

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 06.12.2021Order delivered on 10.01.2022**WPCR No. 765 of 2021**

1. Jyoti Nair W/o Shri Vishwanath Nair, aged about 57 Years, R/o L-3, Anupam Nagar, Raipur Chhattisgarh 492007
2. Janhvi Lata Nair D/o Shri Vishwanath Nair, aged about 28 Years, R/o L-3, Anupam Nagar, Raipur Chhattisgarh 492007
3. Shailja Nair D/o Shri Vishwanath Nair, aged about 26 Years, R/o L-3, Anupam Nagar, Raipur Chhattisgarh 492007
4. Tavarita Devi @ Vasundhara Kumari W/o Shri Sanjai Singh Bissau, aged about 58 Years, R/o Bissau House, Chand Pole, Jaipur Rajasthan 302001

---- Petitioners**Versus**

1. State of Chhattisgarh Through - Department of Home, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. Director General of Police, Chhattisgarh. DGP Office, Near Mantralaya, Sector-19, Naya Raipur Chhattisgarh
3. Inspector General of Police, Durg. 32 Bunglows, Garage Road, Durg Bhilai, District Bhilai Chhattisgarh
4. Superintendent of Police Kabirdham, District Kabirdham Chhattisgarh
5. Station House Officer Kabirdham, District Kabirdham Chhattisgarh
6. Investigating Officer P. S. Pipriya, District Kabirdham Chhattisgarh
7. Central Bureau of Investigation Through - Director, CBI Head Office, Plot No. 5-B, CGO Complex, Lodhi Road, New Delhi-110003
8. Yogeshwar Raj Singh S/o Late Raja Vishwaraj Singh, aged about 56 Years, R/o House No. 61, Raj Mahal Parisar, Collectorate, Rd. Kawardha, District Kabirdham Chhattisgarh 491995
9. Kriti Devi Singh W/o Yogeshwar Raj Singh, aged about 50 Years, R/o Palace Kawardha Collectorate, Rd, Kawardha, District Kabirdham Chhattisgarh 491995

---- Respondents



For Petitioner : Mr. Sourabh Dangi, Advocate
For State : Mr. Devendra Pratap Singh, Dy.
A.G.
For Respondent No.7. : Mr. Tushar Dhar Diwan, Advocate
on behalf of Assistant Solicitor
General for Union of India/CBI

Hon'ble Smt. Justice Rajani Dubey
CAV Order

1. This petition, initially taken up for hearing on I.A.No.02/2021 for interim relief wherein the petitioner has prayed for direction to the state police authorities to retrieve the call records of the respondent No.8 and 9 and of the five persons arrested in connection with murder of late Vishwanath Nair and stay the investigation carried out by the state police authorities, has been preferred seeking an appropriate writ/order/direction to transfer the investigation of murder case of late Vishwanath Nair to an independent agency like that of CBI and investigate the matter as also for any other relief, which this Hon'ble Court deems fit in the facts and circumstances of the case.
2. Brief and necessary facts of the case, as projected in the writ petition, are that late Vishwanath Nair, who was the nephew of late Smt. Sashi Prabha Devi, wife of Shri Vishwaraj Singh, also famously known as Rajmata of princely State of Kawardha (C.G.), was also an MLA from Kawardha constituency during the period 1977 to 1980 from Akhil Bharti Ram Rajya Parishad and from 1985 to 1990 from Indian National Congress. Rajmata was a highly influential and political personality having crores of rupees property in the Kawardha district. Rajmata has two daughters and one son (respondent No.8.). It is



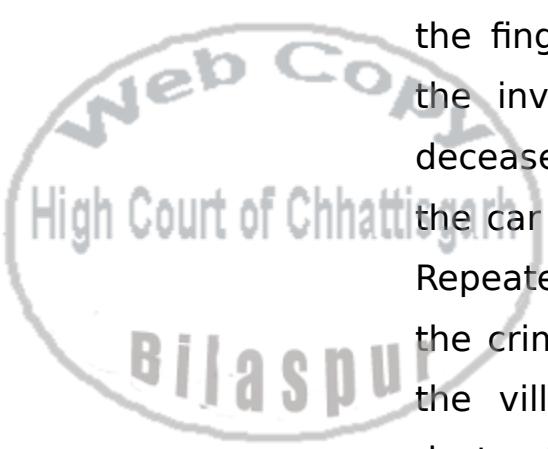


stated in the writ petition that there were major differences between Rajmata and her son and she (Rajmata) was quite close to her nephew, deceased Vishwanath Nair. Rajmata had also executed a Will (Annexure P/1) wherein she has transferred all her property to both the daughters, nephew deceased Vishwanath and no share was given in property to her son - respondent No.8. After the death of Rajmata, her daughters also reposed the same faith on late Vishwanath Nair for managing and administering not only their properties but also of Rajmata. This closeness of late Vishwanath Nair with Rajmata and her daughters was hurting respondent No.8 and caused anguish and hatred in his heart and before the murder of Vishwanath Nair, he (respondent No.8) threatened him of dire consequences. It is also stated in the writ petition that on unfortunate night of 27.08.2021, while Vishwanath Nair was asleep in the farmhouse situated at Indori in Kabirdham, he was brutally murdered.

3. It has been further stated in the petition that during investigation, the petitioners have informed about the animosity between deceased and respondent No.8 and 9 but no investigation has been conducted by the police authority from this perspective and there are many lacunas in the investigation just to shield the real culprit. The petitioners have been telling the investigating authorities to procure the call details of the arrested accused and the private respondents as they suspect it to be a case of contract killing, however, the same has fallen into the deaf hear of police authorities. The Doctor conducting postmortem of deceased gave his report opining that two weapons were used (i) blunt and heavy object and (ii) a sharp and heavy object like butcher's knife to stab the deceased nine times on the



head, and the same was also evident from the visuals of the wounds. It has been alleged in the petition that postmortem report does not mention the use of sharp weapon or the number of stabs on the head and upon inquiring from the doctor as to why the use of sharp weapon is not mentioned in the autopsy report, they informed that since the police authorities told that the murder weapon was a rod, therefore, they made the report accordingly. It has been also pointed out that the police authority, without making a seizure memo of the car and keys of farm house, returned the same to the petitioners just a day after the incident, which was an important article for collecting evidence and obtaining the fingerprints. The weapon of offence, according to the investigating authority, was found in the car of deceased but no fingerprint was obtained from inside the car as well as from the farmhouse of the deceased. Repeated request was made by the petitioners to freeze the crime scene, but the police authorities did not stop the villagers from entering the premises leading to destruction of substantial evidence. It is also stated in the petition that despite repeated request of the petitioners no call records of deceased Vishwanath Nair have been retrieved by the police from the telecom company, who keeps the data for a short while only. It has been further stated in the petition that the respondent Nos. 8 and 9 are very influential persons of Kawardha district and they not only belong to the Kawardha Royal family but also an ex MLA of Kawardha Vidhan Sabha Constituency and, therefore, they have a strong hold and influence over the local police of that area and just to shield them the state police authorities are not conducting the investigation in a fair manner which is violative of Article 21 of the Constitution of





India. Therefore, in order to conduct fair investigation in the matter, the petitioners has filed this petition to transfer the investigation of murder case of deceased Vishwanath Nair to an independent agency like C.B.I. and also prayed for retrieving call details of deceased and suspected accused persons from the telecom company, which is being kept by it for a short period.

4. Learned counsel for the petitioners argued that there are ample evidence of animosity between deceased and private respondent (8 and 9) as the Rajmata did not give share of property to her son respondent No.8 and reposed faith in deceased Vishwanath Nair to manage and administer her property. The investigation being carried out by the state police shows lacuna in it just to shield the real culprit. The investigating agency, on petitioners' repeated request, did not bother to retrieve the call details of deceased and suspected person which can help the agency to grab the real culprit. In support of his submission, learned counsel placed reliance on the decisions of Hon'ble Apex Court in the matter of **Dr. Naresh Kumar Mangla Vs. Smt. Anita Agarwal & Ors (Criminal Appeal Nos.872-873 of 2020 arising out of SLP (Cri.) Nos.4935-4936 of 2020, order dated 17.12.2020.)** and **Tomaso Bruno and another V. State of Uttar Pradesh** reported in **(2015) 7 SCC 178.**
5. Learned Dy. Advocate General for the State/respondent Nos. 1 to 6 submits that after registration of FIR at Crime No.0312/2021 on 27.08.2021 before the police station Pipariya, District Kabirdham (C.G.) for the offence punishable under Section 302, 380 and 457 of IPC, the concerned Investigating Officer/SHO has done the investigation in true and fair manner and arrested the accused persons who were involved in the crime as also



filed the charge sheet No.377/2021 for the offence punishable under Sections 302, 449 and 396 of IPC against the accused before the Court of Chief Judicial Magistrate, Kawardha on 24.11.2021 whereas, charge sheet No.377A/2021 has been filed on 24.11.2021 before the Juvenile Justice Board, Kawardha against four juvenile accused persons. Learned State counsel also submits that as regards allegation levelled by the petitioners, a threadbare enquiry was conducted and detailed report dated 16.11.2021 (Annexure R-2) was submitted by Addl. Superintendent of Police before the Superintendent of Police, District Kabirdham. It has been also submitted that granting interim relief to the petitioners amounts to grant of final relief and, therefore, the application filed by the petitioners may be rejected.

6. Heard learned counsel for the parties and perused the material available on record.
7. In order to appreciate as to whether the facts brought before this Court alleging that the State Police authorities are conducting the investigation in an unfair and biased manner needs to be transfer the investigation or to be investigated by the CBI or an independent agency, this Court deem it appropriate to refer to the observations made by Hon'ble Supreme Court in its decisions dealing with the prayer made for conduct of enquiry by the CBI.
8. In **Tomaso** (supra), Hon'ble Supreme Court held that non-production of CCTV footage, non-collection of call records (details) and SIM details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV



footage could not be lifted or a CD copy could not be made.

