

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

Heard Mr. Kh. Chonjon, learned senior counsel for the appellant; Mr. S. Samarjeet, learned Senior Panel Counsel for Central Government for the respondent Union of India and Mr.R.K.Umakanta, learned Government Advocate for the respondent State.

2. This writ appeal is filed against the judgment and order of the learned Single Judge dated 18.7.2016 made in W.P.(C) No.1401 of 2016.

3. The appellant is the writ petitioner. She filed the writ petition for issuance of a writ of mandamus directing the State respondents to conduct/hold an enquiry through the Central Bureau of Investigation (CBI) regarding the death of her son Nishan Singh on 19.11.2022 at the Camp of Battalion at Heavy Fuel Power Project, Leimakhong, Senapati District, Manipur. The learned Single Judge dismissed the writ petition. Challenging the same, the appellant has filed the present writ appeal.

4. Brief facts which led to the filing of the writ petition are as follows:

The appellant's son Nishan Singh joined the 26th Bn., CRPF on 19.4.2000 as Constable and was posted at different places from time to time and, at the time when he died on 19.11.2002, he was posted at the Bn., H.Q., D. Company near the Heavy Fuel Power Project, Leimakhong, Shri P.K.Sahu and Shri Dinesh Kumar were the Company Commander and the Commandant of 26th Bn. respectively. Shri Dinesh Kumar used to come to the D. Company very often and one day prior to the death of Nishan Singh, he came to the D. Company and started staying at the residence of Shri P.K.Sahu when the latter stayed away from his room. The Quarter Master of the D. Company Joginder Singh asked Nishan Singh to put a chair inside the room where Shri Dinesh Kumar was staying and when Nishan Singh picked up the chair and went inside the room to place it there, he saw Shri Dinesh Kumar and the wife of Shri P.K.Sahu in an objectionable condition. When Nishan Singh spread the news about the illicit relation, both Shri Dinesh Kumar and Shri P.K.Sahu planned to murder Nishan Singh.

4.1. Accordingly, on 18.11.2022, Shri P.K.Sahu issued a night pass to Nishan Singh telling him to report in the Unit in the morning and on the next day when he presented himself in the Unit at about 7.15 a.m., Havildar Major Ramdarsh Parshad

reported to the Company Commander who ordered that Nishan Singh be produced before him in uniform. When Nishan Singh presented himself, the Company Commander and Havildar Major Ramdarsh Parshad who were in civil dress, were sitting outside the office having a table before them. Shri P.K.Sahu who forcibly snatched the night pass from Nishan Singh, tore it off and told Nishan Singh that he had remained outside for the whole night without his order and since he had violated the law, he would be punished.

4.2. It is stated that Nishan Singh was made to stand as a punishment continuously from 8.22 a.m. to 11.35 a.m. torturing him both physically and mentally under a pre-planned conspiracy amongst his superior officers and during the interrogation, Shri P.K.Sahu asked Nishan Singh as to why he went to the room where and when Commandant Shri Dinesh Kumar and wife of Company Commander were sitting and then why did he announce the same to the public and, therefore, Shri P.K.Sahu told him that he did not want to see him alive. Nishan Singh replied that having felt himself to be quite unsafe, he had already informed his parents regarding the threat and that in case something happened to him, they would be held responsible.

4.3. It is stated that in the afternoon of the same day i.e. 19.11.2002, the Company Havildar Major asked Nishan Singh to have his meal and when Nishan Singh went to the barrack for lunch, Shri P.K.Sahu ordered Constable Mohinder Singh, Havildar Tajudin, Havildar T.J.Thomas to go and kill Nishan Singh and, accordingly, they went and started beating him in his barrack. While Tajudin and Mohinder Singh caught hold of him from both sides, Havildar Thomas fired at him at his abdomen from Insas rifle of Mohinder Singh Meena and killed him. Thereafter, they spread a rumour that Nishan Singh had committed suicide. When Constable T.P.Gautam reached the spot of incident, he saw Nishan Singh crying with the bullet injury and, according to him, there was no rifle present at the spot of the incident.

4.4. On 20.11.2002, two Sub-Inspectors of Police came to the place of occurrence for investigation and after investigation, the investigating team prepared a report and sent it to various higher authorities. But the IO Shri Kiran Singh was not satisfied with the version of the CRPF officers. According to the appellant, after receiving bribe from Shri P.K.Sahu, the concerned police filed a report under Section 174 Cr.P.C. Shri Attar Singh, Deputy Commandant ordered to hold a Court of

Inquiry for which he recorded the statement of witnesses and after preparing a false report, he handed over the same to the Commandant. The Inspector General, CRPF did not accept the enquiry conducted by the Deputy Commandant and re-ordered for enquiry, but the same report was again submitted. When some of the Jawans of the Battallion revolted against the killing, they were threatened by the Commandant not to reveal anything about the incident.

4.5. According to the appellant, an enquiry was conducted by the National Human Rights Council, Punjab and report dated 6.3.2003 was filed with a request that the investigation be done by the CBI. The copies of the said report were submitted to various authorities, including the DG, CRPF. Nothing happened thereafter except that Shri Dinesh Kumar and Shri P.K.Sahu proceeded on pension from 31.3.2003.

4.6. The petitioner filed Cril. Misc. Case No.14716-M of 2003 under Section 482 Cr.P.C. before the Punjab and Haryana High Court and the same was dismissed on 17.8.2005 on the ground that the occurrence took place in the territorial jurisdiction of Gauhati High Court, it did not find any ground to exercise inherent powers under Section 482 Cr.P.C. for issuing direction

to the respondents to get the case investigated by the CBI or any other agency. Hence, the appellant has filed the writ petition.

5. The respondents 1 to 3 filed affidavit-in-opposition, inter alia, stating that whenever Commandant visited D-26 Leimakhong, he never stayed at the residence of Shri P.K.Sahu and the Commandant used to stay in the Army Guest House. The story that Nishan Singh saw Commandant and the wife of Shri P.K.Sahu in objectionable condition is false. The allegation that HC Tajuddin, HC T.J.Thomas and CT Mahendra Singh started beating Nishan Singh is simply an imagination as there is no mark of any scuffle or injury as found in the post mortem report. The Commandant and the Company Commander never planned to kill Nishan Singh. He was always found in disturbed mood due to the fact that he was not being allowed to marry his brother's sister-in-law. Fear of bad name, guilty consciousness and fear of punishment forced him to commit suicide.

