

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(Cr.) No. 665 of 2022

Bijay Hansda aged about 51 years, s/o Dasmath Hansda, R/o Bhawanichoki, Ambadiha, Mandro, P.S. and P.S. Mirzachoki, District-Sahibganj Petitioner

-- Versus --

The State of Jharkhand and Others Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. S.S. Choudhary, Advocate
Mr. Ashish Kumar Thakur, Advocate
For the State :- Mr. Sachin Kumar, A.A.G.-II
Mr. Manoj Kumar, G.A.-III
For Enforcement Directorate:- Mr. Anil Kumar, A.S.G.I.
Ms. Chandana Kumari, A.C to A.S.G.I.

06/18.08.2023 Heard Mr. S.S. Choudhary, the learned counsel appearing on behalf of the petitioner, Mr. Sachin Kumar, the learned A.A.G.-II along with Mr. Manoj Kumar, the learned G.A.-III appearing on behalf of the respondent State and Mr. Anil Kumar, the learned A.S.G.I. appearing on behalf of the respondent no.3- Directorate of Enforcement (E.D.).

2. An Interlocutory Application being I.A. No.7438 of 2023 was filed by the petitioner for withdrawal of the present writ petition and the said I.A was decided by the order dated 17.08.2023 whereby the prayer of withdrawal of the writ petition was rejected for the reasons assigned in that order and the said order speaks as under:

"This matter was listed yesterday at Serial No. 53 and Mr. Ashish Kumar Thakur, learned A.C. to Mr. S.S. Choudhary, learned counsel mentioned this matter on the ground that he only wants to withdraw this writ petition, in view of that, his prayer was allowed that's how this matter was listed today in the supplementary list.

2. Today, when this matter was taken up, Mr. S.S. Choudhary, learned counsel appearing for the petitioner submitted that he has received the fresh vakalatnama and he wants to file an I.A. for withdrawal of the writ petition and prayer was made that this matter may kindly be taken up at 2.15 P.M. In view of such submission, the matter was

passed over and it was again taken up at 2.15 P.M. When the matter was taken up, Mr. J.P. Jha, learned senior counsel has appeared on behalf of the petitioner and he submits that I.A. No. 7438 of 2023 has been prepared for withdrawal of the present writ petition. However, the same was not filed in the registry, as the matter was on the Board. He submits that the copy of the said I.A. has already been served upon the learned counsel appearing for the Enforcement Directorate as well as learned counsel appearing for the State. He submits that the said I.A. may kindly be taken up on record.

3. In view of such submission of learned senior counsel who appeared on behalf of the petitioner, let the said I.A. be taken on record.

4. The argument was advanced by Mr. J.P. Jha, learned senior counsel appearing for the petitioner by way of submitting that the petitioner was in jail custody and was not aware about the filing of the writ petition and somebody has inimical to him has filed the present writ petition and on this background, he submits that the prayer made in the aforesaid I.A. may kindly be allowed and the writ petition may kindly be allowed to be withdrawn.

5. The court, seeing the allegations made in the aforesaid I.A., also heard Mr. Amit Sinha and Mr. Parth Jalan, learned counsels, who are present in the court and they jointly submit that they received the vakalatnama, which was duly certified by the Jailor of the Sahibganj Jail and the pairvikar has contacted them and in view of the instruction, they have filed the writ petition. They further submit that at a moment, the NOC was sought from them, they have given the NOC to the petitioner.

6. Mr. Anil Kumar, learned A.S.G.I. appearing for the respondent No. 3 (Directorate of Enforcement) vehemently opposed the prayer made in the aforesaid I.A., filed for withdrawal of the present writ petition. He submits that in the writ petition, the prayer is made for proper investigation of the SC/ST P.S. Case No. 06 of 2022. The prayer is also made to provide adequate security to the petitioner to ensure his safety. He draws the attention of the court towards the counter affidavit, filed by the Enforcement Directorate and submits that pursuant to the complaint made by this petitioner, the Enforcement Directorate has investigated the matter and in the investigation, several materials have come against the Highers of the State of Jharkhand, including Mr. Pankaj Mishra, who is associated with the Chief Minister of the State of Jharkhand. He further

submits that the entire exercise, by way of withdrawing the writ petition, is set up to frustrate the investigation, which has already been done and being carried out by the Enforcement Directorate. He refers to several paragraphs of the counter affidavit, filed on behalf of the Enforcement Directorate and submits that in view of the materials brought on record, the writ petition may not be allowed to be withdrawn. He submits that the petitioner has disclosed before the Enforcement Directorate about the crime and the same can be brought by him on record by way of filing the affidavit.

7. *Mr. Manoj Kumar, learned G.A.-III appearing for the State submits that the State has already registered the case and the cases are being properly investigated by the State. He also refers to the counter affidavit, filed on behalf of the State and submits that the matter is being properly investigated by the State. He further submits that the matter may kindly be taken up tomorrow.*

8. *In the above background, the Courts are very liberal in allowing the withdrawal of any of the petition, filed before the High Court and only on the agreement of both the sides, the withdrawal is being allowed without any scrutiny. The court is not against the withdrawing of the cases, however, the same is subject to be scrutiny by the Courts. The concern was also expressed by the Hon'ble Supreme court in withdrawing of the cases of serious allegations without giving any reason by the States.*

9. *Looking into the counter affidavits filed by the respondents-State as well as of the Enforcement Directorate, the court finds that there are several materials against the Highers of the State and the said withdrawal petition by way of I.A. No. 7438 of 2023, prima facie appears to be on being forced by a person, who is behind the scene.*

10. *Looking into the averments made in the I.A., it appears that even two of the advocates, who have earlier filed the writ petition, have not been spared by this petitioner and he has tried to made allegation against them also without any reason. The court has looked into the vakalatnama and the vakalatnama is duly certified by the Jailer of the Sahibganj Jail, prima facie, it appears that on the instigation of somebody, who is behind the scene, the present I.A. has been filed.*

11. *In view of the above, prayer made in I.A. No. 7438 of 2023, which has been taken on record, the court is not inclined to accept it. Accordingly, the prayer made in the*

said I.A. is rejected.

