

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO. 2361 OF 2022
IN
CRIMINAL WRIT PETITION NO. 1565 OF 2015***

1. Smita Pansare,

2. Megha Pansare,

3. Mukta Dabholkar,

4. Dr. Hamid Dabholkar,

...Applicants

Versus

1. State of Maharashtra, through the
Additional Chief Secretary (Home),
Mantralaya, Mumbai

2. Central Bureau of Investigation,
A2 Wing, 8th Floor, CGO Complex,
CBD Belapur, Navi Mumbai – 400 614

3. Union of India, through the
Ministry of Law & Justice,
Aaykar Bhavan, Churchgate,
Mumbai – 400 020

...Respondents

Mr. Abhay Nevagi with Sandesh Shukla, Mr. Amit Singh and Ms. Gayatri V. i/b Abhay Nevagi & Associates for the Applicants

Mr. Ashok Mundargi, Sr. Advocate/Spl. P.P. a/w Mrs. M. M. Deshmukh, A.P.P for the Respondent No.1-State

Mr. D. P. Singh for the Respondent No.2–CBI

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
WEDNESDAY, 3rd AUGUST 2022**

ORDER (Per Revati Mohite Dere, J.) :

1 By this interim application, the applicants (applicants Nos. 1 and 2 are the daughter and daughter-in-law of deceased Govind Pansare) seek the following reliefs :

“b. The further investigation to identify masterminds as well as shooters of Comrade Govind Pansare under Criminal Case No. 39 of 2015 may please be transferred

form the Respondent SIT to the Maharashtra ATS with immediate effect;

c. The Investigation as to identify masterminds may be handed over to dedicated team of ATS Maharashtra;

d. The Hon'ble Court may please direct the SIT Maharashtra as well as the CBI to provide all necessary cooperation to the Maharashtra ATS for the necessary hand-over of the Criminal Case No.39 of 2015”.

2 Learned counsel for the applicants submits that this Court has been monitoring the investigation of the murder of Comrade Pansare in the aforesaid petition, being Writ Petition No. 3512/2015, and, that the police have been filing reports with respect to the investigation carried out by them, from time to time. He submits that several orders have been passed by this Court since 2015 till date. He submits that as far as Comrade Pansare's case is concerned, till date, the shooters in the said case have not been arrested, much less the masterminds.

3 The principal ground for seeking transfer of the case, from Special Investigating Team (`SIT') which is presently conducting the

investigation, to Anti-Terrorist Squad (`ATS'), Maharashtra, is, that the real break-through in all the four murder cases i.e. in the murder cases of Dr. Dabholkar, Comrade Govind Pansare, Dr. M.M. Kalburgi and Gauri Lankesh, came when ATS, Maharashtra investigated the Nallasopara Bomb Blast case in 2019. He submits that although, the Central Bureau of Investigation (`CBI') had named Sarang Akolkar and Vinay Pawar (also alleged shooters in the present case) as accused in Dr. Dabholkar case, however, had subsequently dropped their names, at the time of filing of the supplementary charge-sheet on 13th February 2019, as it had transpired that two of the accused arrested in the Nallasopara case i.e. Sharad Kalaskar and Sachin Andhure, were infact the alleged shooters in Dr. Dabholkar case. He further submits that the ATS charge-sheet filed in the Nallasopara's case on 18th February 2019 reveals the gravity of all the four cases i.e. Comrade Pansare, Dr. Dabholkar, Prof. Kalburgi and Gauri Lankesh and that the accused arrested in all the four cases as well as in the Nallasopara Bomb Blast case are front-line accused. He further submits that there exists a common sophisticated network of criminals and organization

behind the four murders. In order to place on record, the gravity of the situation in all the four cases, learned counsel relied on an extract from the charge-sheet titled as “दहशतवादी टोळीचे उद्दिष्टे” (Objectives of the Terrorist Groups). He further submits that in the Nallasopara case, large number of country-made bombs, gelatin sticks, electronic, non-electronic detonators, gun powder, chemicals, etc. were seized and that the investigation in the said case revealed, that after committing the murders of four rationalists, the mastermind were planning to plant bombs at the Sunburn Festival in December 2017 in Pune. According to the learned counsel, the charge-sheet in the Nallasopara case further reveals that the accused had conducted a recce of the said place (where the Sun Burn festival was to be held) and that before the event, two days training was provided for making bombs. Learned counsel submits that the investigation also revealed that two Bengali speaking trainers had given training to make bombs, however, the plan was dropped, as some of the accused came in front of the cameras. The trainers were, however, not arrested.

4 Mr. Nevagi submits that all the five charge-sheets i.e. in the murder cases of Dr. Dabholkar, Comrade Pansare, Dr. Kalburgi, Gauri Lankesh and Nallasopara Bomb Blast case, reveal that the offences are interconnected and that the same weapons were used in the murders of Dr. Dabholkar, Comrade Pansare, Dr. Kalburgi and Gauri Lankesh.

