

CRIME NO.89/2020 OF HAL POLICE STATION, BANGALORE, REGISTERED FOR OFFENCES UNDER SECTIONS 302, 201, 421, 464, 467, 468, 471, 477 AND U/S 120-B READ WITH 34 OF IPC, 2) IN CRIME NO. 148/2020 OF HALASURUGATE POLICE STATION, BANGALORE, REGISTERED FOR OFFENSES UNDER SECTIONS 34, 120-B, 468, 465, 471 AND 420 OF INDIAN PENAL CODE AND 3) IN CRIME NO. 7/2021 OR HALASURUGATE POLICE STATION, BANGLORE, REGISTERED FOR OFFENCES UNDER SECTIONS 420, 255, 257, 259, 256, 258 AND 260 OF INDIAN PENAL CODE AND FINAL REPORTS SUBMITTED BY THEM AS PER ANNEXUERES C,D AND E ARE FAULTY, UNFAIR, INEFFECTIVE AND HENCE THEY ARE LIABLE TO BE REJECTED, CONSEQUENTLY AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question orders dated 21-02-2022 and 10-03-2022 passed by the XXIX Additional Chief Metropolitan Magistrate, Bangalore in P.C.R.No.51691 of 2020 directing further investigation to be conducted by a different Investigating Officer (HAL Police Station), other than the one who had filed a report before the concerned Court. The petitioners have further sought a direction by way of a writ in the nature of mandamus directing handing over of the entire matter to the 9th respondent/Central Bureau of Investigation for a re-

investigation/fresh investigation or further investigation. 'B' report filed before the concerned Court is also called in question.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:

The 1st petitioner is the wife of one K.Raghunath and the 2nd petitioner is the son of the 1st petitioner. K.Raghunath during his life time is claimed to have owned many immovable properties in different places in the District of Bangalore – a few of them in Devanahalli Taluk, K.R.Puram Taluk and in several other places. It is averred that K.Raghunath was closely related to one D.K.Adikeshavalu, a Member of Parliament who was active in politics in his life time. D.K.Adikeshavalu died on 24-04-2013 and then began the scouting of the properties held by D.K. Adikeshavalu. The children of D.K.Adikeshavalu, in particular respondent No.10 and other close associates of 10th respondent started pressurizing K.Raghunath for transfer of some of the immovable properties owned by him alleging that the source of income of the properties in his name is of their father. It is the case of the petitioners that K.Raghunath resisted their pressure and

asserted that he is the absolute owner of the properties acquired from his own source of income coming from real estate and had thus become owner of those properties. The difference between K.Raghunath and the children of the deceased D.K.Adikeshavalu became irreconcilable.

3. In the year 2016, it transpires that an income tax raid took place in the premises of late D.K.Adikeshavalu and the raid and the seizure was attributed to K.Raghunath. It is contended that K.Raghunath executed a Will on 28-01-2016 and got it registered and as per the Will the 1st petitioner was to succeed to all the properties owned by K.Raghunath. K.Raghunath had not disclosed the fact of execution of the Will to any of the private respondents herein during his life time. It appears that when K.Raghunath wanted to sell one of the properties and was about to execute a sale deed on 4-05-2019, the private respondents herein got to know of the same and the 10th respondent and his sister, the 14th respondent herein summoned K.Raghunath to the place of the 14th respondent. The 14th respondent always used to be in the hospital "Vydehi Institute of Medical Sciences and Research Centre" located

in Whitefield. On being summoned K.Raghunath leaves the house on the afternoon of 02-05-2019 informing the petitioners herein that he was going to meet 10th and 14th respondents. For about two days there was no news about K.Raghunath. On 04-05-2019 two days after he had left the house, at 7.00 a.m., it is contended, that a call comes from K.Raghunath that his life was not safe. Since K.Raghunath had expressed threat to his life, the 1st petitioner sends the 2nd petitioner/son to the house of the 10th respondent to verify about K.Raghunath. The 2nd petitioner goes to the guest house of respondent No.10 situated in Whitefield and enters the guest house and sees his father hanging to a ceiling fan. This was at about 8.30 a.m. On this incident, the entire episode of crime unleashed. A statement of the 2nd petitioner/son, was recorded on the very day, who at that point of time did not suspect anyone and thought that it was an act of suicide by his father and gave a statement accordingly to the Police that he was not suspecting anyone. Based upon the said statement of the son, an unnatural death report was generated in U.D.R.No.28 of 2019 by the H.A.L.Police and the case was closed.

4. On 15-02-2020 a complaint comes to be registered by the 1st petitioner alleging that her husband had been murdered by respondents 10 to 13 and others. The Police refused to register the complaint. The same was forwarded to the Commissioner and again the contention is that there was no registration of the crime. When the crime was not registered, the 1st petitioner on 24-02-2020 registers a private complaint in P.C.R.No.51691 of 2020 invoking Section 200 of the Cr.P.C alleging commission of murder of her husband K.Raghunath by respondents 10 to 13. An enquiry was conducted by the learned Magistrate and investigation was ordered on 02-03-2020. In terms of the order an FIR came to be registered against respondents 10 to 13 in Crime No.89 of 2020 for offences punishable under Sections 34, 120B, 467, 468, 421, 474, 302, 464 and 471 of the IPC. Two other crimes also came to be registered in Crime No.148 of 2020 and 7 of 2021. The crime was registered on 05-03-2020. Several civil proceedings between the private respondents herein and the petitioners were generated after registration of the crime by the petitioners alleging murder of K.Raghunath.

5. When investigation was not completed despite an order of registration of crime, the petitioners knock the doors of this Court in Writ Petition No. 4333 of 2021. The petition, after hearing the parties, came to be disposed of directing constitution of a SIT to enquire into the complaint. The SIT is directed to be constituted within two weeks from the date of receipt of a copy of the order. In terms of the direction, an order was issued by the Department to constitute a three member team as a Special Investigation Team. The three member team conducts investigation and files a 'B' report before the concerned Court in Crime No.89 of 2020 and other crimes 148 of 2020 and 7 of 2021. The learned Magistrate by his order dated 21-02-2022 rejected the 'B' report and directed Station House Officer of HAL Police Station before whom the complaint had been initially registered to conduct further investigation and submit a report on or before 22-04-2022. On the order being passed by the learned Magistrate, the petitioners are before this Court calling in question the said order, insofar as it directs conduct of further investigation by the Station House Officer of HAL Police Station and have also sought that the investigation be entrusted to CBI in the light of SIT having already filed a 'B' report.

6. Heard Sri. Hashmath Pasha, learned senior counsel appearing for the petitioners, Sri Dhyan Chinnappa, learned Additional Advocate General appearing for the State, Sri S.Mahesh, learned counsel representing respondents 10, 11 and 14, Sri P.Prasanna Kumar, learned Special Public Prosecutor appearing for the CBI, 9th respondent and Sri.Pelikal.K.Arjun, learned counsel appearing for respondents 12 and 13.

7. The learned senior counsel would submit that the act of the State in constituting a three member committee was to see that the order of this Court has been complied with. The entire investigation was not carried out by the SIT, but only by one R.Prakash, Police Inspector of Govindapura Police Station who is shown to be the Investigating Officer in the order, he has without looking into any factor submitted his report in which *lacunae* galore. The body which was buried in Hyderabad was exhumed by the Investigating Officer without there being any dispute about the identity of the body and commenced investigation on a wrong footing. The learned senior counsel would demonstrate that the entire investigation conducted is so shoddy that it does not even fit in to any contours of

investigation to be in accordance with law. He would contend that the learned Magistrate himself raised a doubt about the way investigation was conducted and directed further investigation, but erred in directing investigation by the HAL Police, as it runs counter to the order passed by this Court directing handing over of investigation to the SIT. He would contend that the learned Magistrate does not have power to direct further investigation under Section 173(8) of the Cr.P.C. by any other investigating agency. It is the power available only at the hands of this Court. He would seek to place reliance upon the judgment of the Apex Court on the power of the Magistrate to direct investigation by any other authority in the case of **CHANDRA BABU @ MOSES v. STATE THROUGH INSPECTOR OF POLICE AND OTHERS – (2015) 8 SCC 774.**

8. The learned senior counsel would further submit that further investigation should be handed over to the CBI, as the conduct of investigation by the SIT did not inspire confidence with the learned Magistrate before whom a 'B' report was filed. He would place reliance upon several judgments of the Apex Court which

have held that further investigation in certain cases if necessary, can be handed over to the CBI as well. In this regard he would place reliance on the judgment of the Apex Court in the case of **POOJA PAL v. UNION OF INDIA - (2016) 3 SCC 135** for the proposition that reinvestigation or further investigation can be directed in certain circumstances and it can be at the hands of the CBI. He would place a later judgment of the Apex Court in the case of **Dr. NARESH KUMAR MANGLA v. ANITA AGARWAL – 2020 SCC OnLine SC 1031** wherein further investigation is handed over to the CBI. Both the aforesaid judgments followed the earlier judgment in the case of **STATE OF WEST BENGAL v. COMMITTEE FOR PROTECTION OF RIGHT, WEST BENGAL – (2010) 3 SCC 571** where the investigation was handed over to the CBI by the High Court in exercise of its power under Section 482 of the Cr.P.C. and the same was affirmed by the Apex Court and would submit that this is a fit case for handing over the matter to the CBI.

