

UMESH
SHRINIWAS
MALANI

Digitally signed by
UMESH SHRINIWAS
MALANI
Date: 2022.05.05
18:54:24 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 411 OF 2021

Anant Thanur Karmuse,)
Age : 40 years, Occ. Business,)
R/o: A1/1504, Ghodbandar Road,)
Kavesar, Unnati Woods Anand)
Nagar, Kasarvadavli, Thane) ...Petitioner

Versus

1. State of Maharashtra)
(Through Vartak Nagar Police)
Station, Thane).)
)
2. Commissioner of Police,)
Thane. Police Commissioner)
Office, 1st Floor, Near Kalwa)
Bride, Thane West.)
)
3. Director General of Police,)
Maharashtra.)
Police Headquarters, Old)
Council Hall, Shaheed Bhagat)
Sing Marg, Mumbai – 400 001.)
)
4. Central Bureau of)
Investigation, Zone -I, CBI,)
13TH Floor, Plot No. C-35A,)
'G' Block, Bandra Kurla)
Complex (BKC), Near MTNL)
Exchange, Bandra (East),)
Mumbai – 400 098.) ...Respondents

- Mr. Subhash Jha a/w Nilesh Tribhuvan, Mr. Hare Krishna Mishra, Mr. Ghanshyam Upadhyay, Mr. Burzin Bharucha, Mukesh Gupta, Dhruv Gupta, Sanjay Rego, D. Dubey Mr. Darshik Vasani, i/by Anirudh Ganu & Mayur Patel for Petitioner.
- Mr. Ashutosh A. Kumbhakoni, Advocate General a/w Mr. Manoj Badgujar and Mrs. A. S. Pai, PP for Respondent – State.

- Mr. Amit Desai, Senior Advocate, a/w Mr. J.P. Yagnik, APP for Respondent No. 3.
- Mr. Prasad K. Dhakephalkar, Senior Advocate a/w Mr. Tushar Sonawane, Advocates for Applicants in IA/1009/2021.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : APRIL 26, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. **Rule.** Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, matter is taken up for hearing and disposal, at the admission stage itself.

2. The present Petition is filed at the instance of Petitioner with following principal prayer "a":

- a) i) *A Writ of Mandamus or any other appropriate writ, order or direction be issued directing the investigation in FIR Nos. 119/2020 and 120/2020 registered at Vartak Nagar Police Station, Thane, be entrusted with the Central Bureau of Investigation, Mumbai or to any other agency as this Hon'ble Court deems fit and proper, for a court monitoring investigating of the aforesaid crimes.*
- ii) *That requisite sanction be directed to be taken as per the provisions of CrPC*

u/s197 for investigation and for prosecution of public servants.

3. Other prayers are the interim prayers in the nature of directions to the investigating agency of the State. There is also another prayer as certain events stated in the Petition and reflected from the submission of learned Counsel for Petitioner as well as learned Advocate General representing the State. It would be necessary to refer to the said prayer i.e., prayer 'f' and the same reads thus:

f) That the name of Minister Jitendra Awhad (MLA – Mumbra Constituency) and the Police Officers who abducted the Petitioner be included in the list of Accused in FIR 120/2020 dated 06/04/2020 filed at Vartak Nagar Police Station, Thane and due investigation be initiated against them;

4. Mr. Jha, learned Counsel appearing for the Petitioner, by inviting our attention to the documents placed on record vehemently submitted that the authorities of the State have failed in performing their duties and in spite of sufficient material available on record, the authorities conducted the investigation in casual manner and particularly to save

one of the accused who is an influential political figure namely, Mr. Jitendra Awhad, who is occupying the position as a Minister in State of Maharashtra. It is submitted by learned Counsel for Petitioner that though there is sufficient material on record, particularly, in the form of the CCTV footage and the conversation in the form of telephonic talk through mobile phone, the investigating agency of the State Government failed to collect this important material and without collecting this material, the charge-sheet is filed. Mr. Jha further submitted that the Petitioner had immediately responded on the social media platform and stated in his post "मी चित्राचा निषेध करतो". It can loosely translated as "I disapprove the picture". It is also submitted by learned Counsel for Petitioner that with insufficient material in the charge-sheet, the accused persons including the accused – Minister and certain police officials would be benefited and as such, it was the submission of learned Counsel that as the investigation is conducted by local police officers and as it is a partial investigation, the investigation be transferred to other independent agency like CBI and order of further investigation be passed by this Court. In

support of his submissions, Mr. Jha, learned Counsel appearing for the Petitioner placed heavy reliance on following judgments: Kashmeri Devi Vs. Delhi Administration¹, Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat², Lallan Chaudhary Vs. State of Bihar³, Narmada Bai Vs. State of Gujarat⁴, Bharati Tamang Vs. Union of India and Ors⁵, Vinubhai Haribhai Vs. State of Gujarat⁶, Param Bir Singh Vs. State of Maharashtra⁷, K.V. Rajendran Vs. S.P., CB CID⁸, Dr. Naresh Mangla Vs. Anita Agarwal and Ors⁹, Punjab and Haryana Bar Association Vs. State of Punjab¹⁰, CBI Vs. Rajesh Gandhi¹¹, Uma Shankar Sitani Vs. Commissioner of Police, Delhi¹², Sri Bhagwan Samraddha Sreepada Vs. State of Andhra Pradesh¹³ & Sudhir M Vora Vs. Commissioner of Police, Greater Bombay¹⁴.

5. *Per contra*, Mr. Kumbhakoni, learned Advocate General appearing for Respondent – State, vehemently

-
- 1 (199*) Supp SCC 482
 - 2 (2004) 4 SCC 158
 - 3 (2006) 12 SCC 229
 - 4 (2011) 5 SCC 79
 - 5 (2013) 15 SCC 578
 - 6 (2019) 17 SCC 1
 - 7 Criminal Appeal No. 473/2022.
 - 8 (2013) 12 SCC 480
 - 9 (2020) SCC Online SC 1031
 - 10 (1994) 1 SCC 616
 - 11 (1996) 11 SCC 253
 - 12 (1996) 11 SCC 714
 - 13 (1999) 5 SCC 740
 - 14 (2004) SCC Online Bom 1209

opposed the Petition and submitted that the investigating agency right from the lodgment of the report took all the necessary steps as required under the provisions of law. As per the report submitted to the police station at the instance of Petitioner himself the relevant sections of IPC were attracted and referred too in the first information report. Learned AG then submitted that on lodgment of the report the investigating agency was set in motion and in the process of investigation, recorded various statement of witnesses including the statement of wife of the Petitioner. Learned AG in his detailed submissions referred to various statements and the material collected in the investigation. Learned AG then submitted that various orders are passed in the matter by this Court and by following these orders, the State authorities have proceeded in the matter. Thus, it was the submission of learned AG that by way of issuing certain directions, this Court itself was monitoring the progress in the matter. It was also the submission of learned AG that as the entire investigation is carried out as per the provisions of law and charge-sheet is submitted against the accused persons

including some police officials, the Hon'ble Minister is made an accused no. 13. It is also submitted by learned AG that considering the nature of offences attracted in the matter arrest of accused – Minister was also effected and subsequently the said accused was released on bail. Thus, the initial submission of Mr. Jha, learned Counsel appearing for Petitioner that the name of the person who was a proposed accused and his name ought to have been included in the name of the offenders was purposely not included by the investigating agency holds no water on the backdrop of the submission of learned AG that as initial report lodged at the instance of the Petitioner only referred to his presence and utterances of such words which was in the form of some inquiry, the name was not initially added as an accused, but subsequently during the course of investigation when certain material revealed of some involvement of that person, his name was included as an accused. The legal steps such as, effecting arrest of the accused was also duly followed.