5 Learned counsel for the applicants submits that although Comrade Pansare was killed on February 16, 2015, even after more than seven years, the SIT has failed to bring in any clear and clinching breakthrough in the said case. He submits that whereas, a serious breakthrough showing connection between all the said cases was unearthed due to the efforts of the ATS, Maharashtra in the Nallasopara Bomb Blast case. He submits that the Nallasopara case reveals a larger conspiracy, pursuant to which, the respective State Governments provided protection to the people named in the hit-list and that the said intellectuals, including the applicants have been provided with security, and, that the level of security of the applicants

was further enhanced, pursuant to the said information/disclosure. The grievance of the applicants is that despite efforts of SIT, the officers are unable to reach the mastermind behind the said five cases, much less, the shooters.

6 Learned counsel for the applicants submits that the accused in the Nallasopara Bomb Blast case were found to be the shooters in Dr. Dabholkar's case i.e. Sharad Kalaskar and Sachin Andhure. He submits that initially the very same accused i.e. Sharad Kalaskar and Sachin Andhure were named as witnesses in the present case i.e. in Comrade Pansare's murder case, and later, after their arrest in the Nallasopara case, they were dropped as witnesses by SIT.

7 According to the learned counsel for the applicants, the investigation conducted by SIT has not made any headway, despite several orders being passed by this Court, from time to time. The grievance of the applicants also is that not only the shooters but even the mastermind in the said case have not been traced till date and

hence, the investigation ought to be transferred to the ATS, so as to enable them to not only to trace the shooters, but also the mastermind in the said case.

8 Mr. Nevagi, learned counsel for the applicants further submits that in order to identify the mastermind, special skills and investigation is required. He submits that the ATS, Maharashtra had cracked the Nallasopara Bomb Blast case and it is only pursuant to their investigation, that the shooters in Dr. Dabholkar's case were identified. He submits that the investigation can be transferred to ATS and continued, without disturbing the present status of the pending case.

9 Mr. Mundargi, learned senior counsel and Special Public Prosecutor appearing for the respondent-State, on 1st August 2022, had tendered a letter dated 25th July 2022 sent to the Special Public Prosecutor by Mr. Retesh Kumaarr, Addl. DGP, CID, Maharashtra State, Pune. He submits that the SIT has no objection for transferring

of the investigation to the ATS on the request of the applicants, if the High Court so desires. Today, Mr. Mundargi reiterates the said position. He further submits that some members of the SIT can join the ATS team, so that, there is continuity in the investigation.

10 Perused the application and heard learned counsel for the respective parties on the application seeking transfer of investigation from the respondent-SIT to the ATS, Maharashtra.

11 A few facts are as under:

On 20th August 2013, Dr. Narendra Dabholkar was shot dead at Pune by motorcycle borne assailants; on 20th February 2015, Comrade Govind Pansare was shot dead; and on 30th August 2015, Professor Kalburgi was shot dead at Dharwad, Karnataka. On 14th December 2015, SIT (Additional S.P., Kolhapur) filed charge-sheet as against Sameer Gaikwad in the trial Court at Kolhapur for the alleged offences punishable under Sections 120-B, 302, 307 r/w 34 of the Indian Penal Code (`IPC') and Sections 3 r/w 25 and Section 5 r/w

Section 27 of the Arms Act, in the Comrade Pansare's case. On 10th June 2016 Dr. Virendra Tawde was arrested by CBI in connection with the Dr. Dabholkar murder case. After investigation, the CBI filed charge-sheet in the said case on 6th September 2016 as against Dr. Tawde for the alleged offences punishable under Sections 120-B r/w 302 of the IPC. On 29th November 2016, SIT (Addl. S.P, Kolhapur) filed supplementary charge-sheet as against some of the accused in Comrade Pansare's case. On 5th September 2017, Gauri Lankesh was murdered in Bengaluru. It appears that in March 2018, the wife of Professor Kalburgi filed a petition in the Apex Court for constitution of a dedicated SIT for investigating the murder case of Professor Kalburgi. It appears that in the said petition, National Investigating Agency ('NIA') had filed counter affidavit dated 8th March 2018, *inter alia*, stating therein, that the absconding accused-Sarang Akolkar and Vinay Pawar (alleged shooters in Comrade Pansare's case) were also involved in the Goa Bomb Blast case and are not traceable. In August 2018, ATS, Maharashtra registered C.R. No. 11/2018 in Nallasopara case. The offences alleged were under Sections 4 and 5 of the

Explosive Substance Act, provisions under the Unlawful Activities (Prevention) Act and the Arms Act. Three accused were arrested in the said case by the ATS, including Sharad Kalaskar, who were allegedly planning terror plots in Mumbai, Satara and Solapur. On 11th February 2019, SIT (Addl. S.P., Kolhapur) filed supplementary charge-sheet as against Sameer Gaikwad, Virendra Tawde, Amol Kale, Vasudev Suryawanshi, etc. On 13th February 2019, CBI also filed a supplementary charge-sheet as against Virendra Tawde, Sachin Andhure and Sharad Kalaskar. On 18th February 2019, ATS, Maharashtra filed charge-sheet in the Nallasopara case and 12 persons were named in the said case.

12 The applicant Nos. 1 and 2 have filed the aforesaid writ petition in 2015, seeking for a writ or direction in the nature of Mandamus to the respondent No.1-State of Maharashtra for appointing an independent Special Investigating Team led by the Additional Director General of Police, Maharashtra, comprising of officers of the ranks of Inspector General of Police, Deputy Inspector

General of Police, Superintendent of Police and other senior officers, to conduct the investigation into the conspiracy of the gruesome murder of Comrade Pansare at Kolhapur. It is also prayed that the investigation carried out by SIT be monitored by this Court till the time, investigation reaches its logical conclusion. It is also prayed that the respondent be directed to submit status report as to the progress of the investigation made in the said case.

13 As far as Comrade Pansare's murder case is concerned, SIT was formed consisting of six persons under the leadership of Mr. Sanjay Kumar, ADG, CID, Crime, Pune. Periodically, status reports were filed by SIT in sealed envelopes in this court. This Court (Coram : S.C. Dharmadhikari & Shalini Phansalkar-Joshi, JJ.) vide order dated 3rd May 2016, had observed that *"..... if we do not find a real headway, we would be constrained to summon high level officials of both investigating agencies to Court and on the next occasion. We are hopeful that these officers personally monitor and avoid such a situation."* It was also observed that *"We are expecting the*

investigating agencies to now, at least, show us a real and concrete progress.”

14 Vide order dated **4th August 2019**, this Court (Coram : S.C. Dharmadhikari & Shalini Phansalkar-Joshi, JJ.) had observed that SIT would be continuing with the investigation of Comrade Pansare’s case and it was noted that the SIT is expected not to make any change or make any alteration in the composition of the SIT, without obtaining leave of the Court. Vide the said order, the SIT was also directed to expedite the process.

15 Again, vide order dated **29th September 2016**, this Court (Coram : S.C. Dharmadhikari & B. P. Colabawalla, JJ.) noted that it was expected that an early conclusion to the investigations would be arrived at, given that the crimes have been committed long back. It was also noted that there is alleged common thread or link in two or three crimes and, therefore, the nexus has to be probed and established fully, that does not mean that the investigations can go on endlessly.

16 Again, vide order dated **23rd November 2016**, this Court (Coram : S.C. Dharmadhikari & B. P. Colabawalla, JJ.) observed, after perusing the status report submitted by the SIT, that they were dissatisfied with the contents of the same. It was further observed that the guilty should be brought to book expeditiously so as to prevent attacks on social workers, writers, thinkers, rationalists and liberal minded people in all walks of life. Certain observations were made in the said order, which the central agencies were expected to be mindful of.

17 Vide order dated **17th March 2017**, this Court (Coram: S.C. Dharmadhikari & B.P. Colabawalla, JJ.) observed as under :

“4. We expect that something would emerge from the ongoing joint efforts, particularly, in the light of the directions issued by us today. If nothing emerges, then, we would be constrained to pass such further orders and directions, as are permissible in law.....”

Vide the said order, this Court recorded the statement of Mr. Mundargi on instruction, that the agencies would concentrate and devote their time essentially on these investigations.

18 This Court (Coram: S.C.Dharmadhikari & Bharati H. Dangre, JJ.) again, in its order dated 7th **December 2017**, observed in para 3 as under :

“3. During the course of hearing, we have impressed upon both the agencies, through learned special senior counsel Mr. Mundargi and learned Additional Solicitor General Mr. Singh, that those guiding and directing their officials, the superiors to them in the hierarchy and to whom the investigating officials are reporting should now take a lead. The court is anxious and now getting a feeling of being not assisted properly in taking cognizance of the grievances of the family members of the deceased as also the general public.

In para 6, it is noted that the learned Special P.P. stated that a meeting would be convened with the superior officials at the level of the Secretary in the Department of Home, Government of Maharashtra and the Director General of Police and equally the Joint Director in the CBI and that after such a meeting, it is expected that

the court will find a definite progress and advancement towards concluding the investigations and apprehending the absconding accused.

19 This Court (Coram: S.C. Dharmadhikari & Bharati H. Dangre, JJ.) again, vide order dated **19th April 2018**, observed in para 3, as under :

“3. With the assistance of both senior counsel, we have perused these reports and which indicate that sincere efforts are being made by the teams of officials under the supervision of competent seniors. However, at some stage, it is admitted that the police machinery has not been able to reach the absconding accused, though off and on they are getting information that they have been seen in some parts of India and particularly in northeastern states. The teams have rushed to such sites, but for want of adequate assistance at the ground level, were not able to nab and apprehend these absconding accused. The only manner of tracking and reaching them is through the mobile phone towers. There are certain mobile numbers and once used by the accused or presently, there are mobile numbers made available and used by their near and dear relatives with whom they are establishing contacts, but not regularly and on occasions. Based on the vigil maintained and the checks and restrictions imposed, the call data records in relation to these mobile numbers of the relatives have been made available.

In para 8, it was noted as under :

“8. Further progress, then, we would be constrained to summon these officials, as named above, entirely at their cost and consequences. We give a final opportunity to the investigation teams to proceed and carry out the investigation so as to reach the absconding accused.”

20 Vide some of the orders, the officers were also asked to remain present personally, during the course of the hearing.

21 Again, vide order dated **6th September 2018**, this Court (Coram: S.C. Dharmadhikari & B.P. Colabawalla, JJ.), in paras 5 and 6, observed as under :

“5 We have also perused the report tendered by Mr. Mundargi who says that insofar as the investigations in Comrade Govind Pansare murder case, the SIT is closely monitoring the matter. If there is an involvement of those who are arrested in the case of Dr. Dabholkar's murder, then, after the CBI completes the procedural aspects and particularly after obtaining custody of the persons named as accused, the SIT will take any decision and prompt steps. The SIT wants to investigate whether there is any common link and whether the same persons are involved. Since the investigations are at a crucial

stage, Mr. Mundargi says that it will not be possible to divulge anything further. At the same time, he assures the Court that independent of this, the SIT will continue its probe and investigation.

6 Both have assured this Court that the steps and measures taken in the past have not been abandoned nor any final opinion is expressed with regard to involvement of other persons in the crime.”

22 Vide order dated 10th October 2018, this Court (Coram: S.C.Dharmadhikari & B.P.Colabawalla, JJ.), after perusing the report, tendered by Mr. Mundargi, observed thus :

“7. On perusal of the report tendered by Mr. Mundargi, we inquired when the further steps in relation to the investigations in the murder of Comrade Govind Pansare would be taken and on instructions, Mr. Mundargi states that after the custody of certain persons is obtained, the investigations would take further shape and he says that the Special Investigation Team hopes to conclude them expeditiously.”

It appears that during the proceedings, some of the accused arrested in Gauri Lankesh’s case were found to be involved in the murder of Comrade Govind Pansare and as such, the said accused were also arrested in the said case. It appears that as far as absconding

accused were concerned, it was submitted that all efforts were being taken to apprehend them.

23 Again, this Court (Coram: S.C. Dharmadhikari & B.P. Colabawalla, JJ.), vide order dated **14th March 2019** was constrained to observe in para 5, as under :

“5. As far as the report placed by Mrs.Deshmukh with regard to the investigations in the other crime (murder of Comrade Govind Pansare), we do not find any attempts being made by the State police to nab the absconding accused. The same old story is repeated in this report and we are sorry to say, it is nothing but an eye wash. By the methodology adopted, the absconding accused are not going to be arrested and for years together. By now, these accused are sufficiently aware of the fact or are made aware of it, that it is this Court which is monitoring the investigations and calls for the report of the same. If the details about the absconding accused are continuously highlighted by the Special Investigation Team (SIT), then, such accused are not expected to reside in the State or in the vicinity of the crime spot. If the crime is committed in the State of Maharashtra and not far away from the city of Pune, then, merely because one of the absconding accused owns immovable property in Pune, he is not worried to such an extent that he would visit Pune frequently. Secondly, such persons do not have a secured job. Thirdly, they are already uprooted and are away from the family and at times disowned by the family

members after indulging in such acts. Therefore, they are bound to seek shelter anywhere and everywhere and this is a huge country, thickly populated and one can easily, by modern means of transport, reach the boundaries of India on all sides. We have also found that at times, impression is given to the investigating officials that these accused are somewhere near the scene of the crime, they are being given shelter very near to it, but the investigating agencies are unaware of it. If the investigation team visits the places near the scene of the crime, they are then misled and return clueless. The accused have already left that place or have never visited it after the commission of the crime. Thereafter, if nothing has been done or the investigating machinery only acts at intervals or when reminded of their duty by the Court, then, such absconding accused and those shielding them are emboldened to move the accused to their acquaintances for harbouring such criminals and accused. It is not impossible in this country to obtain identification proof and by changing a name, designation and place of residence. In such circumstances, we do not think that this report can be accepted. While we discard it, we do wish to express our strong displeasure with harsh remarks for we have given enough opportunities to the concerned officials to show their bona fides.”

24 Again, in the order dated **28th March 2019**, this Court (Coram: S.C. Dharmadhikari & B.P. Colabawalla, JJ.) has observed in paras 4, 5, 6 and 8 as under :

“4. Mr. Mundargi, learned Senior Counsel, appearing on behalf of the investigating team investigating the murder of Comrade Govind Pansare would submit that after the last hearing at least two steps have been taken. Firstly, the number of officials or members of the investigating team has now been increased. The restructuring of the team is done. Earlier there was a problem because of shortage of manpower and staff but thereafter the services of additional officers are made available. The time that was consumed in preparing and filing charge-sheets has admittedly taken its toll. Mr. Mundargi admits that during that period and time attempts to trace the absconding accused and apprehend them could not be made. That was on account of time constraints for presenting the charge-sheets. The officials were engaged and busy in performing that duty. Now that the charge-sheets have been laid in the Competent Criminal Courts, the officials, as also the added ones, will fully devote their time and attention and then this Court will see some concrete changes in the next few months. The composition of the team will not be altered unless and until the State informs this Court and takes its permission. Mr. Mundargi submits that some harsh remarks and critical observations have been made in the earlier order but the State would like to give one more opportunity to the investigating officer Mr. Tirupati Kakade. He is a dedicated official and fully devotes himself in performing his duty. He performs it sincerely and honestly. Let him be given an opportunity to complete the job or the task assigned to him.