12. At the request of Mr. Manoj Kumar, learned G.A.-III appearing for the respondent-State, let this matter appear on 18.08.2023.

13. Mr. Anil Kumar, learned A.S.G.I. may file the affidavit in view of his submission.

13. Seeing the allegation of threatening against the petitioner, the respondent-State shall protect the life and liberty of the petitioner.”

3. That is why the matter was posted for further hearing on request of the learned counsel for the respondent State of Jharkhand and that is how the matter is being taken up today.

4. In the present writ petition, the prayer is made for handing-over the investigation of S.C./S.T. P.S. Case No.06 of 2022 dated 01.12.2022 registered under sections 379, 323, 500, 504, 506, 120B and 34 of the Indian Penal Code, section 27 of the Arms Act and section 04 and 54 of the Jharkhand Minor Mineral Concession Rules, 2004, along with section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending in the court of learned Additional Sessions Judge-I, Sahibganj. The prayer is also made for direction upon the authorities to provide adequate security to the petitioner to ensure his safety and further prayer is made for proper order as this Court may think it proper.

5. Mr. S.S. Choudhary, the learned counsel appearing on behalf of the petitioner, who has taken over this case by way of N.O.C obtained from Mr. Amit Sinha and Mr. Parth Jalan, the learned counsels, submits that the petitioner has nothing to submit as the prayer of the petitioner has already been rejected.

6. Mr. Sachin Kumar, the learned A.A.G-II appearing on behalf of the respondent State submits that a very peculiar situation is there in the writ petition. He submits that the F.I.R is also registered on 01.12.2022 and the present case has been filed on 23.12.2022 praying

for transferring the investigation of case to the C.B.I. He submits that this is abuse of process of law. He further submits that the affidavit is filed by the Pairvikar and not by the petitioner. He submits that the entire case is based upon a fake story made by the Enforcement Directorate (E.D) with regard to Pankaj Mishra. He draws the attention of the Court to paragraph no.11 of the writ petition and submits that the allegation is made against the body-guard of Pankaj Mishra. He further refers to the paragraph no.12 of the writ petition and submits that the petitioner has filed the complaint online and by way of referring paragraph no.13, 14, 15, 16, 17 and 18 of the writ petition, he submits that there is nothing cogent to suggest that the investigation is not being done by the State police properly. He submits that the F.I.R No.85 of 2020 dated 22.06.2020 was the subject matter in W.P.(Cr.) No.156 of 2020 in which one of the order was passed vide order dated 06.12.2022 with regard to impleading the Enforcement Directorate (E.D.) and the C.B.I as one of the respondents in that writ petition has been stayed by the Hon'ble Supreme Court and in view of that, this writ petition is not maintainable. He submits that the State police is already investigating the matter in its right direction and if this Court is of the view that the investigation is not being done properly, this Court is competent to monitor the investigation and to constitute S.I.T and whosoever be the accused, the State police is bound to do fair investigation and appropriate order can be passed by the Court sitting under Article 226 of the Constitution of India. He submits that the cases required to be transferred to any independent agency, in rare of the rarest case and there are line of the judgments to that point and to buttress his such argument, he relied in the case of ***Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Another v. State of Jharkhand***, reported in ***(2019) 6 SCC 777*** and refers to paragraph nos.12 and 21 of the said judgment which are quoted below:

12. *The question as to whether the High Court could direct CBI to take over investigation in the facts of the present case needs to be examined. The Constitution Bench in its judgment 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] has examined the question as to the rights of CBI to investigate a criminal offence in a State without its consent. This Court examined Schedule VII List II Entry 2 of the Constitution. It was held that the legislative power of the Union to provide for the regular police force of one State to exercise power and jurisdiction in any area outside the State can only be exercised with the consent of the Government of that particular State in which such area is situated. The Court held that though the Court had wide powers conferred by Articles 32 and 226 of the Constitution, but it must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order is necessary for doing complete justice and enforcing fundamental rights.*

21. *We find that the finding recorded by the High Court that the deity could not transfer its land in any case is not tenable. The appellant relies upon statutory provisions in support of its stand to transfer of land. The sweeping remarks that the allegations are against the Government and the Board which consist of government functionaries; therefore, the matter requires to be investigated by CBI are wholly untenable and such sweeping remarks against the Government and/or the Board should not have been made. The functioning in the Government is by different officers and the working of the Executive has in-built checks and balances. Therefore, merely because, permission has been granted by a functionary of the State Government will not disclose a criminal offence. The High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the deity. Still further, the High Court has issued directions without there being any complaint to the local police in respect of the property of the religious Trust.*

7. He further submits that the extraordinary power must be exercised sparingly, cautiously and in exceptional situation as has been held by the Hon'ble Supreme Court in the case of ***State of West Bengal and Others v. Committee on Protection of Democratic***

Rights and Others, reported in **(2010) 3 SCC 571** and refers to paragraph no. 70 of the said judgment which is quoted hereinbelow:

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.

8. He submits that the allegation of biasness against the police is not tenable which was the subject matter before the Hon'ble Supreme Court in the case of ***Bimal Gurung v. Union of India and Others*** reported in **(2018) 15 SCC 480** and refers to paragraph nos.29, 47 and 53 of the said judgment which are quoted below:

*29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In *K.V. Rajendran v. Supt. of Police* [*K.V. Rajendran v. Supt. of Police*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578], this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top*

officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.