9. On the other hand, the learned Additional Advocate General Sri Dhyan Chinnappa who represented the State would

contend that the 'B' report filed by the SIT is pursuant to a herculean task conducted by the State, this cannot be brushed aside as is done by the learned Magistrate. If the Court would direct further investigation by the SIT, the same would be carried out with all diligence and in compliance with the order to be passed by this Court. He would submit that there is no warrant to involve the CBI for conduct of investigation in the teeth of the State having performed its duty to the fullest.

10. The learned counsel for the CBI would also submit that if the Court directs investigation at the hands of the CBI it would conduct, but submits that the Court would not in a routine manner entrust investigation to the hands of the CBI, he would place reliance upon the judgment of the Apex Court in ***SHREE SHREE RAM JANKI JI ASTHAN TAPOVAN MANDIR AND ANOTHER v. STATE OF JHARKHAND AND OTHERS – (2019) 6 SCC 777*** and ***ARNAB RANJAN GOSWAMI v. UNION OF INDIA - (2020) 14 SCC 12*** to contend that reference to CBI should not be done in a routine manner.

11. The learned counsel appearing for private respondents would contend that the private respondents cannot be repeatedly harassed in the name of investigation, as the issue has gone on for the last two years and private respondents again should not be harassed at the hands of the CBI as 'B' report submitted is in accordance with law.

12. To the submissions of the learned counsel appearing for the private respondents, the learned senior counsel Sri Hashmath Pasha would contend that the accused has no locus to interfere with the proceedings in a case where further investigation is ordered or sought. He would place reliance upon the judgment of the Apex Court in the case of **SATISHKUMAR NYALCHAND SHAH v. STATE OF GUJARAT AND OTHERS – (2020) 4 SCC 22** to buttress his submission on the said issue. At the end of it he seeks further investigation to be handed over to CBI only.

13. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues arise for my consideration:

- (1) Whether the learned Magistrate was justified in directing further investigation to a different Investigating Officer other than the one who had investigated the crime?**
- (2) Whether the accused will have to be heard in a case where a direction is issued for further investigation, either by the concerned Court under Section 173(8) of the Cr.P.C. or by this Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C.?**
- (3) Whether the prayer of the petitioners to entrust the investigation to the hands of the CBI merits any acceptance?**

Issue No.1:

- (1) Whether the learned Magistrate was justified in directing further investigation to a different Investigating Officer other than the one who had investigated the crime?**

14. The afore-quoted narration of facts need not be reiterated. For the consideration of the *lis* that is brought before this Court in the present case, it would suffice to begin with the observation of the Co-ordinate Bench of this Court which directed constitution of a SIT. The crime against private respondents herein was registered in Crime Nos.89 of 2020, 148 of 2020 and 7 of 2021 and when there was no progress in the investigation, the petitioners

herein had knocked the doors of this Court in Writ Petition No.4333 of 2021. This Court accepting the plea of the petitioners passed the following order:

"9. Undisputed facts of the case are, Raghunath was found hanging in the guest house belonging to respondent No.6. He was declared 'brought dead' by the Doctors of Vydehi Hospital belonging to respondent No.6. There are Civil disputes pending with regard to the property in the name of deceased Raghunath. Pursuant to order passed by the learned Magistrate, FIR No.89 of 2020 has been registered on 5-03-2020 in HAL Police Station.

10. Shri Hashmath Pasha, placing reliance on paragraphs No.69 and 70 in State of West Bengal and others v. Committee for Protection of Democratic Rights,, West Bengal and others (2010) 3 SCC 571 submitted that Supreme Court and High Courts not only have the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Par-III in general and under Article 21 of the Constitution of India, in particular.

11. It is averred in the complaint registered as PCR No.51691 filed by the 1st petitioner, that late Shri D.K.Adikeshavulu was related to the complainant. Her husband Raghunath and Adikeshavulu had good relationship and mutual trust. After death of Shri Adikeshavulu, petitioner's husband had told her and children that his life and lives of children were in great danger as he was being threatened by sixth and seventh respondents. They sent her elder son Pradeep to Hyderabad to pursue his area of interest. Sixth respondent and his sister Kalpaja believed that Raghunath was responsible for Income Tax Authorities who raided their office and residences and recovered money to the tune of Rs.60 crores and issued notices in respect of immovable properties worth Rs.250/- crores.

12. Shri Hashmath Pasha also submitted that the learned Magistrate had issued reminder to the police on

3.04.2021. Yet the respondent-police are not investigating the matter diligently.

13. Though more than one year has elapsed from the date of registration of FIR, there appears no progress in the investigation. It is also significant to note that petitioners had to take recourse to filing a private complaint before the learned Magistrate.

14. A fair investigation in Criminal cases to bring culprits to justice, is one of the essential duties of Police in a Rule of Law Society. The facts of the case recorded hereinabove, prima facie show that investigation is not satisfactory. It was urged by Shri Hashmath Pasha that the Court may consider directing the State to entrust investigation to a team headed by an IGP, which, in substance is prayer clause (b).

15. On careful perusal of the material on record and keeping in view the facts and circumstances of this case, in the opinion of this Court, ends of justice would be met by directing investigation by a team headed by a Senior Police Officer. Hence, the following:

ORDER

(a) Petition is allowed.

(b) Respondents No.1 and 2 are directed to assign the investigation of FIRs No.89/2020 148/2020 & 7/2021 to a SIT headed by an Officer in the rank of Deputy Commissioner of Police, who has not earlier dealt with this case or held supervisory jurisdiction over those police stations, by fixing a time limit; and

(c) The Team shall be formed within two weeks from the date of receipt of a copy of this order."

(Emphasis supplied)

Pursuant to the direction issued by this Court, an order was passed on 10-06-2021 constituting a three member SIT. The order reads as follows:

1. ಕರ್ನಾಟಕ ರಾಜ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಲ್ಲಿ ದಿನಾಂಕ 28.04.2022 ರಂದು ರಿಟ್ ಅರ್ಜಿ 4333/2021 ರ ಆದೇಶದಲ್ಲಿ ಕೆಳಕಂಡ ಪ್ರಕರಣಗಳ ತನಿಖೆಗೆ ಡಿಸಿಪಿ ದರ್ಜೆಯ ಅಧಿಕಾರಿಯವರ ನೇತೃತ್ವದಲ್ಲಿ ವಿಶೇಷ ತನಿಖಾ ತಂಡವನ್ನು ನೇಮಕ ಮಾಡಲು ಆದೇಶ ನೀಡಿರುತ್ತದೆ.

1.1) ಹೆಚ್ ಎ ಎಲ್ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ ಸಂ.89/2020 ಕಲಂ 120(ಬಿ), 467, 468, 421, 474, 464, 471, 302 ರೆ:ವಿ 34 ಐಪಿಸಿ.

1.2) ಹಲಸೂರು ಗೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ ಸಂ 148/2020 ಕಲಂ 120 (ಬಿ), 468, 465, 471, 420 ಐಪಿಸಿ.

1.3) ಹಲಸೂರು ಗೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ ಸಂ 07/2021 ಕಲಂ 420, 255, 257, 259, 256, 258, 260 ಐಪಿಸಿ.

2. ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಪ್ರಕಾರ ಮೇಲ್ಕಂಡ (03) ಪ್ರಕರಣಗಳ ತನಿಖೆಯನ್ನು ಕೈಗೊಳ್ಳಲು ಕೆಳಕಂಡ ಅಧಿಕಾರಿಗಳ ವಿಶೇಷ ತನಿಖಾ ತಂಡವನ್ನು ಸಹ ಮಾಡಲಾಗಿದೆ

ಡಾ:ಎಸ್ ಡಿ ಶರಣಪ್ಪ, ಐಪಿಸಿ	: ವಿಶೇಷ ತನಿಖಾ ತಂಡದ ಮುಖ್ಯಸ್ಥರು
ಉಪ ಪೊಲೀಸ್ ಆಯುಕ್ತರು, ಪೂರ್ವ ವಿಭಾಗ	
ಶ್ರೀ ನಿಂಗಪ್ಪ ಬಿ ಸಕ್ರೇ,	: ಮೇಲ್ವಿಚಾರಣಾಧಿಕಾರಿ
ಎಸಿಪಿ, ಬಾಣಸವಾಡಿ ಉಪ ವಿಭಾಗ	
ಶ್ರೀ ಆರ್ ಪ್ರಕಾಶ್, ಪಿಐ	: ತನಿಖಾಧಿಕಾರಿ
ಗೋವಿಂದಪುರ ಪೊಲೀಸ್ ಠಾಣೆ,	

3. ಉಪ ಪೊಲೀಸ್ ಆಯುಕ್ತರು, ವಿಶೇಷ ತನಿಖಾ ತಂಡದ ತನಿಖೆಗೆ ವಹಿಸಿರುವ ಮೇಲ್ಕಂಡ ಮೂರು ಪ್ರಕರಣಗಳಲ್ಲಿ ವಿಶೇಷ ತನಿಖಾ ತಂಡದಿಂದ ತನಿಖೆಯನ್ನು ಮುಂದುವರಿಸಿ, ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಅಂತಿಮ ವರದಿಗಳನ್ನು ತ್ವರಿತವಾಗಿ ಸಲ್ಲಿಸುವುದು.

4. ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್, ಹೆಚ್‌ಎಎಲ್ ಪೊಲೀಸ್ ಠಾಣೆ ಮತ್ತು ಹಲಸೂರು ಗೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ರವರು ಮೇಲ್ಕಂಡ ಪ್ರಕರಣಗಳ ಅಸಲು ಕಡತಗಳನ್ನು ವಿಶೇಷ ತನಿಖಾ ತಂಡದ ಅಧಿಕಾರಿಗಳಿಗೆ ಹಸ್ತಾಂತರಿಸುವುದು.”

The SIT conducts investigation and submits its report which runs into 639 pages. On consideration of 'B' report and protest petition so filed by the petitioners, the learned Magistrate passed the following order:

"6. Heard the complainant and perused the material on record. The following point arises for my consideration.

- 1. Whether the 'B' report filed by the SIT requires to be rejected?*
- 2. What order?*

7. My answer to the above points is as follows:

Point No.1: In the AFFIRMATIVE

Point No.2: As per final order, for the following:

REASONS

*8. **Point No.1:** This is a complaint filed u/s 200 of Cr.P.C. against the accused No.1 to 4 alleging the offences punishable u/s 302, 201, 421, 464, 467, 466, 471, 474, 120(B) r/w Section 34 of IPC. The case of the complainant in brief is that all the accused have criminally conspired with each other and in furtherance of common intention have murdered her husband and destroyed the evidence and also forged the documents with an intention to grab the properties of her deceased husband and cheat the complainant. The jurisdictional police have not taken any action in respect of her complaint. Hence the complainant has approached this Court by filing a private complaint u/s 200 of Cr.P.C.*

9. After receiving the complaint, this Court has taken cognizance of the alleged offences as contemplated u/s 190(1)(a) of Cr.P.C. The sworn statement of the complainant and her son was recorded. They were examined as CW-1 and CW-2. Thereafter further enquiry was ordered u/s 202 of

Cr.P.C. Since, the HAL Police did not conduct the investigation expeditiously, the complainant has approached the Hon'ble High Court in W.No.4333 of 2021 wherein the Hon'ble High Court of Karnataka vide order dated 28-04-2021 has constituted SIT to conduct enquiry and submit the report before this Court. The SIT has filed 'B' final report in this case. The complainant has filed protest memo against the 'B' final report and has prayed to reject the 'B' final report and direct further investigation.

10. I have perused the report submitted by the SIT. The contentions on behalf of the complainant is that the SIT has not investigated the case with all fairness and that the investigation is lopsided. On perusal of the report of the SIT it is evident that the material aspects leading to the death of deceased K.Raghunath, the cause of death, the events subsequent to the death of the deceased are material facts which need to be investigated. The investigation pertaining to the disputed documents needs to be meticulously investigated. The investigation conducted by the SIT is unsatisfactory. Therefore, there is necessity of further investigation in this case.

11. In this case the purpose for which an enquiry u/s 202(1) of Cr.P.C. is directed so as to determine whether or not there is sufficient ground for proceeding, if so, to issue process against the accused herein. The investigating agency instead of submitting the report to assist the Court in this regard, has submitted 'B' report which is unacceptable. The purpose and the object of the enquiry directed u/s 202(1) of Cr.P.C. appears to have been misconceived by the investigating agency. Therefore, having considered the material on record, I find that it is just and necessary that the 'B' report filed by the SIT be rejected. Since there is necessity of further investigation in this case, I deem it proper to direct the SHO of HAL Police Station to conduct further investigation and submit report. Hence, I answer Point No.1 in the Affirmative.

12. Point No.2: For the reasons mentioned above, I proceed to pass the following:

ORDER

The 'B' report filed by the SIT is hereby REJECTED.

Acting u/s 202(1) of Cr.P.C . the SHO of HAL Police Station shall conduct further investigation and submit 22.04.2022."

(Emphasis applied)

The order though is not in great detail *qua* the contents of 'B' report it has traveled beyond its jurisdiction insofar as it directs conduct of further investigation by the HAL Police Station which was not the investigating authority. This Court (*supra*) had directed constitution of SIT. Further investigation, if at all had to be, in the circumstances, directed only to be done by the SIT. On the order directing further investigation by the HAL Police Station, by rejecting the 'B' report on 21-02-2022, the petitioners herein filed a memo seeking to recall the order, in the light of the judgment rendered by the Apex Court in the case of **CHANDRA BABU** (*supra*). Rejecting the said contention of the petitioners that further investigation had to be conducted only by the SIT that was constituted the learned Magistrate has transgressed his jurisdiction by directing further investigation by the HAL Police Station. The power of the learned Magistrate is restricted to further investigation

by the same investigating agency and not to any other investigating agency. The view of mine is in consonance with what the Apex Court has held in the aforesaid judgment in the case **CHANDRA BABU**¹. The Apex Court in the case of **CHANDRA BABU** has held as follows:

"20. We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word "reinvestigation". Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] it has been held : (SCC p. 791, para 41)

"41. ... The power of the Magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code."

¹ (2015) 8 SCC 774

21. *In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that : (Vinay Tyagi case [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , SCC p. 791, para 43)*

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

And again: (SCC p. 794, para 51)

"51. ... Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation' as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

22. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the

jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.”

(Emphasis supplied)

In the light of the judgment rendered by the Apex Court in the aforesaid case, the part of the order where the learned Magistrate directs further investigation to be conducted by the HAL Police Station is rendered without jurisdiction and requires to be obliterated, as power of superior Court cannot be exercised by the learned Magistrate. Therefore, issue No.1 is answered in favour of the petitioners, only to the extent of it directing further investigation to be carried out by a different agency.

Issue No.2:

- (2) *Whether the accused will have to be heard in a case where a direction is issued for further investigation, either by the concerned Court under Section 173(8) of the Cr.P.C. or by this Court, in***

exercise of its jurisdiction under Section 482 of the Cr.P.C.?

15. The Complainant was before this Court. Based upon the order in Writ Petition No.4333 of 2021, SIT was constituted. SIT conducted investigation and has filed a 'B' report in the matter. The learned Magistrate has not accepted or rejected the 'B' report, but has directed further investigation under Section 173(8) of the Cr.P.C. When the learned Magistrate directs further investigation under Section 173(8) of the Cr.P.C., or this Court would direct further investigation in exercise of its power under Section 482 of the Cr.P.C., hearing of the accused is not contemplated in law. The view of mine, in this regard, is fortified by the judgment rendered by the Apex Court in the case of **SATISHKUMAR NYALCHAND SHAH v. STATE OF GUJARAT**². The Apex Court in the said judgment has held as follows:

"10. Having heard the learned counsel appearing on behalf of the respective parties and the private respondent herein, we are of the opinion that as such no error has been committed by the High Court dismissing the application submitted by the appellant herein to implead him in the special criminal application filed by the private respondent herein challenging the order passed by the learned Chief

² (2020) 4 SCC 22

Judicial Magistrate rejecting his application for further investigation under Section 173(8) CrPC with respect to one other accused, namely, Shri Bhaumik against whom no charge-sheet has been filed till date. **Therefore, it is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) CrPC. How he can be said to be a necessary and a proper party.** It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in *W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260:1993 SCC (Cri) 1171]*; *Narender G. Goel [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933]* and *Dinubhai Baghabhai Solanki [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384]*. In *Dinubhai Baghabhai Solanki [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384]* after considering another decision of this Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047]*, it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In *Sri Bhagwan Samardha [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047]*, this Court in para 11 held as under: (*Sri Bhagwan Samardha case [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740 : 1999 SCC (Cri) 1047]*, SCC p. 743)

"11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the

potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."