5.1. It is stated in the affidavit-in-opposition that the enquiry can be conducted by any agency. There was no pre-planned conspiracy to kill the Constable Nishan Singh. Nishan Singh though a young constable has in a brief period of one year, availed 60 days earned leave on medical grounds and 15 days of casual leave. When he was suffering from appendicitis,

Nishan Singh was granted Rs.4000/- from the Welfare Fund of the Unit to enable him to take proper medical treatment.

6. Mr. Kh. Chonjon, the learned senior counsel for the appellant submitted that the learned Single Judge while dismissing the writ petition has failed to take note of the following:

(i) The U.D. Case No.2 of 2002 registered by Saparmeina Police Station under Section 174 Cr.P.C. dated 19.11.2022 a prescribed form duly filled in disclosed the name of Shri P.K.Shahu, Assistant Commandant of D-26 Bn., whose wife was located by the victim in an objectionable condition while living in a room of the Battalion with the Commandant Shri Dinesh Kumar to be complainant of the case as recorded in Column (3) with endorsement of the Officer-in-Charge of the Police Station about attachment of the O.E. thereto and also as stated by the police report, but the O.E. is not available as part of the FIR.

(ii) The U.D. Case No.2 of 2002 is one not taken up by the police suo motu. The form of the U.D. Case showing it to be made by the O/C himself has been contradicted by the form of the U.D. Case and, as such, fabricated as an attempt to fill up the lacuna of the case.

(iii) Nowhere in impugned judgment stated about the examination of Shri P.K.Shahu by the police or Court of Inquiry, as he is the prime suspect of the offence of murder of Nishan Singh in custody i.e. in the barrack of the Bn. and his name is mentioned as complainant of the U.D. Case.

(iv) The order dated February, 2003, which is alleged to be an order of the Commandant Dinesh Kumar, upon conclusion of the Court of Inquiry, has stated just on its para 1 about counselling of Nishan Singh on 19.11.2002 by Shri P.K.Sahu, Office Commandant of D-26 Bn.

(v) In para 3(b) of the order dated February, 2003, it has been stated that Shri P.K.Shahu have furnished the report of desertion of Nishan Singh under Signal dated 18.11.2002 to the Bn. Hq., but the signal has not been seized by the police and his statement has not been recorded.

(vi) The Commandant Shri Dinesh Kumar Singh is also the main assailant in the murder of Nishan Singh in the barrack and then how and under what circumstances or upon what special reason he has been allowed to take part in the Court of Inquiry held for the death of Nishan Singh.

7. The learned senior counsel for the appellant further submitted that the finding of the learned Single Judge in paragraph 8 of the impugned judgment about the National Human Rights Council, Punjab not to be a State Human Rights Commission established under the provisions of the Protection of Human Rights Act, 1993 and the said Council not to have been authorised by any authority to investigate into the case and its report has no authenticity is mere on oral submission of the respondents and nothing has been produced to establish the same by the respondents. According to the learned senior counsel, the National Human Right Council of Punjab has been established under the authority of the Punjab Legislative Assembly and, therefore, any enquiry made and the report submitted by the said Council can be relied upon.

8. The learned senior counsel next submitted that the learned Single Judge has accepted the power and jurisdiction of the High Court to issue writ or direction for investigation by the CBI in appropriate cases to be no longer *res integra*. However, with regard to the applicability of the case in *Achung Kamei v. State of Manipur* (W.A.No.118 of 1999 dated 12.3.2007), the learned Single Judge erroneously held that the said decision has been rendered on its own facts not similar to that of the present

case. According to the learned senior counsel, the said decision in W.A.No.118 of 1999 is very much applicable to the case on hand, as the question involved in the said case is whether the death of the victim is suicide or murder.

9. The learned senior counsel added that on the question of non-examination of the materials witnesses like Harminder Singh, P.K.Sahu, the Company Commandant of D-26 Bn etc. by the police or in the Court of Inquiry is a mala fide omission of the authority concerned and the same cannot be imputed against the appellant. The learned Single Judge has failed to take note of the fact that the appellant was never called upon or informed of the progress or result of U.D. Case No.2 of 2002 or of the alleged Court of Inquiry thereby she has been victimised. The learned senior counsel submitted that there is no proper application of judicial mind by the learned Single Judge and, therefore, the impugned judgment and order is liable to be set aside.

10. By placing on record the decision of the Apex Court in the case of *S.N.Sharma v. Bipen Kumar Tiwari*, AIR 1970 SC 786, the learned senior counsel argued that the High Court can issue appropriate writ of mandamus if it is convinced that the powers of investigation has been misused or the investigating

officers of police are found to be exercising their powers mala fide.

11. It is also the submission of the learned senior counsel for the appellant that all fundamental rights cannot be waived. In support, the learned senior counsel placed reliance upon the decision of the Apex Court in the case of *Assam Sanmilita Mahasangha and others v. Union of India and others*, (2015) 3 SCC 1. Arguing so, the learned senior counsel for the appellant prayed for ordering CBI investigation regarding the death of her son Nishan Singh.

12. Per contra, Mr. S. Samarjeet, the learned Senior Panel Counsel for the respondents 1 to 3 supported the impugned judgment of the learned Single Judge. He would submit that the appellant after knowing the death of her son, ought to have lodged a complaint with the higher authorities or she could have approached the concerned Magistrate to redress her grievance. However, the appellant has failed to do so.

13. The learned Senior Panel Counsel would submit that Nishan Singh was not killed and he committed suicide. It is true that Shri P.K.Sahu was the Company Commander at the time of incident and he belongs to the State of Orissa while Head

Constable T.J.Thomas from Tamil Nadu; Head Constable Tajuddin from Uttar Pradesh; Mahender Singh Meena from Rajasthan; Water Carrier N.C.Deka from Assam and Barbar Thakur from Bihar. The plea of the appellant that the above personnel were confidants of the Company Commander Shri P.K.Sahu is accepted to the extent that in a disciplined force as every subordinates are supposed to obey the lawful orders of his seniors or Commanding Officers. It does not mean that if a Commander orders his subordinate to commit a crime, they will execute the orders of the Commander without considering it as to whether the orders given to them are lawful orders or otherwise.