47. The Constitution Bench of this Court in *Lalita Kumari v. State of U.P.* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] has elaborately considered the obligation to register an FIR when information of cognizable offence is received by a police personnel. The following are the relevant observations made by the Constitution Bench speaking through P. Sathasivam, J. that “When a cognizable offence takes place before the eyes of police personnel, he is not to await any information or any other source for registering an FIR, it is his obligation and duty to register an FIR”. Thus, FIR registered at the instance of police leading serious offences involving the petitioner and supporters of GJM, cannot be discarded on the plea that it was police, who has roped in the petitioner and other supporters by lodging the FIR. No bias or mala fides has been pleaded against any individual State functionary or police officer nor has any such person been impleaded in the writ petition so as to consider the allegation of bias. It is very easy to make allegations of bias against a person but it is difficult to substantiate the same. In the present case, neither are there any pleading nor any material to come to a conclusion that State functionaries including police functionaries are biased against the petitioner. Thus, the allegations of the bias made against the State and police functionaries had to be rejected and the petitioner cannot be permitted in saying that the FIRs lodged against him are result of a bias of the State or police personnel.

53. Most of the cases which were cited before us by the parties are the cases where this Court exercised jurisdiction under Article 32 in transferring the investigation at the instance of the victims. For a victim, the investigation in a case is of much significance. In the event, a proper investigation is not carried out and relevant evidence which would have been collected by due care and caution, is not collected, the victim is sure not to get justice on such faulty investigation. In case of faulty investigation, where an accused has been wrongly roped in, he has the right to seek all remedies before court of law for further investigation and a court of law is able to marshal all evidence and capable of discerning truth from evidence on record. Although as a principle, there is no fetter on an accused to move a court of law for transfer of investigation, but on the facts of this case as noted above, we do not think it to be a fit case where this Court may exercise jurisdiction under Article 32 to transfer the cases en masse to an independent agency. The present case cannot be said to be a case of individual's persecution by the State authority.

9. He submits that repeatedly this has been held by the Courts that the investigation must be in rarest and exceptional cases where the Court finds it necessary in order to do justice between the parties to instill confidence in the public mind then only the said can be transferred and to substantiate his such argument, he further refers to the case of ***K.V. Rajendran v. Superintendent of Police, C.B, C.I.D, South Zone, Chennai and Others*** reported in ***(2013) 12 SCC 480*** and refers to paragraph nos.13 and 14 of the said judgment which are quoted below:

13. The issue involved herein, is no more res integra. 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. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide Gudalure M.J. Cherian v. Union of India [(1992) 1 SCC 397] , R.S. Sodhi v. State of U.P. [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248 : AIR 1994 SC 38] , Punjab and Haryana High Court Bar Assn. v. State of Punjab [(1994) 1 SCC 616 : 1994 SCC (Cri) 455 : AIR 1994 SC 1023] , Vineet Narain v. Union of India [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] , Union of India v. Sushil Kumar Modi [(1996) 6 SCC 500 : AIR 1997 SC 314] , Disha v. State of Gujarat [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628 : AIR 2011 SC 3168] , Rajender Singh Pathania v. State (NCT of Delhi) [(2011) 13 SCC 329 : (2012) 1 SCC (Cri) 873] and State of Punjab v. Davinder Pal Singh Bhullar [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : AIR 2012 SC 364] .)

14. In Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] this Court dealt with a case where

the accusation had been against high officials of the Police Department of the State of Gujarat in respect of killing of persons in a fake encounter and Gujarat Police after the conclusion of the investigation, submitted a charge-sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge-sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

10. On the same line, he further relied in the case of ***Royden Harold Buthello and Another v. State of Chhattisgarh and Others(supra)*** reported in ***2023 SCC OnLine 204*** and he lastly in the line of judgments with regard to transfer of the case to a particular agency he further relied in the case of ***Anant Thanur Karmuse v. State of Maharashtra and Others*** reported in ***(2023) 5 SCC 802*** and he refers to paragraph nos.34 of the said judgment which is quoted below:

34. *In Himanshu Kumar [Himanshu Kumar v. State of Chhattisgarh, (2023) 12 SCC 592 : 2022 SCC OnLine SC 884] , this Court had occasion to consider the power of the Court to transfer investigation to any other independent agency. After taking into consideration the catena of judgments on the point, it is reiterated that investigation may be transferred to CBI only in “rare and exceptional cases”. In SCC paras 44 to 55, it is observed and held as under:*

“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 CBI, such prayer should not be granted on mere asking.

45. *A Constitution Bench of this Court, 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] , has made the following observations pointing out the situations where the prayer for investigation by CBI should be allowed : (SCC p. 602, para 70)

“70. ... 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 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.’

46. In the above decision, it was also pointed out that the same Court in Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya [Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya, (2002) 5 SCC 521 : 2002 SCC (L&S) 775] , 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 the conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

47. 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. By now it is well settled that even after the filing of the charge-sheet the Court is empowered in an appropriate case to hand over the investigation to an independent agency like CBI.

48. The extraordinary power of the constitutional courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to CBI to conduct investigation must be exercised with great caution as underlined by this Court in 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] as adverted to hereinabove, 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 instil 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.

49. 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 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. 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.

50. The above principle has been reiterated in K.V. Rajendran v. Supt. of Police [K.V. Rajendran v. Supt. of Police, (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.’

51. Elaborating on this principle, this Court further observed : (K.V. Rajendran case [K.V. Rajendran v. Supt. of Police, (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.'

52. 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 made by the Constitution Bench in *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]*, that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

53. In *Romila Thapar v. Union of India [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638]*, 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 [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.'

54. It has been held by this Court in *CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253 : 1997 SCC (Cri) 88 : 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.

55. 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.”

11. Relying on this judgment, Mr. Sachin Kumar, the learned A.A.G.-II for the respondent State submits that this is not a case of transfer to any particular agency when the investigation is already being done by the State police. He further repeated his argument by way of referring the documents in the writ petition as well as paragraphs as has been noted hereinabove and submits that this writ petition may kindly be dismissed and he further submits that the State police is bound to do fair investigation. On this background, he submits that this writ petition is fit to be dismissed.

12. Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the respondent no.3-Enforcement Directorate (E.D.) submits that so far as the F.I.R No.85 of 2020 is concerned, that F.I.R was the subject matter in W.P.(Cr.) No.156 of 2020 filed by one Shambhu Nandan Kumar and by order dated 06.12.2022 only the E.D. was directed to be impleaded as a respondent party in the writ petition and in that writ petition the prayer was with regard to handing it over to the C.B.I and that order has been stayed by the Hon'ble Supreme Court. He submits that in the case in hand the manner in which the petitioner is being forced to withdraw the writ petition by other person suggest that higher ups of the State of Jharkhand are behind the scene and pursuant to that, the said I.A. has been filed for withdrawal of the writ petition which has been rejected by this Court by order dated 17.08.2023. He draws the attention of the Court to the contents of the F.I.R being S.C/S.T. P.S.Case No.06 of 2022 dated 01.12.2022 and by way of placing the contents of the F.I.R, he submits that a very peculiar situation is there, as in the contents of the said F.I.R the name of the accused persons are disclosed and there are allegations of doing illegal mining on force which was objected by the petitioner, however, the police has given the colour of the case under the

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. He further submits that when nothing was done by the authority concerned, the petitioner has filed the complaint case before the learned court and by order dated 07.07.2022 the learned court has directed to register the F.I.R under section 156(3) of the Cr.P.C and the police has registered the F.I.R on 01.12.2022 after lapse of about 4 ½ months. He submits that this petitioner was further implicated in two of the cases under several sections as well as under the Arms Act and he was taken into custody and during his custody period, the Enforcement Directorate (E.D) has taken statement of the petitioner and he has stated about the contents of the present F.I.R before the Enforcement Directorate which has been recorded by the Enforcement Directorate. He further submits that the counter affidavit filed by the Enforcement Directorate in the present writ petition and there are several materials have come against one Pankaj Mishra who is a close associate of the Chief Minister of the State of Jharkhand and it has further come in the investigation how that man is powerful in the district of Sahibganj and the complaint E.C.R has already been lodged by the Enforcement Directorate before the Special Court under the Prevention of Money Laundering Act (PMLA), 2002 which is registered as E.C.I.R. Case No.4 of 2022. He further submits that the Enforcement Directorate is not having such mechanism of investigation which the C.B.I is having. He submits that it is on the Court to decide as to whether the case is required to be transferred to a different agency or not? He further submits that the judgment relied by the learned counsel for the respondent State of Jharkhand are not in dispute. According to him, if the case is made out the High Court can transfer the case to a particular agency and those are the observations of the Hon'ble Supreme Court in the case relied by the learned counsel for the respondent State. He submits that one of the judgment relied by the

learned counsel for the respondent State in the case of ***K.V. Rajendran v. Superintendent of Police, C.B, C.I.D, South Zone, Chennai and Others(supra)***, in paragraph no.17, it has been held that the case can be transferred if the higher officials of the State authority are involved or the accusation itself is against the top officials and the said paragraph is quoted below :

17. In view of the above, the law can be summarised to the effect that 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.

13. In this background, he submits that this Court may decide whether the case is fit to be transferred to the C.B.I or not? He submits that in the case in hand, there are allegations made against the higher officials of the State of Jharkhand and in view of that, this Court may take a decision on the basis of materials on record that the case is required to be investigated by the C.B.I or not?

14. Mr. Amit Sinha, the learned counsel along with Mr. Parth Jalan, the learned counsel who were initially appearing in this case on behalf of the petitioner are present and on query of the Court, they submit that the writ petition was filed on receiving the Vakalatnama which has been certified by the Jailor of the Sahibganj Jail and the petitioner was in jail custody and that is why the Pairvikar has sworn the affidavit. He further submits that the moment the N.O.C was sought from them, they have issued the N.O.C and pursuant to that Mr. S.S. Choudhary along with Mr. Ashish Kumar Thakur are appearing on behalf of the petitioner. They submits that the case has been bonafidely filed by

them on instruction.

15. In view of the above submission of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record including the contents of the complaint which was converted into the F.I.R filed by the petitioner as well as the contents of the E.C.I.R Case No.4 of 2022, the counter affidavit of the respondent State of Jharkhand and the counter affidavit of the Enforcement Directorate.

16. It is well settled that victim cannot be afforded to be treated as an alien or total stranger to the criminal trial. Further the fair trial and fair investigation is also part of constitutional right granted under Article 20 and 21 of the Constitution of India. Therefore the investigation must be fair, transparent and judicious as it is the requirement of the rule of law. The investigating agency cannot be permitted to conduct the investigation in a tainted and biased manner where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. In this background and hence the duty is cast upon this Court to find out as to whether on the materials on record, the case is fit to be transferred to any particular agency or not?

17. Admittedly, the present writ petition has been filed on Vakalatnama of the petitioner which has been certified by the Jailor of the Sahibganj Jail as has been disclosed by the counsel who has filed the writ petition that the petitioner was in jail custody and that is why the writ petition was filed on instruction of the Pairvikar. The filing of the writ petition and with regard to the objection of the learned counsel for the respondent State, shall be answered by this Court after discussing the materials on the record. Looking into the contents of the F.I.R the Court finds that this petitioner has filed the complaint case before the learned court alleging therein that he is the resident of Bhawanichoki, Ambadiha,

in the District of Sahibganj and he is a scheduled caste and there are about 80 houses there in that village. Since last 2 ½ years, the stone mafias are doing the illegal mining by way of exploiting the stones of the area in connivance with the Government officials including the mining officials of that district and even the earth moving machines are being utilized and even the blast was being taken up and even the houses of some of the dwellers in the village have been cracked. He has complained several times to the district collectorate including the Deputy Commissioner and Mining Officer of the said district about the mafias who were doing illegal mining and with regard to the pollution being created in the area and in one of the night of 02.05.2022 at 11.00 p.m. when he along with others went to the said area, he found that Vishnu Prasad Yadav, Pavitra Kumar Yadav, Rajesh Yadav, Sanjay Kumar, Bachhu Yadav, Sanjay Yadav, Subesh Mandal and Pankaj Mishra were present and Pankaj Mishra's government body guard armed with A.K.-47 rifle, the said illegal mining was being done. Apart from government guards others were also having the rifles and pistols. It has been further disclosed that since there were Poklan Loader and trucks and that is why sufficient light was there and in view of that, they have been able to identify the concerned accused. He further disclosed that when the conversation was going on between the petitioner with the other accused persons who were present at the site, then one of the accused persons Bachhu Yadav, Vishnu Prasad Yadav and Pavitra Kumar Yadav started abusing the petitioner with filthy language and thereafter the other villagers also assembled at the place of occurrence. The abusive language is also disclosed in the said complaint and they were assaulted and Pankaj Mishra called upon the others by way of using the filthy language stating that nothing will be against you, as the government of his and as soon as the said Pankaj Mishra moved towards them, they started running to

