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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 4th September, 2018
Decided on: 8th October, 2018*

+ **W.P. (CRL) 3391/2016 & Crl. M.A. Nos. 8174/2017, 8651/2018 & 9015/2018**

FATIMA NAFEEES

...Petitioner

Through: Mr. Colin Gonsalves, Sr.
Advocate with Ms. Nabila
Hasan, Advocate.

versus

STATE & ORS.

...Respondents

Through: Mr. Nikhil Goel & Mr.
Ashutosh Ghade, Advocates for
CBI.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

Dr. S. Muralidhar, J.:

Introduction

1. When her 27 year old son Najeeb, a student of M. Sc (Bio-Technology) at the Jawaharlal Nehru University ('JNU'), went missing on 15th October, 2016 and nothing was heard of him for a month thereafter, the Petitioner filed the present petition on 21st November, 2016, seeking a writ of *habeas corpus* for his production.

2. Unhappy with the efforts of the Delhi Police to investigate her complaint,

which was registered as FIR No.523/2016 under Section 365 of the Indian Penal Code ('IPC') at Police Station ('PS') Vasant Kunj, New Delhi as being 'slow, misdirected and subjective', her second prayer was for "an order setting up a Court appointed Special Investigation Team ('SIT') of impartial officers of proven integrity from outside the state of Delhi to take over the entire investigation from the Crime Branch of Delhi Police."

3. At the first hearing of this petition on 25th November, 2016, on an application filed by the Petitioner, this Court directed the impleadment of JNU as Respondent No.4. The Respondent No.1 is the State i.e. the Government of NCT of Delhi; Respondent No.2 is the Deputy Commissioner of Police ('DCP'), South District; and Respondent No.3 is the Station House Officer ('SHO') of PS Vasant Kunj, New Delhi.

4. By the order dated 25th November, 2016, while directing notice to be issued in the petition, this Court directed the matter to be listed again on 28th November, 2016. On that date, the Court was informed that initially the investigation was being carried out by the local police and it was then transferred to the Crime Branch.

Complaint of the Petitioner

5. At this stage, it must be noticed that in her complaint that was registered as FIR No.523/2016, the Petitioner disclosed that Najeeb was living in Room No.106 of Mahi Hostel in the JNU Campus. He was admitted to JNU on 1st August, 2016. After his vacation, he returned to the hostel on 13th October, 2016. She claimed that between 2 and 2.30 am on 15th October,

2016, she received a call from Najeeb from his mobile number and he told her that something had happened to him. When she asked him what it was, he disconnected the call. She then contacted Najeeb's roommate Mohd. Qasim, who informed her that some people had fought with Najeeb and that he had suffered injuries as a result. When she expressed her concern, Qasim pacified her stating that she should not worry as they were there with Najeeb.

6. Between 3.30 am and 4 am on 15th October 2016, the Petitioner along with her younger son boarded a bus to Delhi. On reaching Bulandshahr city, she called up Najeeb, asked him whether he had had breakfast. She asked him not to worry and to have his breakfast, to which he said he would. Then, on reaching the Anand Vihar Bus Terminus in Delhi, she called him and asked him to meet her in his room. He apparently told her "yes mother, come over". However, when she reached his hostel room at around 12 noon -1 pm, she could not find him. She tried calling him up but located his mobile in his room. Thereafter, she tried looking for him in the hostel but was unable to do so. She requested the police that a missing report be filed and necessary legal action be taken.

7. Sub Inspector ('SI') Sandeep Yadav attached to PS Vasant Kunj (North), New Delhi noted at 8 pm on 16th October, 2016, that every possible search was conducted, mandatory steps were ensured and enquiries were made at the JNU hostel and every place "but no clue could be found". It was further noted, "that on the basis of the complaint, circumstances, enquiries, a clear cut offence under Section 365 IPC is found to have been committed."

8. The Petitioner also relied on the complaint given to the SHO by one Mr Mohit Pandey (President of the JNU Students Union – ‘JNUSU’). Nine persons involved in attacking Najeeb on the night of 14th October, 2016, were mentioned by him. He also mentioned as to how he himself and five others i.e. Dalip, Rama Naga, Shahid, Hamid and Qasim were shielding Najeeb. He also mentioned how despite somehow managing to rescue Najeeb from their clutches and taking him to the Warden’s room, the named nine persons still continued threatening him and asked that he be handed over to them so that they could finish him off. Mohit Pandey alleged that since the nine persons were continuously issuing threats to Najeeb, “it is pretty clear that they are involved in the matter of Najeeb Ahmed’s disappearance”.

9. The Petitioner has also enclosed with the petition a handwritten complaint signed by 23 residents of the Mahi Mandavi Hostel, where Najeeb was a resident of Room No.106, referring to his being attacked by nine persons who are identical to the nine named by Mr Mohit Pandey. This complaint mentioned that the above incident took place at around 11.30 pm on 14th October, 2016.

10. On 24th October, 2016, Mohit Kumar Pandey gave a memorandum on behalf of the JNUSU to the Lieutenant Governor (‘LG’) of the NCT of Delhi inter alia stating that no serious efforts were being made by the Delhi Police to trace the whereabouts of Najeeb. It was mentioned that they were aware that a Special Investigation Team (‘SIT’) was already formed, but sought intervention of the LG “so that no dilly-dallying tactics could be used by

Delhi Police.” It was mentioned that “there is a sense of impunity amongst the perpetrators of violence and that is aggravating situation of fear and injustice in campus.” Reference is made to the ‘very first Press Release’ made by the JNU Administration referring to Najeeb as an ‘accused’, in relation to an altercation with one Vikrant Kumar, with no mention being made therein about the attacks on Najeeb himself. It was also stated that the JNU Administration had not shared the decision taken by the Wardens on 16th October, 2016 to defer Najeeb’s punishment in order to inspire some confidence in him.