6. Mr. Kumbhakoni submitted that as per the procedure set out in the Code of Criminal Procedure the

matter would be committed to the Trial Court for conducting trial and the learned Trial Judge, on appreciation of evidence, may pass the appropriate orders. It is also submitted by learned AG that it can be said that trial is at the stage of beginning. Learned AG then submitted that the Petitioner who is a complainant will be participating in the trial and he is certainly at liberty to cross-examine the witnesses during the course of trial as such, the allegation at the instance of Petitioner that merely because some of the accused persons are either the police official or one of the accused person is occupying the position as Minister, one cannot jumps to conclusion that the accused persons would be benefited only because of their position and the Trial Court would be influenced by their position. Mr. Kumbhakoni, learned AG submitted before this Court that if it would have been a case of real victim approaching this Court for seeking directions to transfer the invesetigation submitting before this Court that there is no reasnable pace in the investigation or the investigating agency is not taking appropriate steps, then in that case this Court could have certainly issued the necessary directions

but in the present case the material placed on record clearly show that the Petitioner is utilizing the investigating machinery and this Court as a tool to settle personal score that one of the person having a different ideology, as such, the motive and intention of the Petitioner is not *bona fide*.

7. Mr. Kumbhakoni, learned AG further submitted that the Petitioner submitted before this Court that due to peculiar circumstances i.e. outbreak of Covid 19 pandemic, he was unable to move out of his house for a medical treatment, but the facts stated in the intervention application reflects otherwise. It is submitted by learned AG that after lodgment of report, the Petitioner had physically approached His Excellency the Governor, thereafter he approached the media and gave statements in media. Thus, if the Petitioner was in a position to move physically and was going at various places then he was not prevented to go to a medical officer for treatment or to receive necessary medical certificate. Learned AG, thus, submitted that the selective attendance of the Petitioner is also an indicator to submit that the Petitioner had not

approached this Court with *bona fides*. In support of his submissions, learned AG placed heavy reliance on following judgments: Sakiri Vasu Vs. State of Uttar Pradesh and Others¹⁵, Kunga Nima Lepcha and Others Vs. State of Sikkim and Others¹⁶, & Arnab Ranjan Goswami Vs. Union of India and Others¹⁷. Thus, Mr. Kumbhakoni, prayed for dismissal of the Petition.

8. Mr. Dhakephalkar, learned Senior Counsel appearing for intervenor submitted that Petitioner made a composite prayer whereby quashment of first information report bearing Crime No. 119/2020 & 120/2020 registered at Vartak Nagar Police Station is sought for. Mr. Dhakephalkar vehemently submitted that the FIR No. 119/2020 was registered at the instance of the Applicant Hitesh Wani against the Petitioner. It was also submitted by Mr. Dhakephalkar that the Petitioner is associated with one organization namely, Shivpratishthan. It is also submitted that the said organization is having certain ideological difference with the Hon'ble Minister and the attempts were made by the said organization to circulate certain material in

15 (2008) 2 SCC 409

16 (2010) 4 SCC 513

17 (2020) 14 SCC 12

social media to malign the image of Hon'ble Minister. Mr. Dhakephalar further submitted that the Petitioner has circulated certain very derogatory and defamatory posts against the Hon'ble Minister and these messages and images are annexed to the application. By inviting our attention to the copies annexed to the Application, Mr. Dhakephalkar vehemently submitted that the messages and images were in very bad test. Bare perusal of these messages and images would show that the circulation of these messages and images were with a designed motive to defame the Hon'ble Minister who is active in social and political life for more than 20 years and maligning the images of Minister in public general resulting a serious loss of reputation of Hon'ble Minister. Mr. Dhakephalkar, by inviting our attention to the copy of screenshot image placed on record in the application, submitted that it was not a clear disapproval of the Petitioner but the facebook post of the Petitioner read as "ज्याने हे चित्र मॉर्फ केले मी त्याचा निषेध करतो". Thus, the Petitioner had not disapproved the post sent by him but he had disapproved the act of certain changes made in the post. Thus, the submission of Mr. Dhakephalkar is the so called disapproval of the Petitioner is not

plain and simple but it is with some qualifying reservation.