save their lives. The petitioner fell and one of the bullet crossed from nearby of the petitioner and that is how it has been alleged that the life of the petitioner has been saved. The said complaint was affidavited and the learned court by order dated 07.07.2022 has been pleased to direct to register the F.I.R under section 156(3) Cr.P.C, however, the F.I.R was registered on 01.12.2022 that is after more than 4 ½ months of the direction issued by the learned Magistrate and in a case like this, wherein serious allegations are made against the person who has said to be closed to the Government as well as Deputy Commissioner and Mining Officer of Sahibganj district. Looking into the counter affidavit of the respondent State, it transpires that the nature of investigation is with regard to the SC/ST (Prevention of Atrocities) Act only whereas there are serious allegation in the complaint which has been converted into the F.I.R of illegal mining which suggest that the police has bent upon to protect the accused persons and that is why the investigation is only going on with regard to SC/ST (Prevention of Atrocity) Act case and nothing has been disclosed about illegal mining in the counter affidavit filed by the respondent State of Jharkhand. In this background, it cannot be said that whether the State police is investigating the matter in its right direction, the answer is simply "no" in view of the facts which has been discussed hereinabove. The counter affidavit filed by the Enforcement Directorate further disclosed that inspite of uninterrupted illegal mining, no action was taken for the illegal mining. It has been disclosed in the counter affidavit that the suspects of ECIR No.7 of 2023 namely Bachhu Yadav, Pavitra Kumar Yadav, Sanjay Yadav, Rajesh Yadav, Sanjay Kumar Yadav, Vishnu Yadav and others are habitual offenders who were party in the activities connected to the proceeds of crime and illegal mining sites operated under the government by the suspects Pankaj Mishra, Vishnu Yadav, Pavitra Kumar Yadav and their involvement

with the Bachhu Yadav and Rajesh Yadav has come in the investigation. It has been disclosed that Pankaj Mishra is a person who controls the illegal stone mining and their transportation in Sahibganj and the National Green Tribunal, New Delhi has also expressed serious concern over the issue of illegal mining at Sahibganj. It has been disclosed further that one of the several mining sites which was earlier inspected in presence of the officials of the Enforcement Directorate as well as mining officials, circle officials, officers of the State Pollution Control Board during period 25.7.2022 to 29.07.2022 the earlier finding matched with the content with the F.I.R which is the subject matter of the present writ petition being F.I.R No.06 of 2022 dated 01.12.2022. On the site the Enforcement Directorate has found that the fresh holes were made and explosives were inserted into it keeping in mind ready for fresh blast. With regard to ECIR No.7 of 2023, a letter was written to the Superintendent of Police, Sahibganj for furnishing information in respect of the cases registered at different police stations in the district of Sahibganj by letter dated 01.06.2023 and the said was provided by the said Superintendent of Police. From the contents of the F.I.R it was found that the illegal transportation of stone chips and other aggregates and several seizures of the said minor minerals but the investigation was limited to the seizure of trucks and declaring the truck drivers as owner of the trucks and the stone aggregates seized by them. It has been further stated that Pankaj Mishra, the M.L.A representative of the Jharkhand Chief Minister and is a very influential person and he is directly involved in the illegal mining in Sahibganj and its adjoining areas and the said Pankaj Mishra is already arrested under the Prevention of Money Laundering Act (PMLA) and he is in jail custody. The Enforcement Directorate in the counter affidavit has further disclosed that Rajendra Kumar Dubey, S.D.P.O., Sahibganj who is also deponent of the counter

affidavit filed on behalf of the respondent State of Jharkhand wherein he has stated that the mobile tower network location as well as call details of the mobile number of the petitioner and accused persons have sought from the Superintendent of Police, Technical Cell, vide memo no.2420 dated 05.12.2022 and on perusal it was found that the information received from Technical Cell on 06.12.2022 and the location was gathered of the accused at the time of occurrence at different locations and the mobile number was 9934527037 which is provided in the complaint against the FIR No.6 of 2022 and was said that the location was at Bengaluru, Karnataka, however, the Enforcement Directorate found that the mobile number given in the complaint belongs to one Binod Prasad, son of Sukhdeo Prasad, resident of Bengaluru, Karnataka, wherein in the counter affidavit filed by the respondent State, the allegations are made that this petitioner was found to be in Karnataka which suggest that in a very casual manner, the State police has conducted the investigation that too against the petitioner and the mobile number of the another person who is the resident of Bangaluru was said to be the mobile number of this petitioner and the said Rajendra Kumar Dubey has met Pankaj Mishra unauthorized when he is in judicial custody. The Enforcement Directorate has also taken the statement of the police officials and they have not been able to provide explanation for meeting Pankaj Mishra in judicial custody in an unauthorized manner. The illegal mining was being carried out by transportation through railways, by roads, through highways and in-land vessels which is more than Rupees One thousand crores as of today. It has been disclosed that Pankaj Mishra is a powerful person and he is enjoying political patronage assistance and that is why the investigation is not being done in correct perspective. In the complaint ECIR 04 of 2022 in paragraph no.10.28 it has come that one Prem Prakash is also involved in laundering of the

proceeds of crime obtained out of illegal mining activities. During the course of the investigation statement of Ravi Kumar Kejriwal who was earlier Treasurer of J.M.M was recorded on 21.07.2022 under section 50 of the P.M.L.A Act and in his statement he has stated that while working as a Treasurer of J.M.M. one day he was present in the office of the Chief Minister and the C.M. directed Pankaj Mishra to directly handover the funds coming from Santhal Parganas from the stone mining and sand mining business to Prem Prakash. He has further stated that Prem Prakash will hand over the funds to Amit Agarwal and Prem Prakash is said to be very close to Hemant Soren and Amit Agarwal and Smt. Pooja Singhal was given the additional charge of Mining Secretary, Jharkhand due to her proximity with Amit Agarwal. He has further disclosed that Prem Prakash is very close to Hemant Soren and Pintu (Abhishek Prasad) and has developed good relation with them in the last couple of years. The role of Pankaj Mishra has been further disclosed in the said complaint at paragraph no.9.3.