14. The learned Senior Panel Counsel further submitted that Nishan Singh deserted from camp on 18.11.2002 and reported on his own on 19.11.2002 morning. He was on duty from 8 to 10 a.m. on 18.11.2002 and thereafter his next duty was scheduled at 2.00 p.m. on the same day, but he did not turn up for duty and deserted from the lines in the afternoon. The Company Commander Shri P.K.Sahu had come to the Battalion Headquarter on 18.11.2002 at about 8.00 hours to attend Sainik Sammelan convened by the Commandant and in the absence of the Company Commander, Nishan Singh had deserted from

lines. According to the learned Senior Panel Counsel, Nishan Singh was not sent out of the Camp in a planned manner as alleged by the appellant. The fact remains that Nishan Singh deserted the lines on his own may be in search of hooch and women as he had been doing in the past also.

15. The learned Senior Panel Counsel added that the story that Nishan Singh saw Commandant Shri Dinesh Kumar and the wife of Shri P.K.Sahu in objectionable condition is false and fabricated and there is no truth in it. It is with the motivated intention to support the false theory of murder of Nishan Singh which has no truth at all.

16. Adding further, the learned Senior Panel Counsel submitted that the allegation that Tajuddin, T.J.Thomas and Mahender Singh started beating Nishan Singh is imagination as there is no mark of any scuffle or injury reported in the post mortem report. Similarly, holding a young and healthy Constable by two personnel in order to kill him is also not possible especially seeing the nature of injury. During the scuffle, keeping the rifle point blank range is also not possible. Nishan Singh shot himself into his stomach which is easily possible with Insas rifle, as he was suffering from appendicitis and was an advanced stage.

17. The learned Senior Panel Counsel submitted that after examining the materials on record, the learned Single Judge rightly held that this is not a fit case to direct the CBI to investigate into the case. The learned Senior Panel Counsel submitted that direction for investigation can be given only if an offence is *prima facie* found to have been committed or a person's involvement is *prima facie* established. In the instant case, there is no *prima facie* proof that the personnel alleged by the appellant have committed the crime. The learned Single Judge has rightly come to the conclusion that there is no sufficient material to come to a *prima facie* conclusion that there is a need for such enquiry. Further, the appellant had not brought out any new material facts. Since the judgment of the learned Single Judge is well considered one, no interference is called for. Thus, a prayer has been made to dismiss the appeal.

18. Mr. RK Umakanta, the learned Government Advocate appearing for the fourth respondent submitted that there is no error in the order of the learned Single Judge. Placing reliance upon the decision of the Apex Court in the case of *Secretary, Minor Irrigation and Rurgal Engineering Services, UP and others v. Sahngoo Ram Arya and another*, (2002) 5 SCC 521, the learned Government Advocate submitted that before

directing CBI enquiry the Court has to record a *prima facie* finding as to the truth of such allegation. In the instant case, the learned Single Judge after examining the matter in proper perspective, rightly dismissed the writ petition. Therefore, no interference is warranted in the impugned judgment and prayed for dismissal of the appeal.

19. We have considered the rival submissions and also perused the materials available on record.

20. The case of the appellant is that her son Nishan Singh, Constable of 26th Bn. CRPF, was killed in the barrack of the Battalion on 19.11.2002. At the relevant point of time, the Company Commander of D-Company was one Shri P.K.Sahu and in the same Company Havildar T.J.Thomas; Havildar Tejudeen; Constable Mohinder Singh; Water Carrier Deka and Barbar Thakur were also working. The Commandant of 26th Bn. Shri Dinesh Kumar used to come to the D- Company very often and one day before 19.11.2002, the Commandant Shri Dinesh Kumar came to the D-Company and after talking with the Company Commander Shri P.K.Sahu, the Commandant started living at the residence of Shri P.K.Sahu. When he stayed away from his room, the Quarter Master of the D-Company asked the Constable Nishan Singh to put chair inside the room where the

Commandant Dinesh Kumar stayed. When Nishan Singh picked up the chair and went inside the room to place it, he saw Commandant Shri Dinesh Kumar and the wife of Shri P.K.Sahu in an objectionable condition. The said news of illicit relationship of the Commandant Shri Dinesh Kumar with the wife of the Company Commandant was spread by Nishan Singh. Unable to tolerate the spreading of the news, both Shri Dinesh Kumar and Shri P.K.Sahu planned to murder Nishan Singh and when Nishan Singh went to the barrack to take his place for lunch, the Company Commander ordered Constable Mohinder Singh; Havildar Tajuddin; Havildar Thomas to go to his barrack and kill Nishan Singh. Pursuant to the order of the Company Commander, all the aforesaid three persons started beating Nishan Singh in his barrack. Havildar Tajuddin and Constable Mohinder Singh caught hold of Nishan Singh from both sides and Havildar Thomas fired from Insas rifle of Mohinder Singh from the point blank range of his abdomen and killed Nishan Singh. After the incident, all the above personnel spread rumour that Nishan Singh has committed suicide. On 20.11.2022, two Sub-Inspectors of Police from Sapermeina Police Station came to the place of occurrence and investigated the matter and filed a report under Section 174 Cr.P.C. in U.D. Case No.2 of 2022 disposing the case.

21. As could be seen from the records, the appellant had originally filed the writ petition before the Imphal Bench of Gauhati High Court on 21.12.2005 for direction to the respondents to conduct enquiry through CBI qua the murder of her son on 19.11.2002 at the camp of Battalion at Heavy Fuel Power Project, Leimakhong of Senapati District.

22. Prior to the institution of the writ petition, the appellant had approached the National Human Rights Council, Punjab. The National Human Rights Council, upon enquiry by examining the witnesses and also collection of information from the occurrence spot, came to the conclusion that two people of the Battalion had revolted the killing of Nishan Singh and Nishan Singh had not committed suicide, but he had been shot dead. In the report dated 6.3.2003, the National Human Rights Council, *inter alia*, stated as under:

“Keeping in view, the conditions of the spot, that, the main accused in the case is T.J.Thomas, who has been in connivance of commandant Dinesh Kumar and Company Commander P.K.Shahu being decided to be proceeded on pension by 31st March, is required to be stayed.

All those accused, who have been named as before, all those above said proceedings done by

them, along with Commandant Dinesh Kumar and company Commander P.K.Shahu and all other officers who are attached to this case directly or indirectly have clearly violated the Human Rights, openly, which is in itself, violation of constitutional section 311, 316 and 321 of the Constitution of India.

Keeping in view, all the facts (& figures) and references, the relevant legal actions be taken against them under Section 302 and all other relevant sections and the family members of Nishan Singh and the soul of Nishan Singh be given justice.