11. Therefore, when the proposed accused against whom the further investigation is sought, namely, Shri Bhaumik is not required to be heard at this stage, there is no question of hearing the appellant, one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. Therefore, the High Court is absolutely justified in rejecting the application submitted by the appellant to implead him as a party-respondent in the special criminal application.

12. Now, so far as the reliance placed upon Rule 51 of the Gujarat High Court Rules by the learned Senior Advocate appearing on behalf of the appellant is concerned, we are of the opinion that in the facts and circumstances of the case, Rule 51 shall not have any application for further investigation under Section 173(8) CrPC. Proceedings arising out of an application under Section 173(8) CrPC cannot be equated with the appeal or application against the order passed in criminal case as stated in Rule 51. Therefore, Rule 51 of the Gujarat High Court Rules has no application at all."

(Emphasis supplied)

In the light of the judgment of the Apex Court (*supra*), hearing of the accused, particularly at the stage where the Court would direct further investigation is not a procedure contemplated in law, as the case would be still at a pre-process stage. Therefore, the contention of the learned counsel appearing for the 10th respondent that he is to be heard in the matter prior to a direction for further

investigation *sans* substance and is, therefore rejected. The issue that has arisen is answered holding that the accused has no right to contend that he should be heard in a matter at a pre-process stage.

Issue No.3:

(3) *Whether the prayer of the petitioners to entrust the investigation to the hands of the CBI merits any acceptance?*

16. Before embarking upon consideration of acceptance or otherwise of the prayer to entrust the investigation to the hands of the CBI, it is germane to notice the line of law as laid down by the Apex Court in the cases that are referred to the CBI for investigation; further investigation; re-investigation or *de novo* investigation and the cases where the Apex Court has declined the plea to refer the matter to the CBI.

Cases where the investigation has been referred to the CBI:

The Apex Court in the case of **POOJA PAL**³ (*supra*). The Apex Court in the said judgment has held as follows:

"85. As succinctly summarised by this Court in Committee for Protection of Democratic Right [State

³ (2016) 3 SCC 135

of *W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401*, the extraordinary power of the constitutional courts in directing CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. In our comprehension, each of the determinants is consummate and independent by itself to justify the exercise of such power and is not interdependent on each other.

86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further

investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

... ..

97. Reverting to the facts, the gruesome and sordid assassination of the appellant's husband in broad daylight under the public gaze is not in dispute. As a consequence of the murderous assault with firearms and indiscriminate use thereof, Raju Pal along with two others fell to the bullets. Records seem to suggest that even prior to the incident, attempts were made on his life but he survived the same in view of the timely intervention of the security guards. That representations were made by him seeking additional protection and that after his murder, the appellant and the party higher-ups of Raju Pal had persistently appealed, amongst others, to the Governor and the Chief Minister of the State for handing over the investigation to CBI is also testified by the records.

98. Pledged imputations of the appellant include deliberate, uncalled for and mysterious replacement of the earlier sets of personal security officers/gunners of the deceased, presence of high police officials near the place of occurrence, indifference on the part of the State Police to act with alacrity, hasty conduct of the post-mortem of the dead body and cremation thereof without handing over the same to the appellant or any of his relatives, political pressure on the investigating agency to distort the course of the probe and to screen the incriminating evidence collected, etc. One of the investigating officers in his writ petition, questioning his suspension had also pleaded on oath about the unexpected and unwarranted interference of the higher-ups in the department to withhold evidence gathered in course of the investigation underway. Though nothing decisively turns on these accusations, the same having been refuted by the respondents, the fact remains that the appellant's husband had been mercilessly killed by a group of gun-wielding

assailants in a public place, in the open view of all concerned. Such a daring and desperate act did have a terrorising impact on the society sending shock waves amongst all cross-sections of the community and received wide coverage by the media. The incident understandably is not one to be lightly glossed over or trivialised.

99. The trial on the basis of the investigation completed hitherto by the State Police and CB-CID has remained stayed by the orders of this Court. Prior thereto, however, as per the materials laid before this Court, several eyewitnesses cited by the investigating agency have been examined. As the trial is pending for the present, we refrain from commenting on their testimony, except that they seem to have resiled from their statements under Section 161 of the Code. Having regard to the manner in which the offence had been committed, it is incomprehensible that there was no eyewitness to the incident. Thus, if the persons cited as eyewitnesses by the investigating agency retract from their version made before the police, then either they have been wrongly projected as eyewitnesses or they have for right or wrong reasons resiled from their earlier narration. In both the eventualities, in our opinion, the investigation has to be faulted as inefficient, incomplete and incautious with the inevitable consequence of failure of the prosecution in the case in hand. Such a fallout also spells a dismal failure of the State machinery as a pivotal stakeholder in the process of justice dispensation to protect and assure the witnesses of their safety and security so as to fearlessly testify the truth. We would hasten to add that these observations are by no means suggestive of the complicity of Respondents 4 and 5 and other accused persons standing trial. These, to reiterate, are farthest from even any presumptive hypothesis of their involvement in the offence for the present and are engendered by the concern of possible failure of justice. **If the investigating agencies, as involved, have not been able to identify and present eyewitnesses of the incident who would under all circumstance religiously and devotedly abide by their version about the same, the shortcoming apparently is in the probe made, sadly reflecting on the competence, commitment and efficacy**

of such agencies. The very fact that this Court had earlier stayed the trial while permitting the appellant to approach the High Court with the relief for assignment of the investigation to CBI does signify its expectation that the High Court would adopt a sensitive insight into the issues raised and appropriately address the same. The pendency of the trial and the examination of the witnesses so far made thus in our estimate is not a disarming factor for this Court, to consider the necessity of entrusting the investigation to CBI even at this stage. To reiterate, a decision in this regard has to be induced and impelled by the cause of justice viewed in the overall facts and circumstances attendant on the incident. No inflexible norm or guideline is either available or feasible.

100. The present factual conspectus leaves one with a choice either to let the ongoing trial casually drift towards its conclusion with the possibility of offence going unpunished or to embark upon investigation belated though, spurred by the intervening developments, to unravel the truth, irrespective of the persons involved. As it is, every offence is a crime against the society and is unpardonable, yet there are some species of ghastly, revolting and villainous violations of the invaluable right to life which leave all sensible and right-minded persons of the society shell-shocked and traumatised in body and soul. Such incidents mercifully, rare though, are indeed exceptionally agonising, eliciting resentful condemnation of all and thus warrant an extraordinary attention for adequate remedial initiatives to prevent their recurrence. In our considered view, even if such incidents, otherwise diabolical and horrendous, do not precipitate national or international ramifications, these undoubtedly transcend beyond the confines of individual tragedies and militatively impact upon the society's civilised existence. If the cause of complete justice and protection of human rights are the situational demands in such contingencies, order for further investigation or reinvestigation, even by an

impartial agency as CBI ought to be a peremptory measure in the overwhelming cause of justice.

101. Judged in these perspectives, we are of the firm opinion that notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding far-seeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance.

102. In the wake of the above, we are unhesitatingly inclined to entrust CBI, with the task of undertaking a de novo investigation in the incident of murder of Raju Pal, the husband of the appellant as aforementioned. Though a plea has been raised on behalf of Respondents 4 and 5 in particular that this incident has been exploited by the appellant for her political gains, we are left unpersuaded thereby, as her achievements in public life must have been fashioned by very many ponderable as well as imponderable factors. In any view of the matter, such a contention, in our

view, is of no consequence or relevance. We would, however, make it abundantly clear that this direction for entrustment of the investigation to CBI anew has been made in view of the exceptional features of the case as overwhelmingly demonstrated by attendant facts and circumstances indispensably necessitating the same.

103. We are aware that in the meantime, over a decade has passed. The call of justice, however, demands that CBI in spite of the constraints that it may face in view of the time lag, would make all possible endeavours to disinter the truth through its effective and competent investigation and submit the same before the trial court, as early as possible, preferably within the period of six months from today. The clarion call of justice expects a befitting response from the country's premier and distinguished investigating agency. On receipt of the report by CBI only, the trial court would proceed therewith in accordance with law and conduct and conclude the trial expeditiously and not later than six months. The interim order staying the ongoing trial is hereby made absolute."

(Emphasis supplied)

The judgment quoted (*supra*) in **POOJA PAL** was following the judgment rendered by a Constitution Bench of the Apex Court in the case of **STATE OF WEST BENGAL V. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL**⁴

wherein the Apex Court has held as follows:

"51. *The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution—the*

⁴ (2010) 3 SCC 571

very heart of it—the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution, not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.

... ..

55. In his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), observed as under: (Nilabati Behera case [(1993) 2 SCC 746: 1993 SCC (Cri) 527], SCC p. 769, para 35)

"35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law—through appropriate proceedings."

... ..

57. As regards the powers of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any Government to enforce fundamental rights and, "for any other purpose". It is manifest

from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well i.e. for enforcement of any legal right conferred by a statute, etc.

... ..

Conclusions

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

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

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

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and

on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

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

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

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80

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

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

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not

only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

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

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* [(2002) 5 SCC 521 : 2002 SCC (L&S) 775] this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

(Emphasis supplied)

Both these judgments are considered by a subsequent Three Judge Bench of the Apex Court in the case of **DR. NARESH KUMAR MANGLA v. ANITA AGARWAL**⁵ wherein the Apex Court has answered a point formulated reading 'Transfer of further investigation to the CBI' as follows:

"D Transfer of further investigation to the CBI

24. *The investigation by the UP Police in the present case leaves much to be desired. We have already extracted in the earlier part of this judgment, the contents of the counter affidavit which have been filed on behalf of the Deputy Superintendent of Police, Agra. The contents of the counter affidavit are at a material divergence with the contents of the charge-sheet filed on 5 November 2020. During the course of the hearing, this Court has been specifically informed by learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, that no investigation was conducted into the allegation in the FIR that the deceased had been murdered. Though much was sought to be made out of the alleged suicide note, at this stage it needs to be emphasised that its authenticity has been seriously disputed by the appellant. As the learned Senior Counsel for the State of Uttar Pradesh informed the Court, the forensic science laboratory referred the matter back in the absence of adequate material to assess the genuineness of the suicide note and upon re-submission, a report is awaited.*

25. *Within a couple of days of the death of Deepti, the alleged suicide note found its way into the newspapers in Agra. This is in fact a circumstance relied upon by the learned Counsel for the accused when they submit that despite the publicity given to the suicide note, the FIR does not impugn its authenticity. The sequence in this case appears to follow familiar patterns. Immediate publicity was given to the alleged suicide note. These examples are now becoming familiar.*

⁵ **2020 SCC OnLine SC 1031**

Selective disclosures to the media affect the rights of the accused in some cases and the rights of victims' families in others. The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the criminal trial, can be used to derail the administration of criminal justice. The investigating officer has a duty to investigate when information about the commission of a cognizable offence is brought to their attention. Unfortunately, this role is being compromised by the manner in which selective leaks take place in the public realm. This is not fair to the accused because it pulls the rug below the presumption of innocence. It is not fair to the victims of crime, if they have survived the crime, and where they have not, to their families. Neither the victims nor their families have a platform to answer the publication of lurid details about their lives and circumstances. Having said this, we prima facie reject the insinuation that the FIR had not doubted or referenced the suicide note, despite its publication in the news media. The daughter of the appellant had died in mysterious circumstances. The family had completed the last rites. To expect that they should be scouring the pages of the print and electronic media before reporting the crime is a mockery of the human condition. The apprehension of the appellant that A-2 and his family have a prominent social status in Agra and may have used their position in society to thwart a proper investigation cannot be regarded to be unjustified.

26. In the backdrop of what has been stated above and the serious deficiencies in the investigation, we have during the hearing, made all the counsel aware of the possibility of this court referring the case for further investigation to the CBI. The court must enter upon the prospect of such a course of action with circumspection for two reasons. First, this court has repeatedly observed that the power which is vested in a superior court to transfer the investigation to another agency, such as the CBI, must be wielded with caution. In a recent judgement of this Court, Arnab Goswami v. Union of India¹⁴, one of us (Dr. Justice D.Y. Chandrachud) had interpreted the rationale underpinning the circumspection in the following terms:

"44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. **An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation.** Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation."

(emphasis supplied)

27. Second, in the facts of this case, the charge-sheet which is dated 24 October 2020 has been submitted to the competent court on 5 November 2020. The submission of the

charge-sheet does not oust the jurisdiction of a superior court, when as in the present case, the investigation is tainted and there is a real likelihood of justice being deflected. In *Vinay Tyagi v. Irshad*¹⁵, a two judge Bench of this Court, speaking through Justice Swatanter Kumar, has held:

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

(emphasis supplied)

28. The court held that wherever a charge-sheet has been submitted to the court, even this Court would not ordinarily reopen the investigation especially by entrusting it to a specialized agency. However, in a proper case, when the Court feels that the investigation by the police has not been in the proper perspective and that in order to do complete justice, where the facts of the case demand that the investigation be handed over to a specialized agency, a superior court is not bereft of the authority to do so. (*Disha v. State of Gujarat* [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628] and *Rubabbuddin Sheikh v. State of Gujarat* [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006])

29. In *Pooja Pal v. Union of India*¹⁶, a two judge Bench of this Court, speaking through Justice Amitava Roy, observed that there was no embargo on this Court to transfer an investigation to the CBI after submission of the charge-sheet in the following terms-

"79. The precedential ordainment against absolute prohibition for assignment of investigation to

any impartial agency like CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure, however, can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike....

81. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like CBI, whether or not the probe into a criminal offence by the local/State Police is pending or completed, irrespective of as well, the pendency of the resultant trial have concretised over the years, applicability whereof, however, is contingent on the factual setting involved and the desideratum for vigilant, sensitised and even-handed justice to the parties.

83..... Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties."

30. *Similarly, in Dharam Pal v. State of Haryana¹⁷, a two judge Bench of this Court, speaking through Justice Dipak Mishra (as the learned Chief Justice then was), upheld the power of this Court to transfer an investigation to the CBI, irrespective of the stage of the trial. It held:*

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

25.If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic...."

31. Having regard to the circumstances which have emerged on the record, which have been adverted to in the earlier part of the judgment, we are of the view that it is necessary to entrust a further investigation of the case to the CBI in exercise of the powers of this Court under Article 142 of the Constitution. The conduct of the investigating authorities from the stage of arriving at the scene of occurrence to the filing of the charge-sheet do not inspire confidence in the robustness of the process. A perusal of the charge-sheet evinces a perfunctory rendition of the investigating authorities' duty by a bare reference to the facts and the presumption under Section 304B of the IPC when the death occurs within seven years of the marriage. The stance taken by the Deputy Superintendent of Police in the Counter Affidavit, filed a few days after forwarding the charge-sheet, travels beyond the scope of the investigation recorded in the charge-sheet with respect to the veracity of the suicide note, medical examination of injuries and the past miscarriages of the

deceased. Critical facts of the money trail between the deceased, her father (the informant), and the accused; and the call history of A2, the informant and the deceased are unexplored. No attempt at custodial interrogation of the applicants was made between the issuance of non-bailable warrants on 9 September 2020 and interim protection from arrest by the High Court granted on 22 September 2020. As noted above, upon questioning during the hearing, the Counsel for the State answered that no investigation on the allegation of murder had been conducted. It would indeed be a travesty if this Court were to ignore the glaring deficiencies in the investigation conducted so far, irrespective of the stage of the proceedings or the nature of the question before this Court. The status of the accused as propertied and wealthy persons of influence in Agra and the conduct of the investigation thus far diminishes this Court's faith in directing a further investigation by the same authorities. The cause of justice would not be served if the Court were to confine the scope of its examination to the wisdom of granting anticipatory bail and ignore the possibility of a trial being concluded on the basis of a deficient investigation at best or a biased one at worst.

32. Mr. K.M. Nataraj, Additional Solicitor General of India has appeared in these proceedings with Mr. Arvind Kumar Sharma, and stated that the CBI would abide by the orders of this Court.

E Summation

33. We accordingly allow the appeal and issue the following directions:

- (i) The order passed by the Single Judge of the High Court of Judicature at Allahabad allowing the applications for anticipatory bail by the respondents-accused shall stand set aside and the bail granted to them shall stand cancelled; and
- (ii) **The CBI is directed to conduct a further investigation of the case arising out of case**

Crime No. 0623 of 2020 registered at Police Station Tajganj, District Agra, dated 7 August 2020.

(Emphasis supplied)

17. These are the judgments where in the facts and circumstances as obtaining in those cases before the Apex Court directs investigation to be conducted by the CBI, be it, further, *de novo* or re. The judgments quoted hereinabove also caution the Court exercising jurisdiction under Section 482 of the Cr.P.C. that direction of entrustment of investigation to the CBI should be made sparingly and only in extraordinary circumstances. The Apex Court found those extraordinary circumstances existing in those cases before it and, therefore, directed the CBI to take over the investigation, as the investigation conducted by the Investigating Agencies were so shoddy that the Apex Court had to do so.

Cases where the Apex Court has declined such request for entrustment of investigation to the hands of the CBI:

The Apex Court in the case of ***ROMILA THAPAR v. UNION OF INDIA***⁶ has held as follows:-

⁶ ***(2018) 10 SCC 753***

"24. *Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus : (SCC p. 100)*

"64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."

(emphasis supplied)

25. *Again in Sanjiv Rajendra Bhatt v. Union of India [Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus . (SCC p. 40)*

"68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171], Mayawati v. Union of India [Mayawati v. Union of India, (2012) 8 SCC 106: (2012) 3 SCC (Cri) 201], Dinubhai Boghabhai Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626: (2014) 2 SCC (Cri) 384], CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253: 1997 SCC (Cri) 88], CCI v. SAIL [CCI v. SAIL, (2010) 10 SCC 744] and Janata Dal v. H.S. Chowdhary [Janata Dal v. H.S. Chowdhary, (1991) 3 SCC 756: 1991 SCC (Cri) 933]."

(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in *E. Sivakumar v. Union of India* [*E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , while dealing with the appeal preferred by the "accused" challenging the order [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] of the High Court directing investigation by CBI, in para 10 observed : (SCC pp. 370-71)

"10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231: (2018) 3 CTC 449]. In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki v. State of Gujarat* [*Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626: (2014) 2 SCC (Cri) 384], wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on *Narender G. Goel v. State of Maharashtra* [*Narender G. Goel v. State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] , in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. This Court in *Divine Retreat Centre v. State of Kerala* [*Divine Retreat Centre v. State of Kerala*, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] , has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to

investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. *Be that as it may, it will be useful to advert to the exposition in State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] . In para 70 of the said decision, the Constitution Bench observed thus: (SCC p. 602)*

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

Later, the Apex Court in the case of **ARNAB RANJAN GOSWAMI v. UNION OF INDIA**⁷ where an identical circumstance arose before the Apex Court and the allegation was against the local police that they would conduct or have conducted a shoddy investigation and, therefore, the matter will have to be referred to the CBI, the Apex Court specifically rejects the said prayer by answering as follows:

"42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". Speaking for a Constitution Bench in *State of W.B. v. Committee for Protection of Democratic Rights* [*State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] ("*CPDR, West Bengal*"), D.K. Jain, J. observed: (SCC p. 602, para 70)

"70. ... despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again **it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes**

⁷ (2020) 14 SCC 12

necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

(emphasis supplied)

43. This principle has been reiterated in *K.V. Rajendran v. CBCID* [*K.V. Rajendran v. CBCID*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] . Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held: (SCC p. 485, para 13)

“13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. **It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.”**

44. Elaborating on this principle, this Court observed: (*K.V. Rajendran case* [*K.V. Rajendran v. CBCID*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17)

“17. ... **the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases.** Such as where high officials of State authorities are involved, or

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

The Court reiterated that an investigation may be transferred to CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". This observation must be read with the observations by the Constitution Bench in CPDR [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

45. In *Romila Thapar v. Union of India* [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , A.M. Khanwilkar, J. speaking for a three-Judge Bench of this Court (one of us, Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat* [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , *Sanjiv Rajendra Bhatt v. Union of India* [Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , *E. Sivakumar v. Union of India* [E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] and *Divine Retreat Centre v. State of Kerala* [Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] . This Court observed: (*Romila Thapar case* [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , SCC p. 776, para 30)

"30. ... the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a

particular manner including for court-monitored investigation."

46. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the petitioner seeks a transfer of the investigation.

47. As we have observed earlier, the petitioner requested for and consented to the transfer of the investigation of the FIR from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The petitioner now seeks to pre-empt an investigation by Mumbai Police. The basis on which the petitioner seeks to achieve this is untenable. An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In P.Chidambaram v. Directorate of Enforcement [P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24: (2019) 3 SCC (Cri) 509], R. Banumathi, J. speaking for a two-Judge Bench of this Court held that: (SCC p. 56, para 66)

"66. ... there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in

interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.”
(emphasis supplied)

This Court held that so long as the investigation does not violate any provision of law, the investigating agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in *State of Bihar v. P.P. Sharma* [*State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] and *Dukhishyam Benupani v. Arun Kumar Bajoria* [*Dukhishyam Benupani v. Arun Kumar Bajoria*, (1998) 1 SCC 52 : 1998 SCC (Cri) 261] in which it was held that the investigating agency is entitled to decide “the venue, the timings and the questions and the manner of putting such questions” during the course of the investigation.

48. In *CBI v. Niyamavedi* [*CBI v. Niyamavedi*, 1995) 3 SCC 601: 1995 SCC (Cri) 558] , *Sujata V. Manohar, J.*, speaking for a three-Judge Bench of this Court held that the High Court [*Neyamavedi v. Ramon Srivastava*, 1995 SCC OnLine Ker 15: (1995) 1 KLJ 353] should have: (*Niyamavedi case* [*CBI v. Niyamavedi*, (1995) 3 SCC 601 : 1995 SCC (Cri) 558] , SCC p. 603, para 4)

“4. ... refrained from making any comments on the manner in which investigation was being conducted by CBI, looking to the fact that the investigation was far from complete.”

This Court observed that: (*Niyamavedi case* [*CBI v. Niyamavedi*, (1995) 3 SCC 601: 1995 SCC (Cri) 558] , SCC p. 603, para 4)

“4. ... Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences.”

This Court adopted the position that courts must refrain from passing comments on an ongoing investigation to extend to the investigating agencies the requisite liberty and protection in conducting a fair, transparent and just investigation.

50. The petitioner has then sought to rely upon the allegations which he has levelled against the CP, Mumbai. The petitioner was interrogated on 27-4-2020. The allegations which he levelled against the CP, Mumbai were in the course of a television programme on 28-4-2020 ("Pochta Hai Bharat") relayed on R. Bharat at 1900 hrs. As we have noted earlier, this Court has, in CPDR [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] **held that no transfer of investigation can be ordered "merely because a party has levelled some allegations against the local police". Accordingly, we do not find that levelling such allegations would by and itself constitute a sufficient ground for the transfer of the investigation."**

(Emphasis supplied)

Considering the entire spectrum of law, the Apex Court in a later judgment in the case of **HIMANSHU KUMAR v. STATE OF CHHATTISGARH**⁸ has held as follows:-

"44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571, has made the following observations pointing out the

⁸ 2022 SCC OnLine SC 884

situations where the prayer for investigation by the CBI should be allowed:

"70.... In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. **This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.** Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

(emphasis supplied)

45. In the above decision, it was also pointed out that the same court in *Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya*, (2002) 5 SCC 521, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency.

46. In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.

47. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of Committee for Protection of Democratic Rights, West Bengal (supra) as adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

48. The above principle has been reiterated in K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480. Dr. B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held:

"13. ...This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation

must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. ..."

49. *Elaborating on this principle, this Court further observed:*

"17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

50. *The Court reiterated that an investigation may be transferred to the CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations made by the Constitution Bench in the case of Committee for Protection of Democratic Rights, West Bengal (supra), that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.*

51. *In Romila Thapar v. Union of India, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr. D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in Narmada Bai v. State of Gujarat, (2011) 5 SCC 79, Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1, E.*

Sivakumar v. Union of India, (2018) 7 SCC 365, and Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542. This Court observed:

"30...the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation."

52. It has been held by this Court in CBI v. Rajesh Gandhi, 1997 Cri LJ 63, that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

53. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power."

(Emphasis supplied)

18. On a coalesce of the judgments relied on by the learned senior counsel for the petitioners and the ones that are rendered by the Apex Court as quoted hereinabove, both, referring the investigation to CBI at whatever stage the trial or investigation was, and the ones declining to refer the issue to the hands of the CBI, what would unmistakably emerge is that the power to transfer the

investigation must be used sparingly and only in exceptional circumstances, within the parameters as laid down by the Apex Court in the afore-quoted judgments. An investigation could be transferred to the CBI when it becomes imperative to retain public confidence in the impartial working of Investigating Agencies. It would also emerge that it is not for the complainant, based upon certain allegations against the investigating agency, to choose the agency which he would want to investigate in a given case unless such circumstances exist.

19. In the case at hand, the investigation at the outset, was sought to be conducted by the jurisdictional police. For over a year nothing had happened. It is then the petitioner had knocked the doors of this Court alleging that the accused who are in a position to influence the jurisdictional police are not permitting investigation to be held into the crime. It is then, this Court directed constitution of a Special Investigating Team. The report submitted by the team is not found favour at the hands of the learned Magistrate. Therefore, what becomes necessary is, consideration of the prayer of the petitioner for reference of the matter to the CBI bearing in

mind, the observations made by the Apex Court in the afore-quoted judgments and on their touchstone, considering the facts obtaining in the case at hand or the allegations of lacunae in the investigation. The contentions of the petitioners in support of their prayer for entrustment of investigation to the CBI are as follows:

"43. The defects and deficiencies in the investigation of SIT in all the three case are in short extracted as under:

44(i). In respect of FIR in Crime No.89/2020 of HAL Police Station, Bangalore for offences under Section 120B, 467, 468, 421, 474, 302, 464, 471 of Indian Penal Code:

1. This FIR was registered as per the order dated 02-03-2020 passed by the Hon'ble XXIX Additional Chief Metropolitan Magistrate, Bangalore in PCR No. 15691/2020 under Section 202 of the Code of Criminal Procedure to conduct investigation and submit report.
2. As per the direction of this Hon'ble High Court, the SIT team ought to have conducted thorough investigation regarding the murder of Mr. K.Raghunath committed by respondent Nos. 10 to 14. But the SIT failed to conduct investigation in right direction.
3. It is the fact that, on 02-05-2019 respondent No.14 secured the presence of K.Raghunath to Vaidehi Hospital because respondent NO.10 also coming there to talk with him, because Mr. Raghunath was planning to sell one of his property and the registration date was fixed on 4-05-2019.
4. As per the call of respondent No.14, deceased Raghunath reached Vaidehi Hospital on 2-05-2019 and thereafter he did not return. In Hospital respondent Nos. 10 to 13 were also present and they had put pressure for him to transfer all the properties to the

name of respondent No.10, for which he did not agree. This information was conveyed by the deceased Raghunath to petitioner by telephonic call.

5. *Since 02-05-2019, the deceased Raghunath was not allowed to go from the custody of respondent Nos. 10 to 13 and he was in their custody till his death.*
6. *Respondent No.10 has planned to kill Mr. Raghunath if he was not agreeing to transfer all the properties to his name.*
7. *Deceased Raghunath has given a last call at 5 a.m. on 4-05-2019 and he has informed his wife that the problem is not being solved and it is taking serious turn and he assured that he will come back. Then again at 7-30 a.m. since Raghunath not come, wife made call to him, then he narrated the torture and pressure put on him to transfer property and then he had expressed threat to his life at the hands of respondent Nos. 10 to 14 and they will not spare him. This version of deceased Raghunath was like a dying declaration, implicating respondent Nos. 10 to 14 before petitioner No.1.*
8. *Immediately the petitioner No.1 sent petitioner No.2 to Guest House of respondent No.10 to know the well being of Raghunath.*
9. *Accordingly, petitioner No.2 has rushed to Guest House of respondent No.10 at 8 a.m. on 4-05-2019 and found that the deceased Raghunath was hanging to ceiling fan and respondent Nos. 10 to 13 have slipped away by forcibly hanging deceased Raghunath to ceiling fan and this was told by security guard to petitioner No.2.*
10. *The petitioner No.2 was under shock, seeing his father in hanging posture, his first concern was to save the life of his father and immediately with the help of security person and neighbours brought down Mr. Raghunath from ligature and taken to Vydhehi Hospital for treatment, where he was declared as brought dead.*

11. *After the deceased was declared as brought dead, by then respondent Nos. 10 to 13 have also reached the said hospital and then they took active role in quick succession as to how speedily the dead body could be disposed off.*
12. *Respondent No.11 Damodar, took the active role of getting registered UDR case and formal Inquest was completed and within short time formal Post Mortem in their own hospital i.e., Vydehi Hospital was got conducted by putting pressure on the HAL Police and arranged the dead body to be kept in Ambulance and not allowed the petitioners to think as to what to do but they were sent in the Ambulance with the dead body to be buried at Chittoor District and the respondent Nos. 10 to 13 have swiftly arranged all formalities for burial of dead body. Thereby right from the beginning they managed to screen the evidence of murder and then the petitioners were under shock and helpless condition, thereby they could not lodge complaint at the earliest. But later petitioner No.1 lodged complaint to police regarding the murder of her husband but the police did not take any step to investigate the matter because of intervention of respondent No.10.*
13. *The Mobile telephonic conversation from 2-05-2019 till 4-05-2019 by deceased with the wife (petitioner No.1) speaks for all the circumstances of murder i.e., conspiracy to murder, motive, preparation, commission of the murder by forcibly hanging and then absconded and destroyed the evidence of murder and swift action was taken to screen the offence of murder and the real offenders.*
14. *The subsequent conduct of respondent No.10 was to concoct a Will in the name of deceased Raghunath for an ante date i.e., 20-04-2018 by using counterfeited stamp papers and get registered this Will after seven months after death of Raghunath through respondent No.11 Mr.Damodar.*
15. *At the time of creation of Will, other documents like memorandum of understanding, agreements,*

assignments, declaration and letters in 31 documents have been fabricated to show that deceased Raghunath has executed them in favour of respondent No.10.

16. *By then it was not known to respondent Nos. 10 to 14 that the deceased Raghunath has left the registered Will on 28-01-2016 itself.*
17. *Therefore, the post conduct of respondent Nos. 10 to 13 in fabrication of Will, Memorandum of understandings and other documents, completes the link in the chain of circumstances for the offence of murder of Mr. Raghunath.*
18. *Cause of death as per post-mortem report is that the death was due to Asphyxia as a result of hanging.*
19. *It was not a suicidal hanging. The deceased was forcibly hanged and made to appear as self hanging. At that juncture the deceased Raghunath was held by respondent Nos. 10 to 13 in their premises, this is strong circumstance pointing out towards their guilt.*
20. *Death of deceased was executed within short time of deceased informing his wife about threat to his life that was at 7.30 a.m. on 4-05-2019 and the petitioner No.2 rushed to scene of occurrence by 8 a.m. and by then he was found hanging and the respondent Nos. 10 to 13 have escaped after commission of his murder.*
21. *The conduct of respondent Nos. 10 to 13 in escaping from the scene of occurrence is another strong circumstance against them.*
22. *Death has resulted in the premises of respondent No.10 and he was last seen alive with the deceased along with R-11 to 13 and they have to account for the sudden death of Raghunath. Last seen circumstance is a strong circumstance in a murder case.*
23. *Collection of CCTV footages to show the presence and movements of respondent Nos. 10 to 14 in and around*

the place of occurrence was required, but the SIT failed to collect this important Electronic evidence.

24. *Call details of deceased mobile and of petitioner No.1 to show that the deceased Raghunath has informed threat to his life at the hands of respondent Nos.10 to 14 on 4-05-2019 at 5 a.m. and 7.30 a.m.*
25. *Instead of collecting all these and many more evidence regarding murder of deceased Raghunath, the SIT have misdirected their investigation and made every attempt to show that the deceased Raghunath committed suicide.*
26. *The SIT adopted a reverse mode of investigation to rescue the real offenders and thereby the investigation was a camouflage to cover up the guilty act of respondent Nos. 10 to 14.*
27. *The SIT Investigation Officer has failed to record the full statements of petitioners and not examined many witnesses in and around the scene of occurrence regarding the presence and movement of respondent Nos. 10 to 14.*
28. *The SIT has glorified the statements of A1 to A4 (respondent Nos. 10 to 13) to shield them from the act of brutal murder of Raghunath.*
29. *SIT got exhumed the dead body and collected bones and subjected it for DNA, which was not required because the identity of dead body was not in dispute but this was done only to get negative autopsy report and also to show that SIT has done something. But in reality it is an act of misdirection of investigation, to cover up the act of respondent Nos. 10 to 14.*
30. *During SIT's further investigation, the genuine Will left by the deceased not got compared through handwriting expert by sending admitted signatures of deceased Raghunath, which was in many original registered sale deeds, bank cheques produced by petitioners and available in record. Instead the SIT has sent the forged*

and fabricated Will dated 20-04-2018, for handwriting analysis with the forged specimen signatures created by accused on vouchers of their Hospital, father than sending admitted signatures of deceased Raghunath and got false report of handwriting expert, having compared the forged signature with forged specimen. In fact the other documents like memorandum of understanding agreements, assignment agreements, declarations and letters in all thirty in number which are said to be executed by Raghunath are not got compared and because they knew that they are fabricated and not tally with the signature of the deceased Raghunath, and the genuine Will executed by deceased Raghunath has not been compared on the pretext that original Will was not given, but actually it was agreed to be given through safe custody. But the SIT was insisting to produce directly to him, without even mahazar being prepared and keeping in safe custody.

31. *The genuine Will dated 28-01-2016 is the material document left by deceased Raghunath in favour of petitioners in respect of all the assets of him and the petitioners though apprehended insecurity but agreed to produce the original Will for the purpose of comparison by handwriting expert. But, the SIT Investigating Officer failed to collect under proper safe custody and thereby no Investigation was done on this genuine Will.*
32. *Like this many incriminating evidence available are not collected. But adopted a short cut and diverted route of investigation which could help to shield the respondent Nos. 10 to 14. Therefore the investigation conducted regarding murder of deceased Raghunath is defective and unfair and therefore, the 'B' report filed by SIT regarding murder of deceased Raghunath is a false report liable to be rejected and in the facts and circumstances of the case, fresh investigation is to be ordered at the hands of investigation agency like CBI (respondent No.9) otherwise justice will be buried.*

... .."

20. It is not in dispute that the learned Magistrate himself has declined to accept 'B' report filed by the Police. Therefore, the issue before this Court is not whether to direct further investigation in the matter, as the learned Magistrate himself has directed further investigation, but erroneously to a different Authority. If the reasons as quoted hereinabove are noticed, inference would be that the learned senior counsel for the petitioners is right in contending that another round of investigation by another Special Investigating Team would be an exercise in futility. This Court had already directed constitution of a Special Investigating Team. The report of the said team is not found favour with the learned Magistrate. The issues pointed out by the learned senior counsel as is quoted hereinabove can be described as follows:

20.1. On 02-05-2019 respondent No.14 had secured the presence of the deceased K.Raghunath to Vydehi Hospital on the ground that respondent No.10 was also coming there to hold talks with him. The ground on which the deceased was called was the information available to respondent No.14 that deceased intends to sell one of his properties and the registration date was fixed as 4-

05-2019. The deceased Raghunath reached Vydehi Hospital on 2-05-2019 and never returned back. It is therefore, contended that the deceased Raghunath was not allowed to go out from the custody of respondents 10 to 13 till his death. The allegation is that respondent No.10 had already planned to kill Raghunath. It is the contention of the learned senior counsel that the deceased Raghunath had given a last call to his wife, the 1st petitioner herein at 5.00 a.m. on 04-05-2019 and alleges to have narrated that he was not sure of coming back. The second petitioner, son of the deceased on his visit to the Guest House of respondent No.10 sees the body of his father hanging on the ceiling fan after it was told by the security guard to the son of the deceased. The body was hurriedly kept in an ambulance; the petitioners were not allowed to think the reason for the death and the deceased was hurriedly buried in Chittoor.

20.2. The learned senior counsel would emphasise upon the later events that have happened. After the death of Raghunath a Will comes to be registered which bears the signature of the deceased, of the property that was already subject matter of

registered Will in the name of the 1st petitioner. It is the allegation that signatures on the said Will are forged without knowing that there was already a registered Will of the property in the name of the 1st petitioner. The learned senior counsel would contend that conspiracy to murder, motive, preparation, commission is given a go-bye by the investigating team. The contention is that the investigating team instead of collecting all the aforesaid and much more evidence concerning the death of the deceased Raghunath, misdirected the very investigation and made every attempt to show the deceased as having committed suicide. CCTV footage would show the presence of movements of respondents 10 to 14 in and round the place of occurrence of the incident. The SIT failed to collect this evidence even. Call record details of the deceased with the 1st petitioner are not looked into. It is the allegation that SIT adopted a reverse mode of investigation to rescue the real offender and made the investigation into a camouflage to protect the guilty because of respondents 10 to 14. If what is narrated hereinabove or what is extracted from the memorandum of petition is noticed, it becomes a case where further investigation as is directed by the learned Magistrate stands to reason, but the issue would be

whether a further investigation should be directed to be conducted by the SIT or by the CBI, as is prayed for in the petition.

21. In the light of the aforesaid facts and the *lacunae*, glaring enough they are, and the judgments rendered by the Apex Court (*supra*), it becomes a case where the issue will have to be thrashed out by conduct of a further investigation, not from the hands of the very Special Investigation Team or direction to constitute a second Special Investigation Team, but to be conducted by an independent agency – The Central Bureau of Investigation, as constitution of another Special Investigating Team would be of no avail, since there is already a report of the Special Investigating Team, which is not found favour even with the learned Magistrate, on the presence of the aforesaid lacunae in investigation.

22. This Court is cautious of the fact that extraordinary power to hand over investigation to the CBI is to be exercised sparingly, cautiously and in exceptional circumstances where it becomes necessary to provide credibility and instill confidence in investigation or whether such an order would become necessary for

doing complete justice. Therefore, in the contextual facts and the attendant circumstances as analyzed hereinabove, further investigation to unravel the truth is necessary, as the prime concern and endeavour of a Court of law is to secure justice, on the basis of true facts, which ought to be unearthed through a competent investigating agency. One chance was rendered to the Investigating Team of the State which has filed a 'B' report even on a FIR being filed for offence punishable under Section 302 of the IPC – murder. It is, therefore, the learned Magistrate has directed further investigation into the matter.

23. It is not for the victim to claim or choose the investigating agency he wants to get it investigated and that is not the tenor of the prayer in the case at hand. The prayer is that on two occasions – one by the Police and one by the Special Investigating Team, there has been shoddy investigation which did sound acceptance in the light of the aforesaid circumstances and the contextual facts, as narrated hereinabove. Merely because a party has levelled some allegations against the local Police of conduct of shoddy investigation would not by itself constitute a sufficient ground for

transfer of investigation to the CBI. But, the case at hand is not the one that brings about such circumstance. Elaborate lacunae are pointed out by the learned senior counsel with regard to the investigation conducted by the Special Investigating Team. There cannot be Special Investigating Team-1 which has already conducted an investigation to again to move to another Special Investigating Team to make it Special Investigating Team-2 as they form part of the local police.

24. It is trite law that Article 21 embraces both the life and liberty of the accused as well as the interest of the victim, his or her near and dear ones, as well as of the community at large. A life is lost in the case at hand, it is therefore the victim who have lost their breadwinner are fighting for justice and conduct of a fair trial. It is by now a well settled principle of law, judicially recognized, that fair trial includes, fair investigation and these form facets, *inter alia* of Article 20 and 21 of the Constitution of India. If on these contours the facts in a given case demands transfer of investigation, to the hands of an impartial agency, it should be considered, in furtherance of a call to render complete justice and

protection of human rights, such reference would become imperative particularly in the wake of ever overwhelming cause of justice. The contention of the petitioner is that the status of the accused being so powerful, are in a position to wield abundant influence upon any investigating team of the State, this submission would further wane out the Courts faith in directing further investigation by SIT-1 or by constitution of a SIT-2.

25. Being guided by the parameters laid down by the Apex Court in the afore-quoted judgments to transfer the case to the CBI, I deem it necessary and expedient to direct further investigation by handing over such investigation to the hands of the Central Bureau of Investigation-the 9th respondent herein.

26. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) Orders of the learned Magistrate dated 21-02-2022 and 10-03-2022 passed in P.C.R.No. 51691 of 2020, are set aside only insofar as they direct further investigation to be conducted by HAL Police Station.

- (iii) A mandamus issues to the Central Bureau of Investigation, New Delhi/respondent No.9 to conduct further investigation in Crime Nos. 89 of 2020, 148 of 2020 and 7 of 2021, bearing in mind observations made in the course of the order and without being influenced by the 'B' report already submitted by the Special Investigating Team of the State Government.
- (iv) The Central Bureau of Investigation shall conduct further investigation and submit its report to the concerned Court within an outer limit of six months from the date of receipt of a copy of this order if not earlier.
- (v) The proceedings before the XXIX Additional Chief Metropolitan Magistrate, Bangalore shall remain stalled till the report of the CBI is filed before it and on filing of the report by the CBI the concerned Court shall regulate its proceedings in accordance with law.
- (vi) It is needless to observe that parties to the *lis* shall cooperate with the CBI for conclusion of the investigation within the aforesaid time limit.
- (vii) All other contentions of the State and the petitioners except insofar as they are considered hereinabove shall remain open.

**Sd/-
JUDGE**

bkp
CT:MJ