5. We indicated to Mr. Mundargi that we are not personally against any official nor we derive any

pleasure in making critical comments, much less scathing one. It is only to impress upon the officials who are present in the Court that it is their duty to protect and safeguard everybody, including those who are propounding extreme views and opinions. The State is duty bound to protect everyone and till now everybody was speaking and expressing oneself very fearlessly but now at least some of them are scared. They fear for their lives. Those committing such ghastly crimes and the institutions and persons behind them ought to realise that tomorrow it may be their turn. Ultimately, extremists and those terrorising others alone go and eliminate their opponents. The opponents of such persons may then resort to similar means. However, violence is not the answer. Violence only breeds violence. If peace and law and order are to prevail, then, every crime against the society and committed in such ghastly manner, as is projected before us, should be investigated and the guilty have to be brought to book. This is the prime duty of the State and it must assure every resident that none will be victimised hereafter. A chilling message has to be sent to the perpetrators of the crime and wherever they are hiding.

6. *The second development that Mr. Mundargi informs us is about the enhancement in the quantum of the reward. It is now enhanced to Rs.50,00,000/ (Rupees Fifty Lakhs) and if any person gives information about the absconding accused, he would be duly rewarded. We impressed upon Mr. Mundargi that it is the duty of the investigating officials to nab the accused, even if he is absconding. It is they who must reach him/her and make every attempt to reach the accused wherever he or she is hiding. The State cannot entirely depend upon residents or citizens of*

this country to give them clues or information about the absconding accused. The State officials should not be so naive and ignorant and ought to realise that people who harbour criminals or shield or protect them otherwise get much more in return than what is offered by the State. Possibly some of them may be gaining everyday and every month by shielding and protecting the accused or by misleading the investigating machinery with regard to their whereabouts. Therefore this development can hardly be termed as positive. Rather, it is an admission of the inept handling and tardy and slow pace of the investigation. This is hardly a development worth noting and by this Court.”

“8. We hope and trust that during the time that is sought from the Court something worth noting will occur, this Court would be informed and would be kept posted about the attempts made to nab and arrest the absconding accused. The further reports of the team should be placed on record by both the CBI as also the Special Investigation Team (SIT).”

25 Vide order dated **26th April 2019**, this Court (Coram: S.C. Dharmadhikari & B.P .Colabawalla, JJ.) observed in paras 9 to 11 as under :

“9. We expect all concerned now to render the requisite assistance to the investigating machineries both, at the Central and the State level.

10. *The Government of Maharashtra must realise that when a crime of this nature was committed in the adjoining State, namely, in the State of Karnataka (murder of Gauri Lankesh), the functionaries and officials in-charge of maintenance of law and order in that State acted swiftly and without any intervention of the court. Nobody was required to file any legal proceedings, much less a Public Interest Litigation so as to ensure investigation, interrogation and arrest of the accused. In fact, the police machinery in that State arrested some of the accused involved in the murder of Gauri Lankesh from the State of Maharashtra. We think that lessons have to be learnt by our machinery and there is nothing wrong in even now improving the state of affairs in this State.*

11. *We do not think that the State functionaries expect orders and directions from the court to investigate crimes and to bring the guilty to book. We are informed by Mr.Mundargi that insofar as the investigation in the crime (murder of Comrade Govind Pansare), the Additional Chief Secretary, Home and the Director General of Police, State of Maharashtra are jointly supervising and monitoring the operations. The Additional manpower deployed by the Government of Maharashtra, through this Department of Home, has now taken over the investigation. The officers are posted at specific locations and after the clues are received about the absconding accused, definite strategies have been evolved and put in place and the assurance is that this court would see a positive result by the next date.”*

26 Similarly, this Court (Coram: S.C. Dharmadhikari & G.S. Patel, JJ.), vide order dated **14th June 2019**, in paras 14 to 16, observed thus :

“14. In so far as the Comrade Govind Pansare murder case is concerned, the report is taken on record, but we find that the prosecution in that case is resting only on the revelations made by the accused in two other murder cases. It may be that there is a common thread flowing in the three to four crimes across Maharashtra and Karnataka. However, there are peculiarities of every murder case. That element cannot be excluded from consideration in the manner suggested in this report. Therefore, the Special Investigation Team (SIT) in the Comrade Govind Pansare murder case would have to make independent efforts to bring all the guilty persons in that crime to book. They cannot only rest on the statements of arrested accused and the witnesses in the two other murder cases.

15. It is stated that the two absconding accused could not be traced despite serious efforts. We do not think that announcing rewards and prizes and taking a police officer or official all over India would result in the apprehension and nabbing of the absconding accused. We only remind the Chief Secretary and Executive that this is not the way in which the crime as serious as the murder of Comrade Govind Pansare ought to be investigated and tried. It is the reputation, image and prestige of the investigating agencies in the

State of Maharashtra which is at stake. If the Chief Secretary, Additional Chief Secretary (Home) and the Principal Secretary in that Department, the Director General of Police and senior officials are not concerned about all this, then, we do not know how they will ever impress upon their subordinates the seriousness of a fair and complete investigation. Their investigating skills are put to test in such crime and it is only when every suspect becomes an accused and every accused is tried that the police machinery will come out with flying colours. In the past, the State police machinery has excelled in their investigation skills, even when compared with the investigating agencies abroad. We fail to see that spark and possibly that is missing in the investigation relating to the Comrade Govind Pansare murder case. We are not presuming that the absconding accused would never be traced. We are sure that they will be nabbed some day. However, we must not wait till they surrender or give up. One has to corner them in such a manner that there is absolutely no escape route and they are left with no choice but to surrender to the police. That is surprisingly not happening despite our orders and observations therein. We hope and trust that when persons in power proclaim that they would make every endeavour to win the confidence and trust of every single person be it him or her, high or low and belonging to whichever community, caste and religion, carry them along and extend to them all opportunities to develop and shape their personality, then the investigation and the conduct of the police officials in this case ought to reflect and depict that effort. Unfortunately, until now, the investigation has not achieved that standard. Once the political leaders leading this country proclaim that they stand for peace, tolerance and upholding of the constitutional

values, then, the response from the police officials ought to be in tune with that proclamation. The police and the Home Ministry officials must realise that their performance alone will give the confidence, not only to their political and executive superiors, but to the general public.

16. *We hope and trust that the efforts to nab the absconding accused would now take a proper course. It must chart a course which comes from experience, expertise and a high degree of skill. If necessary, the investigating officials and the police team must be guided by their seniors, maybe even retired police officials. They are still available and the State must explore the possibility of taking their advice and opinion.”*

27 Again, this Court (Coram: S.C.Dharmadhikari & G.S.Patel, JJ.), in its order dated **16th September 2019**, has, in paras 4 to 7 observed as under :

“4. We have also perused the report of the SIT set up to investigate the other case, namely, murder of Comrade Govind Pansare. The said report sets out the steps taken in that case. It is stated that the signatory of this report is associated with the process mentioned in paragraph 4 of the report of the Central Bureau of Investigation and he is aware of the same.

5. *We are anxious to note as to when this report will contain a statement of independent steps taken by the SIT during the course of this prolonged investigation. Uptil now the SIT is resting on the steps taken by the investigation team set up to investigate the murders of Gauri Lankesh and Professor MM Kalburgi in the State of Karnataka and Dr Narendra Dabholkar in the State of Maharashtra. This report does not indicate that independent of the same, the investigations till date revealed anything other than the details obtained during the course of investigation in the other cases.*

6. *We have expressed even today our displeasure with this method of investigation. Although we could have made critical comments with regard to the contents of the report placed on record by Mr Tirupati Kakade, the investigating officer who is also the Additional Superintendent of Police, Kolhapur, it is only because Mr Mundargi persuades us to give him one more opportunity that we refrain from saying anything further. Mr Mundargi prays for such an opportunity only in the light of recent developments, particularly the flooding in the region on account of incessant and continuous rains in this season.*

7. *It is in these circumstances, we post these matters on 14th October 2019. We expect a more comprehensive and better report from the SIT which is set up to investigate the murder of Comrade Govind Pansare.”*

28 Again, in its order dated **22nd November 2019**, this Court (Coram: S.C. Dharmadhikari & R.I. Chagla, JJ.), observed in paras 7 and 8 as under :

“7. Insofar as the other case is concerned i.e Writ Petition No. 1565 of 2015 (Smita Pansare & Anr. Vs. The State of Maharashtra), we have taken on record the status report of the investigating officer. The special investigating team set up to investigate this crime has stated that it is making sincere and genuine efforts to trace the absconding accused. The details of the combing operations carried out in the State of Maharashtra and all over India are set out in this report. We do not wish to divulge the contents of this report as well.

8. We think that the alleged failure of the SIT to bring all accused to book by itself is not enough to cast any aspersion presently on the capacity and capability of the investigating team and its officials.”

29 Again, on **16th January 2020**, this Court (Coram: S.C. Dharmadhikari & R.I. Chagla, JJ.), in paras 4 to 7 observed as under :

“4. As far as the other case is concerned, namely, the murder of Comrade Govind Pansare, the status report of the SIT is tendered and it says that there is an arrest made by the investigating officers in the State of Karnataka (SIT, Bengaluru) in the murder of Smt. Gauri Lankesh. The SIT is keen to investigate, after this arrest made recently, and trying to ascertain

whether there is any commonality as far as the role of the recently arrested accused in the murder of Comrade Govind Pansare. It is said that a team of police officers is camping at Bengaluru from 13-1-2020 and in co-ordination with the SIT, Bengaluru, it is making the necessary inquiry and investigation.

5. *It is stated that by the next date the details of these measures or steps by the SIT would be placed on record.*

6. *Mr. Mundargi has said that apart from what has been set out in this report, up till now the SIT has not been able to make substantial progress insofar as the arrest of the absconding accused. Yet efforts are on and in addition to the State of Maharashtra, police teams have been despatched to the State of Uttar Pradesh, Madhya Pradesh, Gujarat and Goa in this regard. From time to time, the details of the operations launched by them are forwarded to the SIT which are summarised in this report. Mr. Mundargi says that within the State of Maharashtra as well, the search operations are carried out and will continue with the same intensity and seriousness, as before.*

7. *The SIT is hopeful of tracing out the absconding accused.”*

30 In the order dated **13th February 2020** passed by this Court (Coram: S.C. Dharmadhikari & R.I. Chagla, JJ.), in paras 3 and 4, it is observed as under :

“3 In the other crime, Mr. Mundargi, learned senior counsel submits that there is a report placed before this Court. That indicates that there are some developments. The developments would reveal that the absconding accused are taking shelter in some parts of India. However, the search team has been camping in almost every such State where there is a possibility of the absconding accused, and required in several crimes, taking shelter and residing by changing their identities.

4 With the help of modern technology, including taking assistance from the service providers, the location of such persons would be ascertained. Thereafter, intense search would be undertaken. Presently, some clues are available, but Mr. Mundargi says that it will not be proper to disclose the clues or the details in relation thereto.”

31 We may note that there are several orders passed by this Court in the aforesaid writ petition alongwith other connected petitions, from time to time, apart from what are reproduced hereinabove.

32 As there has been no headway or breakthrough in the investigation till date, the applicants have filed the aforesaid application, seeking transfer of investigation from SIT to the ATS,

Maharashtra. According to the applicants, despite SIT filing their reports, stating therein that investigation is in progress, in respect of the two absconding accused who are named as shooters, no arrests have been made, till date. The applicants want not only the shooters to be arrested but even the mastermind behind the said killing of Comrade Pansare.

33 Learned counsel for the applicants submits that the real breakthrough in the four murder cases i.e. of Dr. Dabholkar, Comrade Govind Pansare, Dr. M.M. Kalburgi and Gauri Lankesh, came when ATS, Maharashtra investigated the Nallasopara Bomb Blast case in 2019. Pursuant to the investigation carried out by ATS in the said case and the names revealed, in particular of Sharad Kalaskar and Sachin Andhure, CBI dropped Sarang Akolkar and Vinay Pawar's names, as accused, at the time of filing of supplementary charge-sheet in Dr. Dabholkar's case on 13th February 2019. According to the learned counsel for the applicants, the charge-sheet filed by the ATS, Maharashtra, in the Nallasopara Bomb Blast case, reveals the gravity

of all the cases and that the accused arrested in the four murder cases as well as in the Nallasopara Bomb Blast case, were frontline accused and that they alongwith the mastermind, had hatched a conspiracy to kill intellectuals. It is submitted that the part of the mastermind and conspiracy to kill intellectuals, is still to be investigated. He submits that a perusal of the charge-sheet in the Nallasopara case, would reveal that a large number of explosives, ammunition and such other material were confiscated by the ATS, Maharashtra and that there exists a common sophisticated network of criminals and organisations behind the said murders. In order to place on record the gravity of the situation in the four murder cases and as to how some organizations were vitiating the minds of young people to achieve its objective, the applicants have reproduced the extract taken from the Nallasopara charge-sheet in the application at page 40. The same reads thus:

“दहशतवादी टोळीची उद्दिष्टे: गुन्ध्यातील अटक आरोपी व पाहिजे आरोपी हे 'सनातन संस्था'. 'हिंदू जनजागृती समिती' व समविचारी हिंदू संघटनांचे सक्रिय सदस्य आहेत. अटक आरोपी व पाहिजे आरोपी यांनी 'सनातन' संस्थेच्या 'क्षात्रधर्म साधना' या पुस्तकातील 'हिंदू

राष्ट्र निर्मिती करणे या उद्देशाने प्रेरित होऊन तथाकथित हिंदू राष्ट्र निर्मितीचे उद्दिष्ट पूर्तीचे हेतूने आपापसात संगनमत करून तथाकथित हिंदू धर्म विरोधी कृत्य आणि तथाकथित हिंदू धर्मा विरोधी बोलणा-या/लिखण करणा-या व तथाकथित हिंदू धर्मावर टीकाटिप्पणी करणा-या कार्यक्रमास व चित्रपटांना दहशतीच्या मार्गाने विरोध करून सामान्य जनमानसात दहशत निर्माण करण्याच्या हेतूने गोपनीयरित्या दहशतवादी टोळी तयार केली. सदर टोळी हि भारताची एकता, अखंडता, सुरक्षा व सार्वभौमत्व याना धोका पोहचविण्याच्या उद्देशाने/देशी बनावटीची पिस्टल्स व गावठी बॉम्ब याचा वापर करून तथाकथित हिंदू धर्मा रूढी व प्रथा यांच्या विरोधात विडंबन, वक्तव्य, लिखाण करणा-या व्यक्ती, कार्यक्रम याना लक्ष करून त्याटिकाणी घातपाती कारवाई करून लोकांमध्ये दहशत निर्माण करणे या उद्देशाने तयार करण्या आली आहे.”

34 Learned counsel for the applicants submits that even the weapons used in the four cases were similar. He submits that initially Sharad Kalaskar and Sachin Andhure were shown as witnesses in Comrade Pansare's case, however, subsequently pursuant to the investigation carried out by the ATS, Maharashtra, they were dropped as witnesses by the State. The grievance of the applicants is that although, common weapons were used and some of the accused are common, no investigation has been done to find the shooters and the mastermind. He submits that a combined reading of the five charge-sheets and a specific reading of the charge-sheet in the Nallasopara

Bomb Blast case, would make it clear that there exists a deeper and larger conspiracy, however, the mastermind behind all the five cases have not been traced, till date.

35 As far as Comrade Pansare's case is concerned, it is not in dispute that Sachin Andhure and Vinay Pawar, the alleged shooters, are still absconding. According to the learned counsel for the applicants, till the breakthrough in the Nallasopara's case, Sharad Kalaskar and Sachin Andhure, who are now named as shooters in Dr. Dabholkar's case and who are also accused in the other cases, including the Nallasopara case, were shown as witnesses in Comrade Pansare's case. He submits that hence the Pansare family preferred an application before this Court and brought the same to the notice of this Court. He submits that thereafter, in the supplementary charge-sheet dated 6th September 2019, the said witnesses were named as accused in Comrade Pansare's case and thereafter, Supplementary charge-sheet was filed against them and they were arraigned as accused. According to the learned counsel for the applicants,

investigations have not made any headway as is reflected even from the observations made by this Court from time to time and hence, the applicants pray for transfer of investigation to the ATS, Maharashtra.

36 It appears to us, that it is only when the ATS, Maharashtra cracked the Nallasopara case, that the accused arrested in the said case, were identified as shooters in Dr. Dabholkar murder case and other cases. As investigation by ATS, Maharashtra, had yielded positive results, the applicants pray that the investigation in Comrade Pansare's case be handed over to a specially dedicated team of ATS, Maharashtra. The applicants have further stated in the application, that the trial of the accused in the present case can continue, and, that the investigation can be transferred without disturbing the present status of the case.

37 Considering the prayer of the applicants, we asked the learned Special P.P. Mr. Mundargi to take instructions on the said application, seeking transfer of investigation from SIT to ATS,

Maharashtra. Pursuant thereto, Mr. Mundargi tendered a letter dated 25th July 2022 addressed to him by Mr. Retesh Kumaarr, Addl. DGP, CID, Maharashtra State, Pune. In the said letter, the Addl. DGP, CID, has stated that either a new team of SIT can be constituted or the investigation can be transferred to ATS, Maharashtra, if the High Court so desires. We had, on the last occasion, whilst hearing the application, asked Mr. Mundargi to take instructions whether a few members of the ATS could join the SIT. Today, Mr. Mundargi informs us that the officers who have investigated the Nallasopara case, have already been transferred and as such, the SIT has no objection, if the said investigation is transferred to ATS, Maharashtra. He, however, states that some of the officers of SIT can be part of the investigation conducted by the ATS, Maharashtra, so as to ensure continuity in the investigation.

38 We have noted several orders passed by this Court. On the last date, Mr. Mundargi had tendered the latest report in a sealed envelope. We have opened the seal and perused the said report. The

reports are resealed. The said reports to be kept in the safe custody of Registrar (Judicial-I).

39 No doubt, SIT has taken steps, however, we do not find any major headway being made in the said investigation. Despite the efforts of the Officers of SIT, there is no breakthrough. This Court in the aforesaid petition has been monitoring the investigation since 2016. SIT has been regularly submitting reports with respect to steps taken to nab the shooters. However, till date, they are absconding. The wait for the family of Comrade Pansare has been long, for almost seven years. There is a legitimate expectation not only for the family of Comrade Pansare, but also the public at large, to see that the perpetrators of the ghastly crime, are brought to book. And, this is the responsibility of the investigating machinery, which exists to preserve law and order. In the present case, SIT and ATS, both are part of the Maharashtra Police. The transfer of investigation, even according to Mr. Nevagi, learned counsel for the applicants and Mr. Mundargi, Special P.P., will not impede the ongoing trial. We are of

the opinion, that transfer is necessiated to ATS to enable them to look at the investigation from their angle, as enough and more than sufficient time was given to SIT by this Court. It is necessary that investigation is taken to its logical end, failing which, the perpetrators of the crime would be emboldened.

40 Hence, having regard to what is stated aforesaid and also the statement made by the learned Special P.P, we deem it appropriate to transfer the investigation to the ATS, Maharashtra.

41 Accordingly, the Additional Director General of Police, ATS, to constitute a team of ATS Officers on similar lines, as constituted earlier, by SIT. The said team to include some of the officers of SIT, who have been investigating the said case and are in the know-how of the investigation carried out, till date. The constitution of the team shall be done at the earliest, and in any event, within one week from the date of uploading of this order.

42 We direct the SIT to hand over all papers of investigation in the Comrade Pansare's case to the Additional Director General, ATS, within one week from the date of uploading of this order.

43 The Addl. DGP (ATS) to place on record on the next date, the names of Officers of the ATS team and their designations.

44 Needless to state, that as done earlier, SIT and CBI to provide necessary co-operation to ATS, Maharashtra, in its investigation in the murder of Comrade Govind Pansare.

45 Application is allowed in the aforesaid terms. To be listed on 20th August 2022, for recording compliance of the constitution of the team of ATS Officers, including some Officers of SIT.

46 We may note, that the application was heard at length on the earlier date i.e. on 1st August 2022 and was kept today, only to enable Mr. Mundargi, Special P.P. to take instructions, as noted by us earlier. Today, in the midst, when Mr. Mundargi told us, on the

instructions taken by him, Mr. Jha appearing for the accused tried to intervene, stating that he be permitted to intervene and address the Court. The said intervention was vehemently refuted by both, Mr. Nevagi and Mr. Mundargi. They submitted that the accused had no locus and that a similar attempt made earlier, was not permitted by this Court. There is no application on board filed by the accused seeking intervention in the aforesaid application. Hence, oral request to intervene is refused.

47 Learned A.P.P assures to forward a copy of this order to the Additional Director General, ATS, Maharashtra.

48 All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.