9. On the issue as to whether sanction or approval under Section 6 & 6-A of the Delhi Special Police Establishment Act, 1946 is required even for Court directed monitored investigation was dealt with by the Supreme Court in **Manohar Lal Sharma V. Principal Secretary and Others** reported in **(2014) 2 SCC 532** held thus in para 98:

“98. The law laid down by the Constitution Bench vis-a-vis a High Court exercising judicial review under Article 226 of the Constitution and a statutory restriction under Section 6 of the Act, would apply (perhaps with greater vigour) mutatis mutandis to the exercise of judicial review by this Court under Article 32 of the Constitution with reference to a statutory restriction imposed by Section 6A of the Act. That being so, Section 6A of the Act must be meaningfully and realistically read, only as an injunction to the executive and not as an injunction to a constitutional court monitoring an investigation under Article 32 of the Constitution in an exercise of judicial review and of issuing a continuing mandamus.”

10. The Hon'ble Supreme Court in **Dharam Pal Vs. State of Haryana** reported in **(2016) 4 SCC** observed thus in para 24 and 25 :

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased,





deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

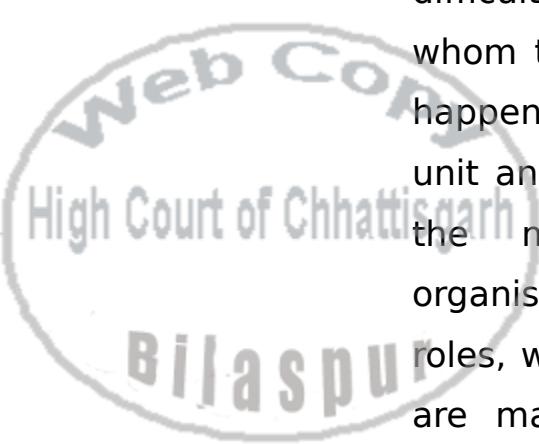
25.*If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "indd fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic...."*
11. Having noted the law declared and observations made by the Supreme Court in the above referred judgments and considering the same in the facts and circumstances of the case it required serious notice that the petitioner alleged inaction of the state investigating agency in conducting fair investigation in the murder case in which influential person is alleged to have been involved. In this case, the petitioners have filed Will (Annexure P/1) executed by Rajmata in favour of her two daughters, son-respondent No.8 and nephew deceased Vishwanath Nair, who was managing and administering her property. The petitioners, along with the petition, have also filed several documents, which indicate that relation between private respondents (8 and 9) and deceased Vishwanath Nair were not cordial and after the death of Vishwanath, the petitioners have questioned and raise serious doubt on the investigation being carried out by the State investigating agency, and considering the previous animosity, they repeatedly requested for call details of private respondents, however, no serious attempt has been made by the investigating agency in this regard except an enquiry dated 16.11.2021 (Annexure R-2) conducted by the Additional Superintendent of Police, District Kabirdham, which does not appear to be





satisfactory and not enough to clear the petitioners' doubt in a case like murder. It is also explained by the local authorities that the petitioners are doubting criminal conspiracy against respondent Nos. 8 and 9 then why call records of private respondents were not procured to unearth the truth. It has been also alleged that SIM card of the deceased was destroyed by the murderer but no call details of deceased and other suspected persons were collected and charge sheet was filed.

12. The Police are one of the most ubiquitous organisation of the society. In an hour of need, danger, crisis and difficulty, when a citizen does not know, what to do and whom to approach, the police station and a policeman happen to be the most appropriate and approachable unit and person for him. The police are expected to be the most accessible, interactive and dynamic organisation of any society. Broadly speaking the twin roles, which the police are expected to play in a society are maintenance of law and maintenance of order. However, the ramifications of these two duties are numerous, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police organisation.
13. The private respondents (8 and 9) and the petitioners have previous animosity and the matter involved huge property of Rajmata who hails from royal family, there is apprehension that the investigation may be influenced, therefore, having considered the law laid down and the observations made by the Supreme Court in the facts and circumstances of the case, in above referred judgments, this Court direct that the matter be investigated by the CBI in a fair and independent manner.





14. In the result, this WP(CR) disposed of with the following directions :

- (a) The CBI is directed to further investigate the matter in connection with Crime No.0312/2021 registered at Police Station Pipariya, District Kabirdham (C.G.) and, if necessary, shall file additional charge sheet.
- (b) The CBI shall seize and collect all the records pertaining to case arising out of Crime No.0312/2021 registered at Police Station Pipariya, District Kabirdham (C.G.) as also SIM details of mobile phone of accused, deceased and suspected persons as early as possible.
- (c) The CBI shall make all possible endeavour to complete fair and independent investigation at the earliest.
- (d) It is made clear that in the event the CBI needs any further direction from this Court it would be at liberty to move necessary application in this regard.

Sd/-
(Rajani Dubey)
Judge