9. Mr. Dhakephalkar further submitted that being aggrieved by the act of the Petitioner a report was lodged at the instance of Applicant at Vartak Nagar Police Station and registered a Crime No. 119/2020 and the same was being investigated by the investigating agency. Mr. Dhakephalkar then submitted that the applicant i.e., complainant in C.R. No. 119/2020 is absolutely having no grievance against the investigating agency and without making the informant party to the Petition, and behind the back of complainant, the prayer of quashment of CR No. 119/2020 is sought for. This act of the Petitioner is not only in the nature of suppression of the material affects the right of the Applicant but also shows oblique motive of the Petitioner. Mr. Dhakephalkar submitted that the Petitioner who claims a transparency in the investigation himself indulged in act of suppression of material. Mr. Dhakephalkar then submitted that it is cardinal principle of law that he who comes to the Court of law must come with clean hands and the

Petitioner with his act gave a complete go by to the said principle. In support of his submissions, Mr. Dhakephalkar placed heavy reliance on following judgments: Samaj Parivartan Samudaya and Others Vs. State of Karnataka and Others¹⁸, Common Cause Vs. Union of India¹⁹, Secretary Minor Irrigation Vs. Sahangoo Ram Arya²⁰, State of West Bengal Vs. Committee for Protection²¹, Shree Shree Ram Janki Ji Asthan Tapovan Vs. State of Jharkhand²², Divine Retreat Centre Vs. State of Kerala²³. Learned Senior Counsel Mr. Dhakephalkar, thus, prayed for dismissal of the Petition.

10. Mr. Amit Desai, learned Senior Counsel appearing for Respondent No. 3 while adopting the submissions of learned AG further submitted that though powers of this Court are not in dispute in so far as transfer of investigation is concerned, but, it is a consistent view of the Apex Court as well as this Court that such powers are to be exercised by this Court sparingly and in rare cases. Mr. Desai further

18 (2012) 7 SCC 407

19 1999 (6) SCC 667

20 2002 (5) SCC 521

21 2010 (3) SCC 571

22 2019 (6) SCC 777

23 2008 (3) SCC 542

submitted that merely on assumptions and presumption of the Petitioner the investigation cannot be transferred from agency to another. It is further submitted that in the present matter the investigating agency acted with due diligence and promptness took necessary steps as required under law. There is no inordinate delay in the investigation. Mr. Desai further submitted that the charge-sheet clearly indicates that the investigating agency proceeded in the matter step by step and now is at the stage of commencement of trial. Mr. Desai reiterated the submissions of learned AG that this Court had monitored the investigation by issuing necessary direction as such, no fault can be found in the investigation. Mr. Desai by referring to the judgment in the matter of K.V. Rajendra (cited supra) and particularly paragraphs 13 to 17 opposed the Petition. Mr. Desai then submitted that though not admitting but even assuming that the trial Court finds some lacuna in the investigation the Trial Court by exercising its powers direct further investigation or re-investigation in the matter.

11. With the assistance of learned Counsel

appearing for respective parties, we have gone through the material placed on record.

12. Perusal of the material shows that the Petitioner lodged report at Vartak Nagar Police Station on 05.04.2020 at 06.37 hours. Perusal further shows that a reference is made to the incident on the very day i.e., 05.04.2020 at 23.50 hours and the information of the incident received by the police station was at 06.22 hours. In the column of the details of the known, suspected, unknown accused, a reference is made to one unknown accused. As per the contents of the report, the Petitioner who is resident of an area situated in Thane received a phone call on his mobile at 11.50 hours on 05.04.2020 through the watchman of the building Mr. Sushil and the said watchman informed him that police are approaching to his flat. Accordingly, the Petitioner informed the watchman to send the police to his flat. 4 persons entered in his flat. Two persons were in uniform, 2 persons were in civil dress. They told the Petitioner that he will have to accompany them to the police station. When the Petitioner asked the reason, the said persons refused to give any reason and