The above detailed references, such as no rifle is present on the spot of incident (2) The post mortem report of Nishan Singh showing only one bullet shot in the body, but three holes found on the spot of incident. (3) If Nishan Singh would have shot himself, then the bullet would have moved upwards, but the bullet has struck the stomach from the front side, which is clearly evident that the bullet was struck by staying a little back from the front side and no blood stain was present on it. (4) The Company Commander P.K.Shahu to proceed on leave on the very 3rd day of incident, stresses to think about it suspiciously. (5) Sending all the relevant officials forcibly on leave also puts suspicion in the case.

Henceforth, not agreeing to it, it is hereby requested to get this case investigated by some neutral agency or by C.B.I.”

23. Earlier, the appellant had also filed Criminal Misc. Case No.14716-M of 2003 before the Punjab and Haryana High Court under Section 482 Cr.P.C. to direct the respondents therein to conduct the enquiry through CBI regarding the death of her son who was murdered under a pre-planned conspiracy. By the order dated 17.5.2005, the CrI. Misc. Case No.14716-M came to be dismissed by the Punjab and Haryana High Court. The operative portion of the order reads thus:

“After hearing the counsel for the parties and going through the record of the case and in view of the fact that the alleged occurrence took place in the territorial jurisdiction of Gauhati High Court, I do not find any ground to exercise the inherent powers of this Court under Section 482 Cr.P.C. for issuing directions to the respondents to conduct the enquiry in the aforesaid alleged occurrence through CBI or any other agency.

Dismissed.”

24. Subsequent to the dismissal of CrI. Misc. Case No.14716-M, the appellant had filed the present writ petition.

25. Denying the averments in the writ petition, the respondents filed affidavit-in-opposition, *inter alia*, stating that nobody had fired at Constable Nishan Singh and he himself committed suicide. It is also the say of the respondents that Nishan Singh had been indulging in the activity of leaving the Camp and he was found to have been disturbed due to the fact that he was not being allowed to marry his brother's sister-in-law. Apparently fear of bad name, guilty consciousness and fear of punishment forced him to commit suicide. The enquiry conducted by the National Human Rights Council, Punjab is not tenable, as they have not contacted any of the senior officers of the Department to ascertain the facts.

26. It is pertinent to note that in paragraph 16 of the affidavit-in-opposition, the respondents 1 to 3 averred that the enquiry can be conducted by any agency. There was no pre-planned conspiracy to kill Constable Nishan Singh. In paragraph 16.1 of the affidavit-in-opposition, it has been stated as under:

“16.1 The enquiry can be conducted by any agency. All the relevant witnesses are in the Battalion only except Hv. T.J. Thomas and Thakur retired and Const. T.P.Gautam (Now as Havildar) in 1376 Bn). CT Mahender Singh transferred to 165 Bn. Sri Dinesh Kumar

Commandant transferred to IGP Special Sector and Sri P.K.Sahu Assistant Commander transferred to GC CRPF Imphal. They can also be summoned to depose as and when required.”

(emphasis supplied)

27. Admittedly, the affidavit-in-opposition was sworn by the then ADIGP Shri Hari Ram Banga way back in the year 2005 itself. When it is the say of the respondents 1 to 3 that enquiry regarding the murder of the deceased Nishan Singh can be conducted by any agency, taking note of the averments set out in the writ petition and more particularly, the averment in paragraph 16.1 of the affidavit-in-opposition that the enquiry can be conducted by any agency, if the Writ Court ordered enquiry through any agency or CBI, the matter would have come to an end by this time. However, for the reasons best known to the parties, no such order has been passed and the matter has been prolonged and, finally on 18.7.2016, the writ petition came to be dismissed by the learned Single Judge, after a gap of 11 long years from the date of filing of the affidavit-in-opposition by the respondents 1 to 3 and 14 years from the date of alleged occurrence.

28. The learned Single Judge held that the incident took place in the barrack of 26th Bn. CRPF on 19.11.2002 and there is no eye witness to it. The averments made in the writ petition appear to have been told by Nishan Singh to somebody immediately prior. The person to whom Nishan Singh might have talked or narrated about the incident has not come forward to speak about the same. There is no material on record to corroborate the averments made in the writ petition about the objectionable condition in which Nisha Singh has seen his superior officer and the manner in which Nishan Singh was caught hold of him by Tajuddin and Mohinder Singh, when Thomas fired at him.

29. The learned Single Judge fully believed the case of the respondents to hold that the special report prepared by the National Human Rights Council, Punjab, cannot be used in favour of the appellant, as the said Council is not the State Human Rights Commission. The learned Single Judge further observed that the statement made in the affidavit sworn by Harminder Singh is only on hearsay and shall not disclose the factual position of the case. Observing so, the learned Single Judge in the impugned judgment held as under:

“[8] After examining the materials on record and having heard the learned counsels appearing for the parties, this court is of the view that there is no prima facie case and the materials on record are not sufficient to direct the CBI to investigate into the case.

The learned counsel appearing for the petitioner has placed his reliance on the decision rendered by the Hon’ble Gauhati High Court in the case of W.P. (C) No.11 of 1999, Smt. Achung Kamei Vs. State of Manipur & ors. Wherein the Hon’ble High Court, after examining the materials available on record and in particular, the report of the magisterial enquiry and the post-mortem report, found it to be a fit case and accordingly, direct the case be investigated by the CBI. But on perusal of it, it is seen that the decision has been rendered on its own facts which are not similar to that of the present case and therefore, it will not apply to the facts of the present case.

[9] For the reasons stated herein above, the instant writ petition fails and is accordingly dismissed with no order as to costs.”

30. We slightly differ from the aforesaid view taken by the learned Single Judge. Admittedly, nothing has been produced by the respondents to discard the report of the National Human Rights Council, Punjab. According to the respondents,

Nishan Singh himself committed suicide due to personal reasons i.e. the marriage issue and the advanced stage of his appendicitis.

31. During the course of hearing, we had called for the original Files and other relevant documents in reference of CT/GD Nishan Singh of 26 Bn. Pursuant to the order of this Court, the original Files were produced before us. We have perused the Files (2 Files – One named as COI file of Late CT Nishan Singh and another file named as Court of Inquiry File in R/O of Late CT Nishan Singh (005160602 of D/26 BN CRPF). The first File contains two set of letters containing allegation against the Unit officers in connection with the death of Nishan Singh; office orders dated 27.4.2003 to conduct the Court of Inquiry and statements of witnesses examined. The second File contains statements of witnesses, reports of the deceased officers, medical records, FIR registered by the Saparmaina Police station, copy of post-mortem report.