18. In W.P.(Cr.) No.156 of 2020, the issue was with regard to tender of Barharwa Toll Plaza and the prayer was made for investigation so far as Barharwa Toll Plaza in connection with Barharwa P.S. Case No.85 of 2020 and in that case, by order dated 06.12.2022, only the Enforcement Directorate was made party, that was challenged, which has been stayed by the Hon'ble Supreme Court. In the case in hand, that is not the subject matter and in view of that, the W.P.(Cr.) No.156 of 2020 has nothing to do with the present case. In the writ petition, at paragraph no.16 of the writ petition, the petitioner has stated that he has supported the Enforcement Directorate and has gave his statement which suggest that genuinely the prayer in the writ petition was made, however, all of sudden, filing of the I.A. for withdrawal of the writ petition and complaint made before the Doranda Police Station which is

annexed with the I.A., clearly suggest that somebody is forcing the petitioner to withdraw the writ petition only to frustrate the materials collected by the Enforcement Directorate.

19. In view of the above discussion, the Court finds that there are sufficient materials of illegal mining in the district of Sahibganj that too on the behest of one Pankaj Mishra and others and if such materials are there on the record, the Court finds in view of the counter affidavit filed by the respondent State of Jharkhand that the investigation is only an eye-wash so far the illegal mining is concerned. The allegation in the counter affidavit of the State is made that the location of the mobile of this petitioner was found in the State of Karnataka at Bengaluru wherein in the Enforcement Directorate has found about the said mobile of one Binod Prasad who is the resident of Bengaluru which suggest that the State police is shielding the accused person. In the complaint the allegation is made against the Deputy Commissioner of Sahibganj and other officials and that is why prima-facie it appears that the State police is shy-off investigating the matter in its right direction and in this background the Court finds that I.A. No. 7438 of 2023 was filed by another counsel after taking N.O.C from the earlier counsel for withdrawing of the writ petition and in view of the discussions made in the order dated 17.8.2023, the said I.A. was rejected and the Court has not allowed to withdraw the writ petition and the contents of that order has already been quoted (*supra*). Further this petitioner was made accused in two cases of Arms Act when the complaint case of the petitioner was transferred by the learned court for registration of the F.I.R and he was languishing in jail and during that period, certified Vakalatnama of the Sahibganj Jailor on the instruction of the Pririvikar, the present writ petition has been filed and all of a sudden, the said I.A. was filed which shows that there are persons behind the scene, who are

after the petitioner to withdraw the writ petition and in view of that by the said order, this Court has directed to protect the life and liberty of the petitioner by the State of Jharkhand. Thus, merely on the said I.A. that too on a new Vakalatnama after obtaining the N.O.C was not justified to withdraw the writ petition and the Court finds that all attempts were being made only to frustrate the action of the Enforcement Directorate as if the proceeds of crime derived from the scheduled offence and not proved in a case registered by the police, the case of the Enforcement Directorate (E.D.) will fail and that is the modus-operandi and there must be a legal mind against all these things which has happened in the case in hand. So far as the argument with regard to the affidavit sworn by the Pairvikar on behalf of the respondent State of Jharkhand is concerned, the said argument is taken at a belated stage and even no averment is there in the counter affidavit filed by the respondent State of Jharkhand. It is well known that in terms of Jharkhand High Court Rules, 2001 that in criminal cases the accused are not allowed to file affidavit and only pairvikars are allowed to swear the affidavit and at the time of filing of the present case the petitioner was in judicial custody and that is why Vakalatnama is certified by the Jailor of Sahibganj Jail. The affidavit between the parties have already been exchanged and only on the ground of technicality, this Court cannot restrain itself in rendering justice while exercising its power under Article 226 of the Constitution of India being a Court of writ jurisdiction and accordingly, this contention of Mr. Sachin Kumar, the learned A.A.G.-II appearing on behalf of the respondent State with regard to affidavit is hereby negated by this Court. The line of judgments relied by Mr. Sachin Kumar, the learned A.A.G.-II are not in dispute and this Court is conscious about the fact that in a routine way or merely on certain affidavit a particular case cannot be transferred to a particular agency. In the case relied by Mr. Sachin Kumar,

the learned A.A.G.-II in the case of ***Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Another v. State of Jharkhand (supra)***, the dispute was with regard to property of Deity of ***Shree Shree Ram Janki Ji Asthan Tapovan Mandir(supra)*** and there were trust to maintain the said property and in that background, the Hon'ble Supreme Court has passed that order and has held that no case of C.B.I enquiry is made out. The facts of the present case is otherwise as has been discussed hereinabove. In the case of ***State of West Bengal and Others v. Committee on Protection of Democratic Rights and Others(supra)*** which has been relied by the learned counsel for the petitioner is not in dispute and the principle of handing over the case to the C.B.I. has been decided in that case as well as the jurisdiction of the Constitutional Court wherein at paragraph no.68 and 69, it has been held as under:

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.

20. In that case, the Hon'ble Supreme Court considering the investigation not in proper way as well as the higher officials were involved in that case, the case was directed to be transferred to the C.B.I. and on that ratio, the present case is also on the same footing as higher officials are also said to be in connivance with one Pankaj Mishra who is a king-pin of stone mining in the Sahibganj district. In the case relied by Mr. Sachin Kumar, the learned A.A.G.-II in the case of ***Bimal Gurung(supra)***, the case was otherwise and the matter was arising out of an agitation of Gorkha Jan Mukti Morcha and the destruction of the property was the subject matter in that case and in that scenario, the Hon'ble Supreme Court has passed that order and the facts of the present case is otherwise and that case is not helping the respondent State of Jharkhand. So far the case relied by Mr. Sachin Kumar, the learned A.A.G.-II in the case of ***K.V. Rajendran v. Superintendent of Police, C.B, C.I.D, South Zone, Chennai and Others(supra)*** is

concerned, in that case the High Court has already refused to transfer the case to C.B.I. and thereafter in the second petition that direction was issued and in that background the Hon'ble Supreme Court has passed that order which is not the subject matter of the present writ petition. In the case of ***Royden Harold Buthello and Another v. State of Chhattisgarh and Others(supra)*** relied by the learned counsel appearing on behalf of the respondent State, the facts were otherwise. In that case, the matter was with regard to evidence to be considered in the judicial proceeding to arrive at a conclusion and that is why, that order was passed and the facts of the present case is otherwise. In the judgment relied by Mr. Sachin Kumar, the learned A.A.G.-II in the case of ***Anant Thanur Karmuse v. State of Maharashtra and Others(supra)*** has also held about the power of the Constitutional Court at paragraph no.42 and 48 of the said judgment which are quoted below:

42. Applying the law laid down by this Court in Dharam Pal [Dharam Pal v. State of Haryana, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] and Bharati Tamang [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge-sheet is filed and the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice.

48. Be that as it may, even according to the State investigating agency, the further investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further investigation/reinvestigation/de novo investigation, if the facts so

warrant.

21. Thus, that judgment is also helping the petitioner. In view of the above, the Court finds that there are materials on record and in a case in which the complaint is made for illegal mining, the police is investigating the case as of the case is of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the falsification of the counter affidavit filed by the State is further disclosed in view of the mobile number of one Binod Prasad which has been discussed hereinabove and filing of the I.A. for withdrawal of the writ petition further fortified that *prima-facie* the influential people are there to force the petitioner to file the said I.A. In the complaint filed by the petitioner it has been stated that inspite of petition filed before the police station, the FIR was not registered and that is how he has been compelled to file the complaint case and even after direction of the learned court the case has been registered after more than 4 ½ months and if such allegations were there, it was the duty cast upon the police to register the FIR in view of the judgment of Hon'ble Supreme Court in the case of ***Lalita Kumari v. Government of Uttar Pradesh and Others***, reported in ***(2014) 2 SCC 1***, wherein at paragraph nos. 119 and 120 of the said judgment, it has been held as under:

120. *In view of the aforesaid discussion, we hold:*

120.1. *The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3. *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not*

later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

22. In the case in hand, even after the direction of the learned court of registering the FIR, the investigation is not going on the illegal mining, whereas the petitioner has been implicated in two cases, he was put in jail custody, which further suggest about the investigation by the State police in perfunctory way. If the police is biased, the Court can on a finding can transfer the case to a particular agency which was the

subject matter in the case of ***Disha v. State of Gujarat and Others***, reported in ***(2011) 13 SCC 337*** wherein at paragraph no.21 of the said judgment it has been held as under:

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

23. The Court is required to keep in mind that impartial and truthful investigation is imperative and if such facts are there, the Constitutional Court should not close its hand and that was the subject matter in the case of ***Dharam Pal v. State of Haryana***, reported in ***(2016) 4 SCC 160***, wherein at paragraph nos.24 and 25 it was held as under:

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

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one taste, the taste of salt, so does justice have 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 sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

24. The Court can transfer the case to the C.B.I where the persons are influential as was further considered in the case of ***State of Punjab v. Davinder Pal Singh Bhullar and Others*** reported in ***(2011) 14 SCC 770***, wherein at paragraph no.75 it was held as under:

75. Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

25. The Court is not required to interfere with the investigation and caution is required to be maintained that is in the mind of the Court in dictating the present judgment and a reference may be made to the case of ***Manohar Lal Sharma v. Principal Secretary and Others***, reported in ***(2014) 2 SCC 532***, wherein at paragraph no.24, 26, 33, 38 and 61 it has been held as under:

“24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

33. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.

38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial

inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

61. At the outset, one must appreciate that a constitutional court monitors an investigation by the State police or the Central Bureau of Investigation (for short "CBI") only and only in public interest. That is the leitmotif of a constitutional Court-monitored investigation. No constitutional court "desires" to monitor an inquiry or an investigation (compendiously referred to hereinafter as "an investigation") nor does it encourage the monitoring of any investigation by a police authority, be it the State police or CBI. Public interest is the sole consideration and a constitutional court monitors an investigation only when circumstances compel it to do so, such as (illustratively) a lack of enthusiasm by the investigating officer or agency (due to "pressures" on it) in conducting a proper investigation, or a lack of enthusiasm by the Government concerned in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the Government concerned to take the investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation."

26. The illegal mining by the relatives of the Chief Minister and sale thereof in private mining company and involvement of various political parties in illegal mining was the subject matter in the case of ***Samaj Parivartan Samuday and others v. State of Karnataka and Others***, reported in ***(2012) 7 SCC 407***, wherein at paragraph nos. 35, 37, 40 and 66 it has been held as under:

35. The court is vested with very wide powers in order to equip it adequately to be able to do complete justice. Where the investigating agency has submitted the charge-sheet before the court of competent jurisdiction, but it has failed to bring all the culprits to book, the court is empowered under Section 319 CrPC to proceed against other persons who are not arrayed as accused in the charge-sheet itself. The court can summon such suspected persons and try them as accused in the case, provided the court is satisfied of involvement of such persons in commission of the

crime from the record and evidence before it.

37. We may notice that the investigation of a case or filing of charge-sheet in a case does not by itself bring the absolute end to exercise of power by the investigating agency or by the court. Sometimes and particularly in the matters of the present kind, the investigating agency has to keep its options open to continue with the investigation, as certain other relevant facts, incriminating materials and even persons, other than the persons stated in the FIR as accused, might be involved in the commission of the crime. The basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and ensure that the guilty are punished.