Proceedings at JNU

11. Enclosed with the writ petition is a handwritten copy of the proceedings of “warden and students meeting held in emergency on 15.10.2016 at 12 am”. These minutes are signed by Mr Sushil Kumar (Senior Warden), Arun Srivastava (Men’s Warden), Mohit Pandey, JNUSU President, Alimuddin (Mahi Mandavi Hostel’s President), Qasim (room partner) and Dilip (Ex. Mahi Mandavi Hostel President). It records as under:

“An emergency meeting was held due to the situation arisen by slapping of Vikrant Kumar (Mahi 213) by Mr. Najeeb Ahmed (106 Mahi). The alleged incident happened when Mr. Vikrant Kumar contesting for mess secretary went to the room of Mr. Najeeb, it is said that Mr. Najeeb without any provocation slapped Mr. Vikrant in front of two witnesses Mr. Ankit Kumar (214 Mahi) and Sunil Pratap (122 Mahi). This alleged incident of slapping was accepted by the accused Mr. Najeeb in front of Sr. Warden, Mess Warden, JNUSU President Mr. Mohit Pandey, Mahi-Mandavi President Alimuddin, Najeeb's room partner Mr. Qasim, Ex. Mahi-Mandavi President Dileep.”

12. Below the signatures of the aforementioned persons is the following

noting:

“On the basis of the written complaint given by Shri Vikrant Kumar (room 213 Mahi) and eye witness accounts and the acceptance of guilt by Shri Najeeb Ahmed (room 106 Mahi), Mr. Ahmed stands accused of violence against Shri Vikrant Kumar. Accordingly, the Warden Committee in the presence of JNUSU President Shri Mohit Pandey, Hostel President Shri Alimuddin and former President Shri Dileep Kumar, took the impromptu decision to expel Shri Najeeb Ahmed from Mahi-Mandavi Hostel with immediate effect. Official communication for vacating the hostel premises will be provided to Shri Ahmed in due course. Shri Ahmed is required to vacate the hostel on or before 21/10/16.

Signed by:

1. Sushil Kumar
2. Arun Srivastava
3. Soumyajit Ray”

13. The above noting has been signed by Sushil Kumar (Senior Warden), Arun Srivastava (Men’s Warden) and Soumyajit Ray, another Warden.

14. Another meeting of Wardens took place at 9.30 pm on 16th October, 2016, where it was noted as under:

“1 Decision taken on 15-10-2016 is deferred till further notice. This is done keeping in mind the present situation specially about Mr. Najeeb Ahmad who is untraceable after the incidents.

2 The warden committee called witnesses to the violence (complaint attached) by a group of students that ended in the brutal assault on Mr. Najeeb Ahmad during the intervening night of 14th and 15th October 2016.

3 The warden's committee decided to send a report on the accident to the Dean of Students on the instructions of the Rector-I (JNU).

4 The warden's committee the warden committee is to identify illegal residents involved in the violence and take the hostel out of bounds for them.

5 The warden's committee recommends that on the basis of written complaints submitted by the complainants and the report submitted by the wardens, the chief proctor should take appropriate disciplinary action at the earliest.”

15. This was signed by three of the Wardens - Sushil Kumar, Senior Warden, Soumyajit Ray, Warden, Arun Srivastava, Warden - and Alimuddin, President of the Mahi Mandavi Hostel.

16. JNU released a press release on 17th October, 2016 stating inter alia that the Administration had taken the following steps:

“a) The JNU security was instructed to immediately look for the missing student.

b) The DOS gave a written instruction to all the Wardens to search hostel rooms.

c) The police visited the campus and investigated the matter, which is still going on.

d) The administration is in constant touch with the police to facilitate the investigation.”

17. A separate letter was given by Mr Mohit Pandey, President of the JNUSU to senior officers of PS Vasant Kunj (North) requesting swift action in arresting the nine persons mentioned by him, who were involved in the attack on Najeeb on the night of 14th October 2016.

18. When the writ petition was listed before this Court on 28th November,

2016, Mr Rahul Mehra, learned Standing Counsel appearing for the State submitted a status report, which was handed over to Mr. Colin Gonsalves, learned Senior Counsel appearing for the Petitioner. As noted by the Court, the said status report was “perused and returned by him to Mr Mehra”. This was in light of the apprehensions expressed by Mr Mehra about sharing of the status report “as it would hamper the investigation at this stage.”

Order dated 28th November 2016

19. This Court on 28th November 2016 noticed that at page 4 of the said status report, reference was made to Najeeb having been taken to the Safdarjung Hospital where he refused medical examination. The Court was surprised that the background to Najeeb having to be taken to Safdarjung Hospital was not set out. It directed an affidavit to be filed by the concerned officer explaining the reasons for this lapse and to also file a supplementary status report setting out the details of the incident which led to “removal of Najeeb from to the hostel to Safdarjung Hospital”.