32. In the Medical Certificate of Cause of Death, it has been that '*GUN SHOT WOUND ABDOMEN WITH HAEMORRHAGIC SHOCK*'. On seeing the said Medical Certificate, the said words - *GUN SHOT WOUND ABDOMEN WITH HAEMORRHAGIC SHOCK* – appear have been written

in different ink when compared to the other writings made in the said certificate. In the said certificate, it has been stated that the examination was done around 13.30 hours on 19.11.2002. After examination, the Medical Officer has handed over the body for post mortem to the Investigating Officer of Sapamaina Police Station. In the copy of the FIR in UD Case No.2 of 2002 registered at 4.00 P.M. on 19.11.2002, the date of occurrence and cause of death has been stated as 19.11.2002 at 11.50 hours suicide. This very word “*suicide*” appearing in the FIR is highly suspicion, as it is not known how Shri P.K.Sahu, Company Commandant D-26 CRPF would have come to the conclusion that Nishan Singh has committed suicide. Though the body of the deceased Nishan Singh was received by the Investigating Officer on 19.11.2002, the same was produced for post mortem on 20.11.2002 at 10.20 A.M. After conducting the autopsy, the Doctor opined that “*death was due to laceration vena cava and spinal cord resulting from firearm injury of a contact shot suicidal in nature*”. The respondents pleaded that Nishan Singh was suffering from appendicitis and he was in advanced stage, which is the cause of death. However, the post mortem report speaks nothing of Nishan Singh’s having suffered from appendicitis or of it being enough to cause his death. Admittedly, the respondents have failed to produce any document in support of their

submission that Nishan Singh was suffering from appendicitis. The aforesaid would slightly disturb our mind that the respondents have not given the correct picture of the case.

33. Coming to the affidavit of Harminder Singh relied upon by the appellant, the learned Single Judge held that the same cannot be taken into consideration, as at the relevant point of time, Harminder Singh was posted at some other location which is far away from the place of occurrence.

34. On a perusal of the annexures annexed to the appeal papers, it is seen that the statement Harminder Singh has been relied upon by the National Human Rights Council, Punjab and, in fact, he has been examined by the said Council and recorded his statement. In para 2 of the affidavit, Harminder Singh stated that he was posted as driver in 26th Battalion, CRPF. At the time of swearing affidavit, he was posted as Constable at E-26 Company situated at K.P.I. District Senapati. In paragraph 3, he has stated that on 19.11.20022 a Sepoy No.005160602 Nishan Singh of D-26 Company was killed with a gun shot by the Company Commander Mr. P.K. Shahu along with his Jawans Havaldar T.J. Thomas, Havaldar Tajudeen, Sepoy Mohinder Singh, B.M.Thakur (Barber), N.C. Deka (Water Carrier) in a pre-planned conspiracy with the orders of the Commandant of 26th

Battalion Sh. Dinesh Kumar. Admittedly, the said affidavit does not contain the date of swearing. Paragraph 3 of the affidavit is quoted hereunder for ready reference:

“3. That on 19-11-2002 a Sepoy No.005160602 Nishan Singh of D-26 Company was killed with a gun shot by the Company Commander Mr. P.K. Shahu along with his Jawans Havaladar T.J. Thomas, Havaladar Tajudeen, Sepoy Mohinder Singh, B.M.Thakur (Barbet), N.C. Deka (Water Carrier) in a pre-planned conspiracy with the orders of Commandant of 26th Battalion sh. Dinesh Kumar.”

35. May be while swearing affidavit, Harminder Singh was posted at a different place, but on the date of occurrence, he was working in 26th Bn. CRPF and he must have known what is happening in the Company. In the affidavit, Harminder Singh categorically stated that the death of Nishan Singh has occurred in connivance with Shri P.K. Sahu. He has also stated about the visiting of Shri Dinesh Kumar to the house of Shri P.K.Sahu and having bad condition of Shri Dinesh Kumar and wife of Shri P.K.Sahu. Since the Nishan Singh was working as Constable at 26 Bn. and he has been directed to put chair inside the room where Commandant Shri Dinesh Kumar was staying, there is every possibility of Nishan Singh seeing the things that occurred

in the said room and the persons available in the said room and their position.

36. The appellant mainly contended that when Nishan Singh spread the news about the illicit relation, both Shri Dinesh Kumar and Shri P.K.Sahu planned to murder Nishan Singh and, accordingly, on 18.11.2002, Shri P.K.Sahu issued a night pass to Nishan Singh directing him to report to the Unit in the morning and on the next day when he presented at 7.15 A.M., Shri P.K.Sahu forcibly snatched the night pass from Nishan Singh and tore it off and asked him to wait outside for whole night. On 19.11.2002, the Havildar Major asked Nishan Singh to have his meal and when Nishan Singh went to the barrack for lunch, Shri P.K.Sahu ordered Constable Mohinder Singh, Havildar Tajudin, Havildar Thomas to go and kill Nishan Singh and, pursuant to the words/directions of Shri P.K.Sahu, they went and started beating Nishan Singh in his barrack. While Tajudin and Mohinder Singh caught hold of Nishan Singh from both sides, Havildar Thomas fired at him at his abdomen from Insas rifle of Mohinder Singh and killed him.

37. It appears that qua the occurrence, the Deputy Commandant ordered to hold the Court of Inquiry in which he had recorded the statement of witnesses and after preparing

statements, he handed over the same to the Commandant with a copy to the Inspector General, CRPF. However, the Inspector General, CRPF did not accept the enquiry conducted by the Deputy Commandant and re-ordered enquiry. On 18.2.2003, an order came to be passed by the Commandant Shri Dinesh Kumar in the following lines:

“1) No.005160602 Ct Nishan singh committed suicide with the rifle of No.913243236 Ct Mahender Singh for which none is to be blamed. The death is attributed individual’s act of committing suicide. He will be entitled to no other benefits except DCRG, GPF, GIS, RPF etc. under normal rules and Dependent pension to the NOK (mother) if permissible.

2) He will be struck off the strength of this Unit w.e.f. 19.11.2002 (AN).

3) The one round fired by the late Ct. with the Insas Rifle Butt No.97 shall be written off.