40. Now, we shall proceed to examine the merit of the contentions raised before us. We may deal with Submissions (a) and (b), together, as they are intrinsically interrelated.

66. Wherever and whenever the State fails to perform its duties, the Court shall step in to ensure that the rule of law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes. This Court expressed its concern about the rampant pilferage and illegal extraction of natural wealth and resources, particularly iron ore, as also the environmental degradation and disaster that may result from unchecked intrusion into the forest areas. This Court, vide its order dated 29-7-2011 [Govt. of A.P. v. Obulapuram Mining Co. (P) Ltd., (2011) 12 SCC 491] invoked the precautionary principle, which is the essence of Article 21 of the Constitution of India as per the dictum of this Court in M.C. Mehta v. Union of India [(2009) 6 SCC 142], and had consequently issued a ban on illegal mining. The Court also directed relief and rehabilitation programmes to be carried out in contiguous stages to promote intergenerational equity and the regeneration of the forest reserves. This is the ethos of the approach consistently taken by this Court, but this aspect primarily deals with the future concerns. In respect of the past actions, the only option is to examine in depth the huge monetary transactions which were effected at the cost of national wealth, natural resources, and to punish the offenders for their illegal, irregular activities. The protection of these resources was, and is the constitutional duty of the State and its instrumentalities and thus, the Court should adopt a holistic approach and direct comprehensive and specialised investigation into such events of the past.

27. Almost identical is the situation in the case in hand, as has been discussed hereinabove, and in that case of ***Samaj Parivartan***

Samuday and others(supra) the Hon'ble Supreme Court has been pleased to direct to take over the investigation by the C.B.I. In the I.A. filed by the petitioner for withdrawing the writ petition, in paragraph no.(viii), the prayer is made to made thorough enquiry through the Registrar General of this Court. Thus, the petitioner has also prayed for investigation by the C.B.I. as well as the Registrar General of this Court and in the present case, as has been discussed hereinabove, the Court is required to find out who is the competent authority to enquire into such allegation which is the subject matter of the present writ petition.

28. In view of the above discussion made hereinabove, it is a settled position of law that the High Court under Article 226 of the Constitution of India and the Hon'ble Supreme Court under Article 32 of the Constitution of India can direct the C.B.I. to investigate into any specific case to conduct enquiry against a person. It is further well settled that it can do so only when there is sufficient matter to come to a prima facie conclusion that there is need for such enquiry. It goes without saying that such enquiry cannot be ordered as a matter of routine or merely because a party makes an allegation and if after considering the materials on records the Court concludes that such materials disclose that prima facie case calling for investigation by the C.B.I, the Court can pass necessary order and in light of that, several judgments have been discussed hereinabove and one of the celebrated decision of the Hon'ble Supreme Court is the case of ***State of West Bengal and Others v. Committee on Protection of Democratic Rights and Others(supra)***.

29. In the case in hand, prima facie, it appears that the petitioner is being forced to withdraw the present writ petition which has been denied by this Court in view of the discussions made hereinabove. The case about the illegal mining was tried to be lodged by the petitioner

which was not registered by the police, he filed the complaint case before the learned court and the learned court has directed to register the FIR under section 156(3) Cr.P.C by the order dated 07.07.2022, however, the said F.I.R was registered on 01.12.2022. In the counter affidavit filed by the respondent State, there is no averment with regard to the investigation on illegal mining and in the entire counter affidavit, it has been disclosed that the Technical Cell was directed to investigate about the mobile number and it was found that the location of that mobile which is happened to be of the petitioner was of Bangaluru wherein the Enforcement Directorate has found about the said mobile is of one Binod Prasad who is a resident of Bangaluru which suggest that the police is shielding the main persons who are behind the illegal mining. The further question remains that if such a thing brought to the knowledge of the Constitutional Court, the Court can allow it to go unattended or not! the answer is simply "no" because the public at large expected at here on fair and impartial enquiry/ investigation. In paragraph no.(ix) of the I.A. No. 7438 of 2023 it has averred that on 16.08.2023 when the petitioner was trying to obtain no objection certificate from the advocate on the vakalatnama to appoint another advocate at that he was called over phone for taking no objection certificate where persons namely, Ashok Yadav and Mukesh Yadav both residents of Sakri Gali, Jirwabari, Sahibganj along with two other persons surrounded him and threatened him in many ways including sending him to jail and to assault him.

30. In view of the above facts discussed hereinabove, the Court comes to the conclusion that it would be sufficiently served if the Director, Central Bureau of Investigation (C.B.I.) is directed to initiate a preliminary enquiry into the conduct of the accused persons including this petitioner as he has sought to withdraw the writ petition on

Vakalatnama filed by a new Advocate by way of obtaining N.O.C. and in view of that, the prayer made by the petitioner with regard to the enquiry through the Registrar General will also be justified. Such preliminary enquiry shall be conducted in accordance with law and will be concluded as early as possible within one month from the date of receipt of a copy of this order.

31. The petitioner shall be protected by the Sahibganj police, as his life is under threat.

32. This Court hopes and trust that the officers appointed for the purpose of conducting preliminary enquiry shall receive due consideration from individual agencies who are approached by the C.B.I including the Enforcement Directorate (E.D). Once the preliminary enquiry is completed and report to that effect is submitted, the Director, C.B.I shall be at liberty to choose further course of action in accordance with law. If the Director, C.B.I comes to the conclusion that there is no reason to proceed further in the matter, he may pass appropriate order to that effect.

33. In view of the above facts and the reasons and analysis, W.P.(Cr.) No.665 of 2022 is allowed in the above terms and stands disposed of.

34. I.A. if any pending shall stand disposed of.

35. Mr. Anil Kumar, the learned A.S.G.I. appearing on behalf of the Enforcement Directorate and he also represents the C.B.I. and he has requested to communicate this order to the Director, C.B.I.

36. Consequently, this petition is disposed of.

(Sanjay Kumar Dwivedi, J.)