20. The Court also noticed that the steps taken by the local police and the SIT included wireless messages having been sent to the SSPs of all the Districts of India on 15th/16th October, 2016; uploading the details of the missing person on the Zonal Integrated Police Net (‘ZIP Net’) on 16th October, 2016; circulation of hue and cry notices since 15th October, 2016; information sent to Director NCRV on 16th October 2016; transmission of the information to Delhi Doordarshan and CBI Missing Section; publishing of the details of the missing person in newspapers on 25th and 26th October and then on 6th and 8th November, 2016 and photo of the missing person

being circulated on private channels on 6th November 2016. The reward was increased from Rs.50,000/- to Rs. 2,00,000/-, and later to Rs.5,00,000/-. Four teams were sent along various routes including Delhi-Agra, Delhi – Bulandshahr, Ghaziabad, Moradabad and Rampur. The CCTV footages of Metro Stations were examined. It was also stated as under

“The statement of driver of the TSR in which Najeeb travelled from the Hostel to Jamia Milia has also been recorded under Section 164 Cr.P.C. The statement of persons associated with Najeeb at Jamia Milia have also been recorded.”

21. The order dated 28th November 2016 of this Court then noted that learned counsel appearing for JNU informed the Court that he would seek instructions whether the decision of expelling Najeeb “has been reconsidered or would be reconsidered”. The Court also directed the Petitioner to issue a statement, with the assistance of the police, through print and electronic media to Najeeb requesting him to return. The Court also requested JNU to issue an advertisement informing Najeeb that the decision of his expulsion from the hostel would be reconsidered on his return. The Court explained:

“These two directions have been issued keeping in view the health of Najeeb in mind, if for any reason he is under any depression or his apprehension or is feeling slighted on account of the action taken against him. We request the JNU Authorities, the students of JNU and anybody who can assist the police and provide any clue/lead to the police so that the missing person can be recovered after putting all their differences on one side.”

22. The Court directed that the status report submitted to it would be sealed by the Court Master and kept in the Court file. It also noted:

“Status report supplied to Mr. Colin Gonsalves, learned senior counsel for the petitioner has been read by him and the same has been returned to Mr. Rahul Mehra.”

Order dated 9th December 2016

23. The next hearing of the case took place on 9th December 2016, when the Court perused the affidavit of Dr. Ram Gopal Naik, DCP (Crime Branch) which was tendered along with the supplementary status report. It was submitted by Dr. Naik as under:

“That in pursuance of the order dated 14/12/2016 the entire JNU campus including the complete administrative and academic blocks, hostel complexes, class-room complexes, open areas, terrace areas with all water tanks, septic tanks and residential complexes were thoroughly searched on two consecutive days ie 19/12/2016 & 20/12/2016.

For comprehensive and thorough exhaustive search of the entire JNU campus, the 1019 acres area of JNU Campus was divided into eleven zones. Each zone was headed by an ACP assisted by 03 Inspectors and other police staff including Sub Inspectors, ASIs, HCs, Constables, etc. The entire search operation was conducted under the close supervision of the DCP, Crime Branch. Being a herculean task, the Local Police Officials of South district were also roped in to assist the Crime Branch to conduct the search operation.

The massive search operation consisting of 560 Police Officials including 01 DCP, 13 ACPs, 34 Inspectors & 67 Srs/ASrs along with other staff was thus carried out for two days. Further 60 personnel from the security staff of JNU also fully assisted in conducting search operations on both the days.

Further to assist the Police Officials in search operation, 02 squads of Sniffer Dogs and 04 squads of Mounted Police along with Photographers and videographers were also involved for

conducting the search.

During the massive search operations, total 18 Hostels, residential complexes including that of V.C., Institutional complexes, Shopping complexes, Cafeteria, Jungle/green areas etc were searched for.

On 19/12/2016, the entire search operation was conducted in the presence of Smt. Fatima Nafees (Mother of Najeeb) and Mujib (Brother of Najeeb).

To comply with the directions of the Hon'ble Delhi High Court process of lie detection tests of various suspects has been initiated. In this process, consent of Qasim (Room mate of Najeeb) to undergo the Lie Detection Test before the court concerned was recorded on 16/12/2016 and the subject is to appear before FSL, Rohini, Delhi on 22 & 23/12/2016 to undergo the test.”

24. It was stated in the said affidavit by Dr. Naik that the 9 students alleged to be involved in the attack on Najeeb by Mr. Mohit Pandey were contacted telephonically and notices were also sent to them by registered post asking them to join the investigation and to undergo lie detection tests. Reference was made to the doubt expressed by Mr. Gonsalves about an auto rickshaw driver identifying Najeeb as the boy whom he ferried from JNU Campus to Jamia Milia Islamia University since there was no system in place of noting the registration number of the auto rickshaws entering/exiting JNU Campus. Dr. Naik stated:

“To clarify this aspect, on 15/12/2016, Sh. Mohit Pandey (President, JNUSU), Sh. Akbar (Ex. President JNUSU, undergoing Ph. D in School of Social Science) & Ms. Geeta (A JNU Student of MA- History-IIInd Year) had come to the office of AHTU at Sec-16, Rohini, Delhi under the instructions of Ld. Counsel Sh. Gonsalves. Two registers containing entries in

respects of TSR's maintained at JNU gates, seized in this case were shown to them to their satisfaction.”

25. The supplementary status report tendered by Dr. Naik enclosed the statements of roommate Mohd. Qasim and 12 others which included the President of Mahi Mandavi Hostel JNU, the wardens, Prof. Arun Srivastava, Dr. Sushil Kumar and Dr. Soumyajit Roy (Warden – sanitation). Further the number of the fellow students and ex-students including those who had attacked Najeeb were “also re-examined/interrogated at length in person.” Their statements were enclosed with the supplementary status report. That report also sought to reconstruct the sequence of events. It was noted in the supplementary status report that at the emergency meeting of the Warden Committee Najeeb was:

“repeatedly asked whether he was beaten up by any one and he repeatedly said that he did not remember anything at all. Accordingly the committee unanimously decided to expel and evict Mr. Najeeb Ahmed from the hostel with immediate effect.”