requested the Petitioner to accompany them. At that time, wife of the Petitioner felt apprehended and expressed her apprehension to these persons. Then these persons told to the wife of the Petitioner that they will return back with her husband within 10 minutes. The Petitioner took up mobile which was lying in front of him and the keys of his car. It is further stated in the report that the police insisted the Petitioner to accompany them in police vehicle and snatched his phone. He found that in the Scorpio vehicle already six persons were sitting and there was another Innova vehicle in which 4-5 persons were sitting. When the Petitioner found that the Kasarvadavli police station left behind he asked the police persons where they are proceeding to which police persons replied that they are proceeding to Cyber crime Office and then the Petitioner thought that as he has forwarded facebook post against the Minister Jitendra Awhad probably he was being taken up to the Cyber Crime Office. But even the vehicle proceeded leaving the Cyber Crime Office behind, the Petitioner then found that the vehicle was leading to residence of Hon'ble Minister and he inquired with the police as to whether they proceeding

to the bungalow of Hon'ble Minister?, they relied in affirmative.

Then police took him in the residence of Hon'ble Minister. He found that there were some 10 to 15 persons present in the bungalow and as soon he entered in the bungalow these persons started beating him. The police persons beat with fiber stick and some beat with iron rod.

13. It is then stated in the report that one of the persons who were beating to the Petitioner said that "He (the Petitioner) shall not be spared". Two police persons who brought the Petitioner to police station were uttering words that "see that there is no injury to face and head". Then it stated in the report that Mr. Awhad was present in front of gate of his house and he made a query to the Petitioner as to whether the Petitioner had written and shared a facebook post, the Petitioner replied that in an over enthusiasm and heat of passion the facebook post was shared by him and he felt sorry about his act and he will immediately delete the said post. It is further stated that in front of Minister Petitioner took mobile

phone of one of worker (कार्यकर्ता) of Minister and by giving phone call on his mobile phone which was left at his residence informed his wife to delete the post in relation to Mr. Awhad from his facebook account. Then Minister told to his workers as to verify the Petitioner participated in Reki of the house of Minister. Then one of the person stated that let their be video of the Petitioner expressing his sorry for his act. Again the Petitioner was subjected to beating and this act was video graphed in one mobile phone. Then the Petitioner requested those persons to leave him to his house. Those persons then gave water to the Petitioner. Then Petitioner was taken to Vartak Nagar Police Station and he was referred to hospital for treatment. After the treatment the Petitioner came back to Vartak Nagar Police Station and lodged the report.

14. Perusal of report, it clearly reveals that when the Petitioner lodged the report on 05.04.2020 he made reference to mere presence of Hon'ble Minister and certain utterances by Minister. In the said report, the Petitioner had not uttered single word of any overt-act by the Minister. (Emphasis supplied).

15. Petitioner then submitted one communication to Senior PI, Vartak Nagar Police Station, Thane on 15.04.2020 i.e., after 10 days of the incident and he refers to this communication as a supplementary statement. In this statement he stated that though he approached to the Sr.PI on 09.04.2020 and made request to record his supplementary statement, the Sr.PI told him that as he is occupied in one matter, the Petitioner may attend him on next day. Then Petitioner stated that so as to avoid the delay in recording supplementary statement he himself submitting this supplementary statement in typed form as he had received the injury to his hand, as such, he is unable to write by his hands. Then he further stated that the Minister who was present in front of his gate gave abuses to the Petitioner and directed his associates to beat him and teach him a lesson and then video-graphed tendering apology by the Petitioner. Then he gave description of the person who beat him under the directions of the Minister.

16. Mr. Jha, learned Counsel appearing for the Petitioner submitted that the Petitioner had received

the injuries due to beating and the pictures of those injuries were taken on a mobile phone and these pictures are placed on record by annexing to the Petition. It was also submitted that the Petitioner though was ready to provide these pictures to investigating agency, the investigating agency was purposely avoided to collect these pictures.

On the backdrop of the submissions of Mr. Jha, learned Counsel appearing for Petitioner, when a query put to the learned Counsel as to whether the Petitioner had approached any medical practitioner for the treatment, Mr. Jha submitted that as it was Covid pandemic period, the Petitioner was not in a position to attend the medical practitioner personally / physically and he sought an advice from one of his friend who is medical professional by showing the pictures on mobile and his friend then prescribed certain medicines to him on mobile.

17. Mr. Kumbhakoni, learned AG opposed this submission of learned Counsel appearing for Petitioner and submitted that after the Petitioner approached to the police station for lodgment of report, he was

immediately referred for medical examination, and medical certificate was also obtained and the same is the part of the charge-sheet. Learned AG then submitted that in the period of Covid pandemic though priority was given to the Covid patients, it was not the case that the medical practitioners stopped providing treatment completely to other patients. Learned AG then submitted that as at the time of lodgment of the report by the Petitioner except the presence of Mr. Awhad and query put to the Petitioner in respect of facebook post, no other overt-act was attributed against Mr. Awhad by the Petitioner himself. As such, there was no question referring Mr. Awhad as an accused at that point of time.

18. Learned AG by inviting our attention to the copy of the charge-sheet placed on record by referring to the statement of witnesses submitted that when it was revealed in the statements that certain overt-act is committed by Mr. Awhad. As such, during the course of investigation the statement of Minister has also recorded as one of the witness and subsequently, the State reveals that he was added as an accused and

arrest was effected. Learned AG also submitted that the investigating agency during the course of investigation collected the CCTV footage from the place of incident as well as from one mall i.e., Viviana Mall. The necessary seizure panchnama of the CCTV footage is also drawn.

19. Perusal of charge-sheet show that the Petitioner was immediately referred to the medical officer attached to Chatrapati Shivaji Maharaj Rugnalaya, Kalwa and on 06.04.2020 a communication was forwarded to the medical officer for providing the medical certificate. On 08.04.2020 and 09.04.2020, the medical report and certificate were forwarded to the investigating agency.

20. Perusal of medical report and medical certificate, which is part of charge-sheet and the same is placed on record at page 223, shows that there were four injuries suffered by Petitioner and these injuries are simple in nature.

21. Mr. Jha, learned Counsel appearing for Petitioner submitted before this Court that the

Petitioner in his report specifically stated that through mobile phone of one of the worker of Mr. Awhad namely, Nityanand Waghmare, he gave phone call on his mobile phone and informed his wife and the investigating agency failed to collect this material facts.

Perusal of charge-sheet clearly show that the investigating agency collected the call detail report in respect of phone call from mobile phone of Mr. Nityanand Waghmare bearing mobile no. 7977173678.

22. In so far as the audio recording is concerned, learned AG vehemently submitted that the Petitioner had not disclosed about this audio recording when the Petition was filed in this Court and for the first time it was disclosed when additional affidavit filed in this Court. Learned AG submitted that as soon it was disclosed to this Court the investigating officer collected the said audio clip and recorded voice sample of accused no. 13 and the same was forwarded for forensic examination and the report is awaited.

23. Learned AG then submitted that a detailed order was passed by this Court on 24.03.2021 while

issuing notice and in the said order certain directions were given by this Court. In pursuant to the order of this Court, the investigating agency collected said material in the form of CCTV footage and it is submitted to the learned CJM and was in the custody of CJM. Learned AG submitted that as per the order of this Court the investigating agency sought permission to file charge-sheet and then the charge-sheet was filed before the learned Magistrate on 03.12.2020. On 28.07.2021 the supplementary charge-sheet was filed. On 14.10.2021 the arrest of accused no. 13 was effected.

24. Learned AG also invited our attention to the statement of the wife of Petitioner recorded by investigating agency during the course of investigation. It may not be necessary for us to refer to the other details of wife of the Petitioner, but as certain statements were made referring to the phone call made by the Petitioner, it would be useful for our purposes to refer to that part in the statement of wife of Petitioner. In her statement she stated that mobile phone of the Petitioner was put on charging as such, the Petitioner picked up her mobile phone so as to

contact her. Then she stated that after sometime she received phone call from the mobile number 7977173678 and the Petitioner told her that he had written a facebook post in relation to Mr. Awhad and then further asked her to delete the said post.

25. Now as stated above, this communication was established by the Petitioner from the mobile phone of one Nityanand Waghmare and this phone number is tallies with the statement of wife of the Petitioner. As stated above, the CDR of this mobile phone is also collected by the investigating agency and is part of charge-sheet.

26. Though, Mr. Jha, learned Counsel appearing for the Petitioner by placing reliance on various judgments to submit that the Respondent – State and its investigating agency failed to perform its duties and failed to collect necessary material during the course of investigation and the investigation is casual and partial, on perusal of the material placed on record, we are unable to accept the submission of Mr. Jha. On the contrary, we find substance in the submission of Mr. Kumbhakoni, learned AG. Learned AG was justified in

making submission before this Court that the lodgment of the report at the instance of Petitioner the investigating agency immediately took all the necessary steps during the course of investigation. All the necessary material is collected by the investigating agency which is part of the charge-sheet. Learned AG was also justified in submitting that by passing various orders this Court was monitoring investigating. The investigating reached to its logical end by filing charge-sheet and effecting arrest of the accused persons including the Hon'ble Minister – Mr. Jitendra Awhad.

27. There is also merit in the submission of learned AG that merely because the Petitioner wants the matter pending for further period and merely some ill-founded allegations are made against the Minister of State, and the matter wherein the investigation is completed, cannot be opened for further investigation and when the investigating agency carried out the investigation by following the provisions of law and merely because the Petitioner who is approaching this Court by suppression of material facts, cannot be

transferred to another agency.

28. There is also considerable merit in the submissions of Mr. Dhakephalkar, learned Senior Counsel that Petitioner in his principal prayer, the prayer is sought for transfer of the first information report not only the FIR against the Petitioner but also the FIR which is filed against him and without making original complainant party to the Petition, as such, it shows that the Petitioner had not approached this Court with *bona fide* intention.

29. Though, it was submitted by Mr. Jha that the Petitioner was brought to the house of Minister and the Petitioner from mobile phone of one Mr. Waghmare made phone call to his mobile and informed his wife to delete the facebook post, and the said mobile phone was not collected by the investigating agency so as to keep lacuna in the investigation, we are unable to accept this submissions of Mr. Jha in view of the counter submission of Mr. Dhakephalekar.

30. Mr. Dhakephalekar submitted that the Petitioner who had put derogatory and defamatory post

against Mr. Awhad and shared the same on social media, the CR No. 119/2020 was registered at the instance of Applicant – Hitesh Wani. During the course of investigation of this FIR, the mobile phone of the Petitioner was seized by the investigating agency and subsequently, the said mobile phone was handed over to the Petitioner. All these facts are suppressed by the Petitioner.

31. At the cost of repetition, we may state that the investigating agency had collected the CDR of the said mobile phone of Mr. Waghmare and the same is the part of the charge-sheet. As such, we are unable to accept the submissions of Mr. Jha, learned Counsel appearing for the Petitioner.

32. Considering all these aspects, we are of the clear opinion that there is no merit in the Petition seeking transfer of the investigation. Thus, the Petition is devoid of merits, deserves to be dismissed. The same is accordingly dismissed. Rule is discharged.

33. In view of dismissal of the Petition, no separate orders are required to be passed in pending

interim applications, as such, the said applications are also disposed of.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)