4) The FIR/Police UD Case No.2/02 dated 19.11.2002 in the Saparmaina Police Station should be pursued for settlement and firearm (INSAS Rifle No.16324955 Butt No.97) along with one magazine with 19 live rounded and one empty case of 5.56 mm round be obtained back after settlement of the case.”

38. While ordering so, the Commandant issued the following precautions:

“i) There is a need to keep a check/watch specially on young constables so that they do not go astray and counselling in this regard on a regular basis should be done for keeping them on proper track.

ii) Keeping the rifle unattended by the Force personnel need not be discouraged in order to avoid such incidents. Suitable orders in this regard should be passed.

iii) Platoon Commander and Section Commander may exercise proper supervision and take responsibility so that the Cts under their command are not allowed to fall into bad habits. This needs to be watched in all coys for which necessary steps should be taken.”

39. Subsequent to the passing of the order dated 18.2.2003, the Commandant Shri Dinesh Kumar constituted a Court of Inquiry to conduct an enquiry on the following aspects:

“(a) Was there any attempt made by any of the unit personnel to hide the truth and conspire to kill Ct. Nishan Singh.

(b) The role of CT/DVr Harminder Singh, SI/GD S.D.Shikla and HC/GD Joginder Singh. Do they have any new facts which are relevant.

(c) The names of following staff of D/26 have figured in the complaint. Do they have anything new or additional facts to submit in connection with death of Ct. Nishan Singh.

(d) What was the reason of shouting by CT/Dvr Harminder Singh when he had gone to D/26 location with Shri Attar Singh D/C and factors leading to his Act of in-discipline and gross misconduct.

(e) Role of SI/GD S.D.Shukla in spreading false propaganda in connection with death of Ct. Nishan Singh.

(f) Reasons for submitting written statement by Ct/Dvt Harminder Singh in-front of the so called Human Right Council members of Punjab who all visited him and why they did not meet unit Officers.

40. Though the appellant was not directly aware of what had happened on the fateful day, she has clearly stated in her writ petition that her son Nishan Singh while he was alive informed them about the threat by Shri Dinesh Kumar and Shri

P.K.Sahu, superior officers of Nishan Singh. The affidavit of the Harminder Singh, which was referred to by the National Human Rights Council, Punjab assumes much importance in the present case, as the said affidavit speaks about the occurrence and killing of Nishan Singh with a gun shot by the Company Commander Shri P.K.Sahu along with his Jawans Havildar Thomas, Havildar Tajudeen, Sepoy Mohinder Singh, Barber B.M.Thakur and Water Carrier N.C.Deka. The said affidavit cannot be brushed aside as observed by the learned Single Judge. That apart, as stated supra, the affidavit also speaks about the illicit relationship of the Commandant Shri Dinesh Kumar with the wife of Company Commander. The specific case of the appellant is that since Nishan Singh spread the news about the illegal intimacy of Shri Dinesh Kumar with the wife of Shri P.K.Sahu, both of them have planned to eliminate her son and such a plea cannot be brushed aside.

41. On a perusal of the records, it is seen that the State police authorities have not investigated the case properly. In the case on hand, a complaint dated 19.11.2002 before the jurisdictional police station has been lodged by the then Company Commander D-26 CRPF Shri P.K.Sahu and the jurisdictional police treated the said complaint as UD Case No.2

of 2002 under Section 174 Cr.P.C. The Investigating Officer has filed a report under Section 174 Cr.P.C. on 5.7.2003 stating that since the case is suicidal in nature, the same may be disposed of. Similarly, the Commandant Shri Dinesh Kumar had ordered constitution of Court of Inquiry and the Court of Inquiry submitted a report to the effect that the death of Nishan Singh is only by suicide. Agreeing with the report of the Court of Inquiry, the Commandant Shri Dinesh Kumar has passed an order on 18.2.2003 holding that the death is attributed to the individual's act of committing suicide. The circumstances under which the complaint lodged by the Company Commander Shri P.K.Sahu and the constitution of Court of Inquiry by the Commandant Shri Dinesh Kumar clearly establish that only in order to save their skin, they have lodged the complaint and constituted the Court of Inquiry respectively. Since the main allegation itself against the Commandant Shri Dinesh Kumar and the Company Commander Shri P.K.Sahu, there is high suspicion in the instant crime. As rightly argued by the learned senior counsel, the Commandant Shri Dinesh Kumar cannot take part in the Court of Inquiry held for the death of Nishan Singh.

42. Admittedly, this is a case where a young Constable has been killed without any fault and the appellant is an

unfortunate woman who lost his son at the age of 21 years. In fact, she is fighting for justice since 2003 by filing various proceedings. Aggrieved by the slipshod investigation by the State police and the collusion of the officials concerned in coming to the conclusion that the death of her son is suicide, the appellant has preferred the writ petition under Article 226 of the Constitution of India seeking a mandamus for investigation by the CBI.

43. In *S.N.Sharma*, supra, the Apex Court held that in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution of India and the High Court can issue appropriate writ of mandamus if it is convinced that powers of investigation have been misused or the Investigating Officers of Police are found to be exercising their powers mala fide.

44. The respondents cannot canvass delay and laches, in view of the judgment of the Apex Court in the case of *Assam Sanmilita Mahasangha*, supra. In *Assam Sanmilita Mahasangha*, supra, wherein the Apex Court held as under:

“32. Tilokchand Motichand v. H.B.Munshi, 1969) 1 SCC 110 is a judgment involving property rights of individuals. Ramachandra Shankar

Dodhar v. State of Maharashtra, (1974) 1 SCC 317, also of a Constitution Bench of five judges has held that the fundamental right under Article 16 cannot be wished away solely on the 'jejune' ground of delay. Since Tilokchand Motichand case was decided, there have been important strides made in the law. Property Rights have been removed from part III of the constitution altogether by the Constitution 44th Amendment Act. The same amendment made it clear that even during an emergency, the fundamental right under Article 21 can never be suspended, and amended Article 359(1) to give effect to this. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248, decided nine years after Tilokchand Motichand, Article 21 has been given its new dimension, and pursuant to the new dimension a huge number of rights have come under the umbrella of Article 21 [for an enumeration of these rights, see Kapila Hingorani (1) v. State of Bihar, (2003) 6 SCC 1, para 57]. Further, in Olga Tellis v. Bombay Municipal Corpn. (1985) 3 SCC 545, it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not

be sufficient to shut the doors of the court on any petitioner.”

