

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 422 of 2021**

Bharat Lal Chandrakar, S/o Shri Gopal Ram Chandrakar, Aged about 48 years, R/o Ward No. - 12, Mahasamund, Police Station and District Mahasamund (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through: Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. Director General of Police, Raipur, District Raipur (C.G.)
3. Superintendent of Police, Mahasamund, District - Mahasamund (C.G.)
4. Sub-Divisional Officer (Police) Mahasamund, District Mahasamund (C.G.)
5. Station House Officer, Police Station - Mahasamund, District Mahasamund (C.G.)
6. Union of India, Through - Secretary, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) North Block, New Delhi, Pin - 110001.
7. Central Bureau of Investigation, Through Superintendent of Police, Bhilai, District Durg (C.G.)
8. Lokesh Chandrakar, S/o Prahlad Chandrakar, aged about 29 years, R/o Village - Umarda, Post, Police Station and District Mahasamund (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Rakesh Pandey, Advocate.
For Respondents No. 1 to 5	:	Mr. H.S. Ahluwalia, Deputy Advocate General.
For Respondents No. 6 and 7	:	Mr. Ramakant Mishra, Assistant Solicitor General.
For Respondent No. 8	:	Mr. Mayank Chandrakar, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice N.K. Chandravanshi, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

08.12.2021

Heard Mr. Rakesh Pandey, learned counsel for the appellant. Also heard Mr. H.S. Ahluwalia, learned Deputy Advocate General appearing for respondents No. 1 to 5, Mr. Ramakant Mishra, learned Assistant Solicitor General for respondents No. 6 and 7 and Mr. Mayank Chandrakar, learned counsel appearing for respondent No. 8.

2. This writ appeal is presented against an order dated 16.07.2021 passed by the learned Single Judge in Writ Petition (Cr.) No. 217 of 2017.
3. The appeal is accompanied by an application for condonation of delay, which is registered as I.A. No. 1 of 2021.
4. The appeal was filed on 24.11.2019. In the application, it is stated there is delay of 41 days. The delay is sought to be explained by stating that the appeal could not be filed within the stipulated time because of 'bonafide omission'.
5. The Registry, however, opines that due to extension of period of limitation by the Hon'ble Supreme Court, the delay will be only of 9 days.
6. There is no objection to this application. I.A. No. 1 of 2021 is allowed.
7. The case of the appellant in the writ petition is that the family of the petitioner, his parents and family of the brother of the petitioner used to reside jointly in one house. While the parents of the petitioner and the petitioner and his family used to live in the ground floor, his younger brother was living

alongwith his family in the first floor. The respondent No. 8, who is a cousin of the petitioner, was also living in the first floor in a different room. A fire had broken out on 18.03.2015 at about 11.13 pm in the house of the petitioner and the family of the younger brother was trapped in their rooms. Though he tried to rescue them, but because of the intensity of fire, his effort went in vain. However, allegation is levelled that door was bolted from outside and it is asserted that it was the respondent No. 8, who had committed cold-blooded murder of the brother of the petitioner and his family.

8. Alleging that investigation was not done properly, the petitioner had approached this Court praying for a direction to hand over the investigation to the Central Bureau of Investigation (CBI).

9. In the return filed by the State, it was stated that one 'Special Investigating Team' was constituted and the same had decided to go for a 'Narco Test' on respondent No. 8 and had moved an application before the Chief Judicial Magistrate First Class, Mahasamund. It was also stated that investigation has not been completed.

10. The learned Single Judge directed the learned Chief Judicial Magistrate First Class, before whom the application was pending, to decide the application within an outer limit of four weeks and the State was also directed to complete the investigation within an outer limit of one year from the date of receipt of copy of the order.

11. Mr. Pandey submits that though prayer was made for handing over the investigation to CBI, this aspect of matter was not at all considered by the learned Single Judge and therefore, the impugned order is vitiated. It is submitted that the learned Single Judge confined only to the aspect of 'Narco Test' and therefore, appropriate directions may be issued to hand over the investigation to CBI.

12. Learned counsel appearing for the respondents submit that only after the learned Chief Judicial Magistrate had passed the order on the application of 'Narco Test' rejecting the prayer of the prosecution, the appellant had approached this Court. They also submit that in the facts and circumstances, when the appellant had waited for the outcome of the application filed by the prosecution with regard to conducting of 'Narco Test' on respondent No. 8, the appeal ought not to be entertained as it is a case of approbate and reprobate.

13. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

14. A perusal of the judgment of the learned Single Judge, more particularly, paragraph 11, would go to show that submissions were advanced by the learned counsel for the appellant that a direction may be issued for completion of the investigation within a time-frame. Though prayer for handing over the investigation to CBI was made in the petition, it appears that such a prayer was not pressed and the prayer was scaled down to directing the investigating team to complete the investigation within a time-bound manner. It is in that context the learned Single Judge directed investigation to be completed within an outer limit of one year. Therefore, submission of Mr. Pandey that prayer of the petitioner for handing over investigation of the case to CBI was not considered is without merit.

15. In view of the above discussion, we find no merit in this writ appeal and accordingly, the same is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge