whether the authors of the report understand the difference between investigation and trial. *Prima facie* it appears that the authors of the report are of the belief that the trial in the case has already been completed. Further we are also lost to understand that SCARMANS have given their report on the evidence relating to the victim's death when investigation is over and now that the trial has already commenced. We are afraid to state that this report attempts to deliver a verdict even before the trial is over in the present case. The report is allegedly signed by two Advocates and other two persons. It is appalling to read in the report that suggestions are given for review

of police procedure and training for investigators as also recommendation for appointment of SIT when this Court has passed a detailed Order after considering all issues raised by the Petitioner and the same has been confirmed and affirmed by the Hon'ble Supreme Court which is the highest Court of this land.

38. Repeated insistence of Petitioner to procure a finding from the Court that death of the victim in this case was homicidal and not suicidal is a clear indication of procrastinating the trial, especially when her substantive rights have not been foreclosed. Reading of SCARMAN's Report reveals that even before the trial is over, the authors of the report are sitting in judgment over the investigation and delivering a verdict at the behest of Petitioner. At places in the report, there are adverse comments on the judgment and orders delivered by this Court which are not appreciated and deprecated by us. Assuming whilst denying, what the report seeks to do or achieve is the role of the Trial Court which can be accomplished only after the trial is completed. The entire basis of the report is the belief of Jiah Khan's family that her death continues to be erroneously categorised as suicide. Admittedly it is a procured report by the Petitioner. We cannot take countenance of such a report, especially in the light of various decisions rendered by this Court (in the present matter itself), the Trial Court and the Supreme Court alluded to hereinabove. We

strongly deprecate this conduct of Petitioner in procuring such a biased report from a firm which has no authority in law of our land. Rule of law is prevalent in our country and we do not have the slightest doubt that the Trial Court shall deliver its verdict without fear or favour whilst adhering to the due process of law.

39. We also strongly deprecate the manner in which the said report is worded which virtually shows the premier investigating agency of our country in poor light. We would like to state that only after the Petitioner has repeatedly failed to procure Orders as per her desire before completion of trial, she has now found this ingenious way of procuring a report from a firm situated beyond the territorial jurisdiction of our country, who have failed to understand even the basic difference between investigation and trial and have once again repeated and reiterated her earlier request for further investigation. This conduct of Petitioner amounts to unnecessarily procrastinate and delay the trial which is in progress before the Trial Court. As seen from the various Orders passed by the Trial Court, this Court and the Supreme Court, it appears that Petitioner wants this Court to return a finding in her favour that the death of the victim was homicidal and not suicidal, even before the trial is over. It is pertinent to note that the expert opinion obtained by CBI pursuant to the re-investigation done has clearly shown that the investigation has been carried out as

per the directions of this Court to consider the possibility of homicidal death of the victim which the Petitioner had highlighted with respect to discrepancies or lacunae in the investigation by the police authorities. *Prima facie* it does appear that a totally impartial, fair and transparent investigation is made by the CBI in a thorough manner. Each and every angle of the medical evidence and of the circumstantial evidence; the conduct of the accused and/or cause of the incident; everything was re-considered with a fresh angle to ascertain and verify whether it can be a case of 'homicidal death' and then only after confirming that it was a case of suicidal nature, the CBI has filed its further report (supplementary chargesheet). By pointing out to the material on record *prima facie* atleast no fault can be found with the investigation carried out either by the Police or by the CBI. It is stated that merely because CBI has arrived at the same conclusion, that the death of victim being a case of suicide, it will not be proper to hold that CBI has not carried out further or proper investigation in the matter.

40. We may reiterate the observations of the Division Bench in paragraph Nos.52 and 55 of the Order dated 09.02.2017, which are reproduced below for reference:-

“52. Now when after an independent agency has carried out thorough investigation, it would be futile to again appoint Special Investigation Team of the police personnel from the State Police Machinery; especially when the prayer to that effect

made earlier was not acceded to. Merely because CBI, an independent agency, like the State Investigation Agency of Police has arrived at the same conclusion, after its re-investigation or fresh investigation, that of ruling out the possibility of homicidal death and that the Petitioner is not satisfied with the same, it cannot be accepted that one more agency, like Special Investigation Team, should be again directed to carry out further investigation. Needless to state, that there would be no end to such exercise until the Petitioner gets the result of her choice.

53.

54.

55. *At this stage, we may add that the accused in this case had also filed Intervention Application No.459 of 2016. However, as we are of the view that this Petition itself holds no merit, we do not find it necessary to allow such intervention application. The said application, therefore, becomes infructuous and hence stands dismissed.”*

41. The Supreme Court has affirmed this observation of the Court and the trial in the case is hand. Hence, we do not find any merit in the present Writ Petition. Investigation has shown that the death of deceased was not homicidal death but asphyxia due to hanging leading to a suicidal death. Despite that it is the consistent insistence of the Petitioner that this Court ‘*must*’ give a finding that the death of the deceased was homicidal. The opinion given by various experts in the filed clearly establishes the fact that the death of deceased was suicidal and not homicidal.

We also fail to understand as to how this Court gets jurisdiction for directing the FBI in the United States which is one of the relief sought by the Petitioner in the present Petition. We repeatedly asked the learned Advocate appearing for Petitioner but he failed to address us on this aspect as to whether this Court has powers

to issue directions and Order to the Federal Bureau of Investigation in the United States as desired by Petitioner.

42. We have drawn attention of the learned Advocate for the Petitioner to the provisions of Sections 216 and 319 of Cr.P.C. which have been repeatedly reiterated in the various Orders as stated above. We asked the learned Advocate for Petitioner about the said provisions and tell the Court as to whether it was open to the Petitioner to take recourse to those provisions. We are sorry to state that the learned Advocate feigned ignorance and did not address us on this issue/question of law. The entire approach of the Petitioner appears to procure an Order from this Court, without facing trial, that the death of victim was homicidal and not suicidal. This kind of approach appears to circumvent the due process of law. That apart, once the trial has commenced we do not understand as to how the Petitioner can maintain such objections especially in the light of the Orders passed by this Court and this Court having found that the investigation done by Respondent No.2 – CBI has been appropriate.

43. In view of the above, we strongly deprecate the repeated filing of proceedings by the Petitioner for the same cause of action. Hence, we are inclined to award exemplary costs against the Petitioner for filing the present Petition which is nothing but a replication of the earlier proceedings filed (repeatedly) by the Petitioner, despite this

Court giving a decisive ruling on the same and the Supreme Court upholding the same. The Orders passed by Trial Court, this Court and the Hon'ble Supreme Court speak for themselves.

In view of the facts noted hereinabove, we were in fact inclined to saddle the Petitioner with exemplary costs, however at the pleading of the learned Advocate for the Petitioner, we refrained ourselves from doing so.

44. Criminal Writ Petition is accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]