45. The judgment in the case of *Assam Sanmilita Mahasangha*, supra, is squarely applies to the case of the appellant. As stated supra, since the occurrence is of the year 2002, it cannot be contended that this Court has no power to order re-investigation.

46. Really, the act of the respondent authorities affected the fundamental rights of the appellant. When some suspicion has been established in the alleged crime, this Court cannot shut its eyes.

47. In *Dharam Pal v. State of Haryana and others*, (2016) 4 SCC 160, the Apex Court observed that the Constitutional Courts are envisaged with the power to order fresh, de novo or re-investigation. In paragraph 25, it has been held as under:

“25. The power to order reinvestigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said Constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean

has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sub sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say

so it has become “idee fixe” but in our view the imperium of the Constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evidence and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

48. We noticed from the materials available on record that immediately after the date of occurrence, the Company Commander Shri P.K.Sahu and other persons who are all said to have been involved in the alleged crime proceeded on leave. The same has not been controverted by the respondents. When suspicion exists, the Court can order fresh enquiry/investigation.

49. In *Sahngoo Ram Arya*, supra, the Apex Court held:

“5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to

have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment (AIR 1999 SCW 289 : AIR 1999 SC 2979) at paragraph 174 of the report has held thus:

The other direction, namely, the direction to CBI to investigate “any other offence” is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person’s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of “LIFE” and “LIBERTY” guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of “LIFE” has been explained in a manner which has infused “LIFE” into the letters of Article 21.”

50. The specific case of the appellant is that certain named persons have committed the offence. At the cost of repetition, the prayer of the appellant in the writ petition is quoted hereunder:

“The petitioner humbly prays that Your Lordships may graciously be pleased to issue direction or any other appropriate order or writ to the State-respondents to conduct/hold enquiry through the Central Bureau of Investigation (CBI) regarding the death/murder of Constable Nishan Singh (Constable No.005160602) of the 26th Battalion C.R.P.F. on 19.11.2002 at the camp of the Battalion at Heavy Fuel Power Project, Leimakhong of Senapati District, Manipur, and to award cost of this application, for the ends of justice.”

51. Thus, it is not the case of direction to conduct CBI enquiry as to whether any person has committed an offence. The case of the appellant is that Nishan Singh was killed under the pre-planned conspiracy hatched by Shri P.K.Sahu and Shri Dinesh Kumar respectively.

52. In the decision relied upon the learned Government Advocate in the case of *State of West Bengal and other v. Committee for Protection of Democratic Rights, West Bengal and*

others, (2010) 3 SCC 571, the Apex Court held that 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.

53. The Apex Court in the said decision further observed that the 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 recourses, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

54. As observed by the Apex Court, this is case where an order for conducting the CBI investigation is necessary for doing complete justice and enforcing the fundamental rights. As stated supra, the allegations are against the superior officers of

the deceased. That apart, when the allegations are against the Commandant and Company Commander, the very same persons cannot lodge the police complaint and constitute a Court of Inquiry respectively.

55. The criminal complaint has been closed by filing report under Section 174 Cr.P.C. and based upon the report of the Court of Inquiry, the Commandant came to the conclusion that the deceased died due to suicide. However, the records produced and/or shown before us are otherwise and there appears to be a suspicion in the death of Nishan Singh.

56. The learned Single Judge himself observed that it is indubitably clear that the High Court under Article 226 of the Constitution of India has the power and jurisdiction to direct the CBI to investigate into a case, but this power shall be exercised sparingly, cautiously and only in exceptional situation. This is a case coming under the exceptional situation and power can be invoked to direct fresh investigation. More so, clear averments have been set out in the writ petition.

57. In *K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai*, (2013) 12 SCC 480, a three Judge Bench of the Apex 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 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.”

58. In *Dwarka Nath v. ITO, AIR 1966 SC 81*, the Apex Court observed that Article 226 of the Constitution is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case. Therefore, we have said the above in regard to the exercise of jurisdiction by the Supreme Court under Article 32, must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226 of the Constitution of India.

59. In *Tirupati Balaji Developers (P) Ltd. V. State of Bihar*, (2004) 5 SCC 1, the Apex Court held that under the Constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts both are Courts of record. In a way the canvas of judicial powers vesting in the High Court is wider, inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution of India for the enforcement of any of the rights conferred by Part II of the Constitution of India and for any other purpose while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts.

60. Thus, from the aforesaid decisions of the Apex Court, it is clear that the High Courts are authorised under Article 226 of the Constitution of India to issue directions, orders or writs to any person or authority, including any Government to enforce fundamental rights and for any other purpose. In other words, the right conferred by Article 226 of the Constitution of India 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.

61. At this juncture, the learned Senior Panel Counsel for the respondents 1 to 3 submitted that the appellant ought to have lodged a complaint with the higher authorities or she could have approached the concerned Magistrate to redress her grievance. But the appellant had failed to do so.

62. It is true that upon receipt of the information about the incident from Shri P.K.Sahu, a regular U.D. Case No.2 of 2002 was registered by the concerned police station and the appellant was in the mind that the Investigating Officer would conduct the investigation as per law. But the Investigating Officer has filed a final report under Section 174 Cr.P.C. on 5.7.2003 to the effect that the death of Nishan Singh is suicide.

63. As stated supra, the appellant had also earlier approached the Punjab and Haryana High Court by filing petition and Section 482 Cr.P.C. and the same was dismissed on the ground of territorial jurisdiction. In the facts and circumstances narrated in the writ petition, the non-approaching of the concerned Magistrate or the higher officials is not affecting the case of the appellant. The fact remains that from date of her

son's death, the appellant is fighting for justice knocking the doors of various fora, including the High Courts.

64. Considering the given facts and circumstances of the case, we are of the view that the materials produced by the parties, more particularly the original files produced by the respondents, disclose a *prima facie* case calling for fresh investigation by CBI as the powers and jurisdiction of CBI for investigation are confined to any offence or classes of offences notified by the Central Government. There are many instances like the instant case in which the CBI has been directed by the Apex Court and this Court to investigate into various cases. The Court, being the bulwark of civil liberties of the citizens, has not only the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed under Part III in general and under Article 21 of the Constitution of India.

65. In *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746, the Apex Court held:

“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.”

66. It is pertinent to note that as the incident dates back to the year 2002 and many persons would not be available, this Court directed the respondents to file an affidavit as to the relevant persons who are still in service and those who retired from service but are available and those who are no more who were listed as witnesses in the Court of Inquiry.