26. It is further noted that thereafter Najeeb along with Qasim returned to their room. When Qasim put his hand at the back of Najeeb’s neck, Najeeb complained of pain. Qasim then suggested to the hostel warden that Najeeb should be examined in a hospital. An ambulance was called through the security room. Najeeb, accompanied by Mohd. Qasim and Mohd. Shad reached Safdarjung Hospital. However, on reaching Safdarjung hospital, Najeeb “refused to get any sort of medical aid or treatment.” As a result, Qasim called Najeeb’s mother and informed her that he was refusing treatment, to which she said that Najeeb had some old problem and the relevant medicines would be in his room. It is noted that throughout the

incident “Najeeb was not having any visible injury nor did he complain of any discomfort.” They returned to JNU in the same ambulance, although Najeeb kept insisting that he would wait for his mother at the hospital. He further insisted on going to Gurugram to the house of his aunt (*Fufi*). It was further noted that after reaching JNU, Qasim gave Najeeb certain medicines as instructed by Najeeb’s mother. However, Najeeb did not sleep throughout the night. The report also noted that no MLC was prepared at Safdarjung Hospital, New Delhi. Since the CCTV footage of Safdarjung Hospital is preserved only for 7 days at a time, the police could not obtain the said CCTV footage of the relevant time period. In light of the fact that on 15th October 2016, an auto (TSR) driver purportedly dropped Najeeb near Jamia Milia Islamia University, the route that would be opted by auto drivers from JNU to Jamia University was searched for CCTVs, but no CCTV footage covering the route could be procured.

Orders dated 14th and 22nd December 2016

27. The case was next heard on 14th December 2016. The Court on that date recorded the submission of Mr. Gonsalves that the JNUSU would have no objection if the entire JNU campus was searched by the Delhi Police. No obstruction would be caused and all assistance would be provided by JNU. The JNU was asked to file its affidavit by Friday that week. It was further directed as under:

“Delhi Police is also directed to take all steps including the proposal of conducting lie detector tests on various persons as per information received by them. We expect that there will be no loss of time in conducting the exercise. We also request FSL Rohini to provide the result of the tests as early as possible.”

28. On 22nd December 2016 the Court noted that another status report had been handed over. The Court was informed that the entire JNU Campus including the complete administrative and academic blocks, hostel complexes, class-room complexes, open areas, terrace areas with all water tanks, septic tanks and residential complexes were searched on 19th and 20th December 2016. It was further noted as under:

“The search of the entire 1019 acres of JNU campus was searched under one ACP, three Inspectors, police officials, Sub-Inspectors, Assistant Sub Inspectors, Head Constables, Constables. Total 560 police officials including one DCP, 13 ACPs, 34 Inspectors and 67 Sub-Inspectors/Assistant Sub-Inspectors, 60 personnel from the security staff of JNU were involved in the two days search operation. To assist the Police officials in the search operation, 2 squads of sniffer dogs and 4 squads of mounted police along with photographers and videographers were also involved. The search included 18 hostels, residential complexes including that of V.C., institutional complexes, shopping complexes, cafeteria, jungle/green areas. Search was conducted in the presence of the mother and brother of the missing person.

We are also informed that nine other students have been issued notices through registered post at their native addresses to enable the State to conduct a lie detector test on them.

We are also informed that the police would conduct search with the dog squad at the rooms of two out of the nine persons who were residing outside the hostel and search would also be conducted, if necessary, at the native places of nine students.

We are informed that the room mate of the missing person had initially agreed for the lie detector test. However, after participating for one day, he has declined.

Mr. Gonsalves, Senior Advocate for the petitioner submits that

it is reasonably expected that roommate of the missing person would participate in the lie detector after the tests are conducted on the nine students, subject to their consent as well.”

Orders in 2017

29. One of the persons suspected, who was issued notice in terms of the above directions, filed an application CrI.M.A.2028/2017 apprehensive of him being compelled to undergo the lie detector test. The Court then clarified in the order dated 23rd January 2017 as under:

“4. Be that as it may we may clarify that in any of our orders we have neither suggested to the Delhi Police the manner in which they will carry out their investigation nor we have issued any directions that a lie detector test should be conducted without the consent of the persons resultantly no further orders are called for in the application.”

30. As far as the main writ petition was concerned, on 13th February 2017 this Court observed:

“We reiterate that we have not directed the Delhi Police to conduct the polygraphic/lie detector test on this applicant or on any other applicants. This is the domain of the Delhi Police and it is for them to decide the manner in which further investigation is to be carried out.”

31. Another status report was handed over as regards the main writ petition. The Court was informed that the students to whom notices were issued for undergoing the lie detector test had appeared before the Court of the Chief Metropolitan Magistrate (CMM), Patiala House Courts on 10th February 2017 and the matter had been adjourned to 15th February 2017.

32. On 20th February, 2017, the Court was informed that the CMM had

adjourned the proceedings to 22nd February, 2017. It was clarified by counsel for the State that the lie-detector test was not restricted to the nine students but also to the roommate of the missing person and a few other persons as well.

33. The case was next heard on 16th March, 2017. A status report was filed which detailed further steps that were taken to trace the missing person. The Court was informed that the CMM had fixed the next date as 20th March, 2017. The State informed the Court that the call records of the nine persons would be produced on the next date.

34. At the hearing on 21st April, 2017, two confidential reports were submitted to the Court. One was the report of the Central Forensic Sciences Laboratory (CFSL), Hyderabad, regarding the data retrieved from the mobile phone as well as the laptop of Najeeb. The second report was an analysis of the CDRs of the nine students alleged to be behind the disappearance of Najeeb. An application was filed by the Petitioner seeking directions for the constitution of an SIT as the current SIT at that time, according to her, was not functioning satisfactorily. The Court observed that the statements of all identified witnesses should be recorded by the IO, if not already recorded. The Court further directed as under:

“The State shall also place on record the statement of the TSR driver, Mr. Devesh Singh, who had allegedly picked the missing person from JNU Campus and dropped him at Jamia University on 15.10.2016. The analysis of his mobile phone data - including the location data shall also be placed on record in a sealed cover along with the further status report.”

35. The State was also asked to explain the initial delay in taking action on the complaint about Najeeb having gone missing.

36. On 16th May, 2017, an order was passed in Crl. M.A. 8174/2017 recording, *inter-alia*, the submission of Mr. Mehra that the Delhi Police would have no objection, if the matter was further investigated by another agency. This Court then recorded as under:

“Although, Mr. Gonsalves suggests that the SIT may be constituted by officers of outside Delhi, a suggestion has been made that the matter may be referred to Central Bureau of Investigation.

Having regard to the nature of the matter, as there is no opposition to the request so made, we transfer the matter to the Central Bureau of Investigation immediately. The further investigation shall be conducted under the supervision of an Officer not less than the rank of DIG.”

37. At the hearing on 8th August 2017, the Court noted that the CBI submitted its status report in a sealed cover, which was then opened in the Court. The Court observed “it is strange that an advance copy of the same has already been served to counsel for the Petitioner.” The Special Public Prosecutor (SPP) for the CBI assured the Court that a detailed status report would be filed on the next date.

38. Mr. Nikhil Goel, Advocate, appeared for the CBI on following date i.e. 6th September, 2017. He pointed out to the Court that from the date the investigation had been taken over by the CBI, 26 persons falling in three distinct categories have been interrogated which include the officials of the JNU, staff, friends, colleagues, etc. It was further submitted that wide

publicity has been given in 12 cities; mortuaries etc. have also been carefully examined. It was also pointed out that railway record for the past one year with name and age had also been called and other than the 8 officials who are in the team, two officials above the rank of DIG are also supervising the investigation. The written suggestions of the Petitioner were accepted by Mr. Goel, who said that those would be examined.

39. The CBI handed over another status report to the Court on 16th October, 2017. After noting that the CMM had adjourned the application seeking leave to conduct the lie detector test of the nine persons to 24th January, 2018, awaiting their reply, the Court disapproved of the long date given. A request was then made to the CMM to ensure that long dates are not given “where applications are made for conducting the polygraph test or in such application where there is urgency in the matter.” When it was pointed out to the Court that the status report of the CBI had been signed by a Inspector whereas the investigation had to be conducted under the supervision of an officer not below the rank of DIG as was directed by the order dated 16th May 2017, the Court directed the concerned DIG to ensure that the status report was filed thereafter under his signatures.

40. At the hearing on 14th November, 2017, a status report handed over by the CBI in Court was given to Mr. Gonsalves for his perusal and was thereafter returned by him to the counsel for the CBI.

41. At the hearing on 21st December, 2017, another status report was submitted, in which, *inter alia*, it was stated that the report of the CFSL, Chandigarh on the forensic examinations of the mobile phones for the

deleted data was awaited. The Court directed the CBI to send a reminder to the CFSL, Chandigarh to expedite the submission of their report. The Court was also shown a copy of the order dated 21st November, 2017 passed by the learned Additional Chief Metropolitan Magistrate (ACMM) disposing of the application filed by the CBI seeking permission to subject the nine persons to polygraph test. The learned ACMM observed that the consent required of such persons for that purpose was not forthcoming.

Orders in 2018

42. On 27th February 2018, another updated status report was filed by the CBI in a sealed cover which was opened in the presence of the parties. Para 3 of that status report was shared with Mr. Gonsalves, learned senior counsel for the Petitioner. The Court issued a direction to the Director, CFSL, Chandigarh, to expedite the report of the analysis of the mobile phones and make the report available to the CBI not later than 19th March, 2018. On the same day, Mr. Gonsalves made a plea that the investigation of the present case should be monitored by the Court and that the status reports submitted by the CBI should be examined by a criminal law expert for his analysis and advice. This was opposed by Mr. Nikhil Goel, learned counsel for the CBI. The Court deferred consideration of the above plea after noting that important steps in the investigation should first be completed.

43. On 2nd April, 2018, the Court noted that a report had been sent by the CFSL, Chandigarh, to the CBI of examination of only three of the mobile phones. Even that part of the report was found to be incomplete. It was noted that going by the status report filed on that date in the Court, the CBI itself

had reservations about the incomplete report in respect of three mobile phones since the task had been entrusted to a junior level officer of CFSL, Chandigarh, who did not appear to be appropriately qualified or experienced to undertake the task. The Court took serious note of the laxity on the part of the CFSL, Chandigarh, and directed that in the event that the complete report of the analysis of the nine mobile phones undertaken by the CFSL, Chandigarh by a senior level officer qualified for the task, is not made available to the IO of the CBI on or before 30th April 2018, the Director, CFSL, Chandigarh would remain present in person in this Court on the next date to explain the lapse.

44. The case was next heard on 11th May, 2018. The Court noted in its order of that date as under:

“1. Mr. Nikhil Goel, learned counsel for the CBI, has presented the 8th status report.

2. Nine mobile phones were sent by the CBI to the CFSL in Chandigarh for extraction of the data contained therein. While the data of two of the mobile phones was sent to the CBI, the data of the remaining seven was awaited as of the last date of hearing of this petition. The report dated 25th April 2018 of the CFSL, Chandigarh states that data from four mobile phones and two SD-cards were retrieved. Approximately 122 gigabytes of data has been recovered. This includes thousands of distinct files (7,907 audio files, 1,440 video files, 4,015 text messages, 3,870 WhatsApp files, 1,14,488 image files, 29,608 SD-card files, 20,717 miscellaneous files) and a 36,401-page Extraction Report. This data is now available to the CBI. Mr. Goel informs the Court that while the analysis of this exhaustive data is a work in progress, the CBI is yet to fine concrete leads in respect of the persons specifically named by the Petitioner.

3. As regards the three phones which are referred to, as Exhibits M-1, M-6 and M-7, the CFSL report states that Ex M-1 could not be analysed since it was not unlocked, i.e. it is protected with a pattern lock. The other two mobile phones, i.e. Exs. M-6 and M-7, are not in working order and, therefore, could not be analysed.

4. On instructions, Mr. Goel states that through a Special Messenger, the CBI will send the said three mobile phones, i.e. Exs. M-1, M-6 and M-7, to the CFSL, Hyderabad no later than three days from today. The Court requests the CFSL Hyderabad to examine the said mobile phones, make every effort to retrieve the data therein and submit a report to the CBI no later than one month thereafter.

5. The CBI's 8th status report also reveals that since the last hearing, 28 students and 25 security guards/supervisors of JNU who were on duty at the various hostels and entry/exit gates have been examined. It is stated that no information has yet been received as regards the whereabouts of the missing person from any part of the country. Even the help of Interpol has been sought for issuance of Yellow Notice. A reward of Rs. 10,00,000/- has been announced to the general public for providing clues about the missing person.

6. Mr. Gonsalves, learned Senior counsel for the Petitioner states that the Petitioner is utterly frustrated with the failed attempts of the CBI to trace her son and has lost faith in the CBI. He urges that the Court should itself peruse the statements said to have been recorded by the CBI since it took over the investigation and in particular examine whether the location and movements of the persons named by her, after the date on which the Petitioner's son went missing, were ascertained. Mr. Goel replies that the CBI went beyond even that. He states that the statements will be available on the next date for the perusal of the Court.

7. Mr. Gonsalves seeks to address arguments on the task of analysing the CBI record being entrusted by this Court to a former Judge for better assistance. The Court will take up

this aspect on the next date.”

45. The ninth status report of the CBI was submitted in this Court on 12th July, 2018. The CFSL, Hyderabad, in its report to the CBI dealt with three mobile phones sent to it and stated that two of them were physically damaged and therefore could not be analyzed. As for the third, the pattern lock could not be opened as it appeared to be in the ‘USB Debugging Disabled Mode’. Mr. Gonsalves drew attention of the Court to the representation dated 17th October, 2016 made to the Chief Proctor, JNU by 18 persons who claimed to be eye witnesses to the assault on the missing person. The Court observed that it would like the CBI to make a separate compilation, for the perusal of the Court, of the statements given by these 18 persons to the CBI. Also that the Court would like the CBI to include in the compilation the statements given by the three Doctors serving as wardens in JNU i.e. Dr. Arun Shrivastav, Dr. Sushil Kumar and Dr. Soumyajit Roy as well as the three security guards, who were assigned to the hostel at the relevant time when the attack took place.

46. At the hearing on 4th September, 2018, the CBI presented before the Court a compilation of the statements given by the 18 persons as well as the three wardens and three security guards assigned to the Mahi-Mandavi Hostel at the relevant time when the attack took place.

Submissions on behalf of the Petitioner

47. The submissions of Mr. Gonsalves, learned senior counsel for the Petitioner were as follows:

- (i) The Petitioner was entitled to be provided with the status reports

submitted from time to time in this Court by the CBI in sealed covers. Reliance is placed by him on the Minnesota Protocol (2016), which is the revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

- (ii) The question that really arose for consideration by this Court was whether the CBI had done its best in tracing out Najeeb. A lot of time was wasted in the CBI suggesting that Najeeb had left in a TSR on the morning of 15th October, 2016 and the fact that that statement was found to be incorrect subsequently. Time was also lost in finding out whether a body recovered from the JNU campus in January, 2017 belonged to Najeeb only to be again answered in the negative.
- (iii) It is difficult to expect CBI to be able to undertake a fair and objective investigation without any political interference. He expressed surprise that the named nine persons were not yet subjected to custodial interrogation to elicit the truth of the matter. Referring to the applications filed by the Petitioner seeking an independent and impartial investigation by an SIT comprising officers from outside Delhi with unimpeachable reputation, reliance was placed on the decision in ***Babubhai Jamnadas Patel v. State of Gujarat 2009 (12) SCALE 183***. It was urged that there should be a Court-monitored investigation.
- (iv) The statements given to CBI by Mr. Mohit Pandey and five others who had saved Najeeb from further attack on the night of 14th October, 2016 by the nine persons should be sufficient material for

the CBI to subject the nine suspected persons to custodial interrogation.

Submissions on behalf of the CBI

48. Countering the above submissions, Mr .Nikhil Goel submitted that while the investigating agency could be asked to share with the complainant the stage at which the investigation was, Section 172 of the Cr PC was clear that only the criminal Court concerned could be privy to what was recorded in the case diary. The status reports were only to indicate to the Court the progress of the investigation. Whether to subject the persons to custodial interrogation or not was the discretion of the investigating agency, keeping in view the parameters set out under Section 41 Cr PC. According to him, the CBI investigation was indeed being monitored by this Court since May, 2017. Although this was essentially the task of the concerned criminal Court which could not be delegated to anyone else, there was no justification for the demand that this Court should constitute an SIT comprising officers from outside Delhi and should also monitor the investigation undertaken by such SIT.

49. Mr. Nikhil Goel, on the basis of the decision in ***Shahid Balwa v. Union of India (2014) 2 SCC 687***, submitted that even if the CBI filed a closure report in the concerned criminal Court, as it proposed to in the present case, at that stage the criminal Court would give the complainant an opportunity of being heard as the complainant had the right to object/oppose the closure report. In what is known as ‘Protest Petition’, the complainant would be heard, to point out to the criminal Court after examining the report placed by

the CBI along with the relevant annexures and supporting documents, before the criminal Court, that the recommendation of the CBI regarding closure should not be accepted and that the matter required further investigation.

The Minnesota Protocol

50. As regards the first plea regarding the Minnesota Protocol, the Court would like to note that in the present case, at every stage of the hearing the Petitioner was aware of the filing of the status reports, first by the Delhi Police, Crime Branch/SIT and thereafter by the CBI. While some of the reports were in fact furnished to the Petitioner, some others were shown to the learned Senior counsel for the Petitioner and then taken back. In one instance, only one paragraph of the status report was shown to the learned Senior Counsel.

51. It must be recalled that the status report indicates what progress has been made in the investigation. It also sets out the specific steps taken by the investigating agency. It might have set out the details of the names of the persons examined. These are usually details in the case diary maintained by the investigating agency under Section 172 (3) Cr.PC. The law is well settled that the details in a case diary maintained under Section 172 (3) Cr.PC are not shared with anyone, be it the suspect or the complainant. It is to be perused only by the Court. There is no requirement of sharing the details in the case diary with the complainant.

52. The Minnesota Protocol underscores the need for the complainant to be able to have an effective representation in the entire process. As far as that requirement is concerned, it is more than adequately met when, after the

filing of the closure report before the criminal report, the complainant files a protest petition opposing the closure of the investigation. The complainant is then provided with full access to the closure report and the materials on which it is based. Subject to terms with which the complainant would have to comply, the criminal Court concerned will provide such access and perhaps also furnish copy of the entire closure report and such of the documents which formed the basis for the recommendation for such closure. The complainant can then carefully analyse the material and point out to the criminal court why in the view of the complainant the closure report should not be accepted. Thereafter, the concerned criminal Court takes a call.

Options before the criminal Court

53. The options available before the criminal court at this stage, have been explained by the Supreme Court in its decision in ***Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel (2017) 4 SCC 177*** as under:

“33. The scope of the judicial audit in *Reeta Nag*, to reiterate, was whether, after the charge-sheet had been filed by the investigating agency under Section 173(2) Cr PC, and charge had been framed against some of the accused persons on the basis thereof, and other co-accused had been discharged, the Magistrate could direct the investigating agency to conduct a reinvestigation or further investigation under sub-section (8) of Section 173. The recorded facts revealed that the Magistrate had in the contextual facts directed for reinvestigation and to submit a report, though prior thereto, he had taken cognizance of the offences involved against six of the original sixteen accused persons, discharging the rest. The informant had thereafter filed an application for reinvestigation of the case and the prayer was acceded to. This Court referred to its earlier decisions in *Sankatha Singh v. State of U.P.*, and *Master Construction*

Co.(P) Ltd. v. State of Orissa to the effect that after the Magistrate had passed a final order framing charge against some accused persons, it was no longer within his competence or jurisdiction to direct a reinvestigation into the case. The decision in *Randhir Singh Rana*, which propounded as well that after taking cognizance of an offence on the basis of a police report and after the appearance of the accused, a Magistrate cannot of his own order further investigation, though such an order could be passed on the application of the investigating authority, was recorded. It was reiterated with reference to the earlier determination of this Court in *Dinesh Dalmia v. CBI* that the power of the investigating officer to make a prayer for conducting further investigation in terms of Section 173(8) of the Code was not taken away only because a charge-sheet had been filed under Section 173(2) and a further investigation was permissible even if cognizance had been taken by the Magistrate. This Court, therefore summed up by enouncing that once a charge sheet was filed under Section 173(2) Cr PC and either charges have been framed or the accused have been discharged, the Magistrate may on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authority, permit further investigation under Section 173(8), but he cannot suo motu direct a further investigation or order a reinvestigation into a case on account of the bar of Section 167(2) of the Code. It was thus held that as investigating authority did not apply for further investigation and an application to that effect had been filed by the de facto complainant under Section 173(8), the order acceding to the said prayer was beyond the jurisdictional competence of the Magistrate. It was, however observed, that a Magistrate could, if deemed necessary, take recourse to the provisions of Section 319 Cr PC at the stage of trial.”

54. If indeed the criminal Court has to form a view on the justification of the CBI recommending closure, it will give a full opportunity to the Petitioner at

that stage to oppose that request by filing a ‘protest petition’ and in that process, the Petitioner will have full access to the entire material gathered by the CBI. This will more than satisfy the requirements of the Minnesota Protocol. This disposes of the submission made in this regard by Mr. Gonsalves.

Constituting an SIT

55. Now turning to the request regarding constitution of an SIT, the Court is conscious that in a series of cases, the Supreme Court has constituted SITs in exercise of its power under Article 142 of the Constitution.

56. In ***Babubhai Jamnadas Patel v. State of Gujarat (2009) 9 SCC 610***, the Supreme Court dealt with appeals filed against the interim orders of the Gujarat High Court passed in the course of monitoring by the High Court in the investigation of an FIR registered at the Karanj Police Station in Gujarat. The question was whether the High Court was interfering with the investigation and if this was contemplated under the Constitution and criminal procedure. Reference was made to the decision in ***Director, CBI v. Niyamavedi, (1995) 3 SCC 601***, where it had been observed that any observation which may amount to interference with the investigation should not be made and that ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation.

57. On the other hand, the contesting Respondents pointed out that the powers of the High Courts and the Supreme Court under the Constitution are wide enough to direct a public authority to perform its duty in accordance

with the law. The decisions referred to were *State of Bihar v. Ranchi Zila Samta Party* (1996) 3 SCC 682, *Vineet Narain v. Union of India* (1998) 1 SCC 226; *State of W.B. v. Nuruddin Mallick* (1998) 8 SCC 43 and *Nirmal Singh Kahlol v. State of Punjab* (2009) 1 SCC 441. The Supreme Court in *Babubhai Jamnadas Patel* (*supra*) noted that the progress of the investigation in the case had been ‘tardy and slow’. In these circumstances, the directions issued by the High Court that the investigation should be handed over to the ACP of the C Division of Ahmedabad City should be viewed as ‘keeping a watch over the investigation in order to prevent the miscarriage of justice’. It was further observed as under:

“37. The Courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly protected. The Courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders passed by the administration.”

58. In the present case, however, this Court did accept the plea of the Petitioner at the first instance and directed the investigation to be undertaken by the CBI. This Court is, however, for the reasons discussed hereafter, not persuaded that the CBI is tardy and slow in the investigation or that it has not taken steps that are required to be taken in the matter. The question really is whether there is any justification for the plea that for the second time now, the investigation should be entrusted to another SIT whose work

will be monitored by the Court, thus removing the CBI from the picture.

59. In *Shahid Balwa* (*supra*), the Supreme Court was dealing with the investigation by the CBI into the '2G Spectrum Scam'. In its decision in *Shahid Balwa* (*supra*), the Supreme Court was considering the applications filed by some of the accused persons questioning its directions that subordinate courts including the High Courts would be prohibited from entertaining any prayer for staying the proceedings. Reaffirming its earlier directions, the Court explained that the directions had been issued having regard to the larger public interest involved "and the necessity of the proper investigation and also with the object of unearthing the track". That was not a case of constitution of an SIT. In fact, the investigation was entrusted to the CBI which ultimately filed their charge sheet. The Court declined to lay down any guidelines as prayed for by the petitioner which would apply in a 'court monitored investigation'. The Court explained

"In a Court-monitored investigation, as already pointed out, the Court is not expected to interfere with the trial proceedings. The conduct of the trial is the business of the trial judge and not the court monitoring the investigation. A superior court exercising the appellate power or constitutional power, if gives a direction to conduct the trial on day-to-day basis or complete the trial in a specific time by giving direction is not interfering with the trial proceedings but only facilitating the speedy trial, which is a facet of Article 21 of the Constitution of India."

60. In the present case, this Court has in fact monitored the investigation thus far of the CBI and has not been persuaded to agree with the Petitioner that the CBI has not acted fairly or that it has been under any influence or political compulsions in its decision to file a closure report. However, the

Court would not like to say anything further in this regard because it will be for the Court concerned to decide whether on the material placed before it, the CBI closure report should be accepted or not. That will be a decision to be taken independently by the concerned Court, uninfluenced by what this Court may have observed thus far in these proceedings. Further, in coming to any conclusion in that matter, the concerned Court will certainly take into consideration the stand and contentions of the Petitioner, if any.

61. In *Sushila Devi v. State of Rajasthan (2014) 1 SCC 269*, the question was whether the Supreme Court should continue to monitor the case investigated by the CBI on its directions even after the charge sheet was filed. It was observed by the Supreme Court as under:

“28. After analysing all these decisions, it appears to us that this Court has already in a catena of decisions held and pointed out that the monitoring of a case is continued till the investigation continues but when the investigating agency, which is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. Accordingly, we are of the opinion that since the investigation has already been completed, charge- sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring of the case in question.”

62. The decision in *Manohar Lal Sharma v. Principal Secretary (2014) 2 SCC 532* involved investigation into the “Coal Scam”. The CBI there had registered preliminary inquiries regarding allegations of coal blocks for the period 1993-2005 and 2006-2009. The allegation was that the coal blocks

for the subject period were allocated to private prayers for extraneous considerations which resulted in enormous loss to the public exchequer. Given the importance to the matter, the Supreme Court undertook monitoring of the investigation conducted by the CBI. The question that arose before the Supreme Court was whether approval of the Central Government under Section 6-A of the Delhi Special Police Establishment Act, 1946 was necessary in the matter where the inquiry/investigation into the crime under the Prevention of Corruption Act, 1988 is being monitored by a Constitutional Court. The said question was answered in the negative. The Supreme Court explained:

“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 the CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.”

63. The Supreme Court further explained as under:

“39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such ‘court directed’ or ‘court monitored’ cases is that there is no undue delay in the investigation, and the investigation is conducted in a free

and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter.

We find that in some cases, the expression 'court monitored' has been interchangeably used with 'court supervised investigation'. Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.”

64. This Court has monitored the investigation of the CBI up to the stage where the CBI is in a position to file a report before the concerned criminal Court. What should happen hereafter is for the concerned criminal Court to decide and not this Court. Consequently the prayer of the Petitioner that the Court should constitute an SIT and monitor its work, thus removing the CBI from the picture, has to be declined.

65. Leaving it open to the Petitioner to raise all contentions available to her

in accordance with law before the concerned criminal Court after the filing of the report by the CBI in such Court, the Court disposes of this petition and all the pending applications.

S. MURALIDHAR, J.

VINOD GOEL J.

OCTOBER 08, 2018

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