67. Pursuant to the direction of this Court, on 27.9.2022, the DIG Manipur & Nagaland Sector, CRPF, Imphal has filed an affidavit detailing the persons in service, retired from service but are alive and who are no more. The details given in affidavit is extracted hereunder for ready reference:

Sl. No.	IRLA/Force No. Rank & Name	Whereabouts
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1	Shri Dinesh Kumar Comdt., IRLA No.12794	As per PIS, said officer proceeded on SUPERANNUATION during the year 2011 from the rank of IG
2	Shri Krishnan Gopal Sharma, Dy. Comdt., IRLA No.38117	As per PIS, said officer proceeded on superannuation during the year 2015 from the rank of Commandant.
3	Shri Pradipta Kumar Sahu, Asstt. Comd. (Now 2-I/C), (IRLA No.5255	As per PIS, said officer presently posted in the office of DIG CRPF, Sambalpur (Odisha) w.e.f. 25/09/2022.
4	811160137 HC.GD J.T.Thomas	As per PIS data said individual proceeded on Voluntary retirement
5	800110286 HC/GD Md. Tajudeen Khan	As per PIS data said indivl proceeded on superannuation w.e.f. 31.03.2018 from 69 Bn.
6	913243236 CT/GD (Now ASI/GD) Mohinder Singh	Presently posted in 35 Bn CRPF, Srinagar.
7	941242551 CT/WC Nirmal Chandra Deka	As intimated by 16 Bn vide signal No.J.II-01/2022-EC-II dated 19/06/2022, CT/WC N.C.Deka is presently posted in 16 Bn since 04/12/2021 and individual is under treatment at Venkateswar Hospital, New Delhi w.e.f. 03/09/2022.
8	680277099 CT/Barber Brahma Deo Thakur	As intimated by GC Imphal vide signal No.P.III-3/2022-GC-IMP-Pen

		dated 21/09/2022, CT/BB Brhma Deo Thakur has proceeded on Superannuation retirement wef 31/12/2003.
9	940260056 CT/Dvr Harminder Singh	As intimated by 226 Bn vide Signal No.J.II-1/2022-226-EC-II dated 16/09/2022 CT/Dvr Harminder Singh have already been proceeded Voluntary Retirement on 31/08/2017

68. At this juncture, the learned Senior Panel Counsel for the respondent Union submitted that as the incident took place in the year 2002 which is more than 21 years, the possibility of recalling afresh the incident may be remote as the individuals related with the incident have also advanced in their ages. Since the occurrence is of the year 2002 i.e. more than 21 years back and individuals related with the occurrence are age old, it cannot be contended that the investigation cannot be stopped.

69. Though the learned Single Judge accepted the power of the High Court in ordering investigation by the CBI, the learned Single Judge came to a conclusion that there is no *prima facie* case and the materials on record are not sufficient to direct the CBI to investigate into the case. We are of the view that the appellant has established the *prima facie* case. In fact, in the

year 2005 itself, the respondents 1 to 3 agreed to direct to hold investigation of the case by any agency, which means that the respondents 1 to 3 have no objection in the year 2005 itself in directing the CBI to investigate into the matter. However, the same has not been done at the relevant point of time. Had the investigation/enquiry been done by any other agency like the CBI at the relevant point of time as agreed by the respondents 1 to 3, the reason for the death of Nishan Singh would have come to light. Now the appellant is aged about 84 years and at the age of 84 years, she wants to know the cause of death and the reason for death of her son. The said prayer of the appellant is quite reasonable and in order to render fair justice to the affected family, the instant case needs to be investigated by the CBI in the interest of justice. The nature of bullet shot and the extent of wound and also the alleged tampering of important documents stated in this case are to be verified by the investigating agency, as this Court is not expertise.

70. At this juncture, it is apposite to rely upon the decision of the Apex Court in the case of *Vinay Tyagi v. Irshad Ali Deepak and others*, (2013) 5 SCC 762, wherein it has been held that “*it is well settled canon of criminal jurisprudence that superior courts have the jurisdiction under Article 226 of the*

Constitution of India to direct further investigation". The Apex Court explained that 'fresh', 'de novo' and 're-investigation' are synonymous expressions and the superior Courts are also vested with the power of transferring investigation from one agency to another provided the ends of justice demand such an action. The Apex Court reiterated that in appropriate cases, it is open to the Court to hand over the investigation to a specialized agency.

71. It is settled that fair trial is a *sine qua non* for instilling faith in the public that the truth behind a crime will be revealed through an impartial investigation.

72. 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 hand over the investigation to an independent agency like CBI. 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.

73. The case on hand is very pathetic, as the allegation is against the higher officials of the disciplined force who are

alleged to have caused death to a newly joined Constable, aged about 21 years at the time of occurrence. The loss of 21 years aged boy who joined in the CRPF with huge dream cannot be tolerated by the mother. Bearing in mind the position of law, as discussed above and, in the facts and circumstances of the case, we are of the opinion that this is a fit case to issue direction to conduct CBI investigation into the alleged crime.

74. For the foregoing reasons, we are of the view that the judgment and order of the learned Single Judge warrants interference and the prayer in the writ petition needs to be considered.

75. In the result,

- (i) The writ appeal is allowed.
- (ii) The judgment and order of the learned Single Judge dated 18.7.2016 made in W.P.(C) No.1401 of 2005 is set aside.
- (iii) We direct the Joint Director of CBI, Manipur, to get the instant case of death of Nishan Singh, Constable No.00560602, 26th Battalion, CRPF, at the Camp of the Battalion at Heavy

Fuel Power Project, Leimakhong of Senapati District, investigated.

- (iv) The Investigating Officer appointed by the Joint Director of CBI, Manipur, shall be entitled to take possession of all the records in FIR/Police UD Case No.2 of 2002 dated 19.11.2002 from the file of Saparmaina Police Station and also other relevant records/documents pertaining to the case of the death of Nishan Singh from the office of the Inspector General, Manipur & Nagaland Sector, CRPF, Imphal, Manipur and also from the other offices for the purpose of fresh investigation.
- (v) On what aspects the fresh investigation shall be carried out is left to the wisdom of the CBI.
- (vi) The fresh investigation be carried out and completed as early as possible, preferably within a period of three months from the date of receipt of a copy of this judgment.
- (vii) There will be no order as to costs.

(viii) The original Files are ordered to be returned to the learned Senior Panel Counsel with due acknowledgement.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil