

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

**WRIT PETITION Nos.39767, 40733, 42228, 43144 and
43339 of 2022**

Between:

Bharatiya Janata Party & others ... Petitioners

v.

The State of Telangana,
Rep. by its Principal Secretary
Home Department,
Secretariat, Hyderabad & others ... Respondents

DATE OF ORDER PRONOUNCED: 26-12-2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? : Yes

B. VIJAYSEN REDDY, J

*** HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**

**+ WRIT PETITION Nos.39767, 40733, 42228,
43144 and 43339 of 2022**

% Date: 26-12-2022

Bharatiya Janata Party & others .. Petitioners

v.

\$ The State of Telangana,
Rep. by its Principal Secretary
Home Department,
Secretariat, Hyderabad & others .. Respondents

! Counsel for the Petitioners : Mr. J. Prabhakar,
W.P. No.39767 of 2022 Senior Counsel, appearing for
Mr. M. Vishnuvardhan Reddy,
learned counsel

W.P. No.40733 of 2022 Mr. Mahesh Jethmalani,
Senior Counsel, appearing for
Mr. M.V.V. Baswa Raj,
learned counsel

W.P. No.42228 of 2022 Mr. Uday Holla,
and 43144 of 2022 Senior Counsel appearing for
Mr. Ponnamm Ashok Goud and
Mr. V. Ram Mohan Reddy,
learned counsel Mr. P.P. Hegde and

W.P. No.43339 of 2022 Mr. S.D. Sanjay, senior
Senior Counsel appearing for
Ms. Bandaru Hima Varshini,
learned counsel

^ Counsel for the respondents : Mr. Dushyanth Dave,
Senior Counsel, appearing for
Advocate General for the
State of Telangana;

Advocate General and
Additional Advocate General
for the State of Telangana
(official respondents of the State in
all the writ petitions);

Mr. Gadi Praveen Kumar,
Deputy Solicitor General for India
appearing for Union of India;

Mr. A. Prabhakar Rao,
learned counsel for *de facto* complainant

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (2014) 8 SCC 273
2. (2010) 3 SCC 571
3. (2020) 20 SCC 184
4. (2010) 12 SCC 254
5. 2018 (17) SCC 627
6. (2016) 3 SCC 135
7. 2014 (2) SCC 1
8. (2018) 10 SCC 753
9. 2021 SCC OnLine SC 315
10. 1992 Supp (1) SCC 222
11. 1992 Supp (1) SCC 335
12. (2008) 3 SCC 542
13. (2020) 14 SCC 12
14. (1978) 1 SCC 405
15. (1967) 3 SCR 19 : AIR 1967 SC 1445 : 1967 Cri LJ 1218
16. 1998(4) SCC 626
17. (1985) 1 SCC 260 : 1985 SCC (Tax) 75
18. (2012) 9 SCC 460
19. 2014 (8) SCC 768
20. (2016) 1 SCC 207
21. 1993 Supp (4) SCC 46
22. 1996 SCC OnLine Kar 154
23. (2013) 5 SCC 762
24. (2019) 15 SCC 470
25. 2022 SCC OnLine Cal 3361
26. (2010) 2 SCC 200

C/15

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**W.P. Nos.39767, 40733, 42228, 43144 & 43339 OF 2022****COMMON ORDER :**

1. F.I.R. No.455 of 2022 was registered for the offences punishable under Sections 120-B and 171-B read with Sections 171-A and 34 of the Indian Penal Code 1860 (for short 'IPC') and Section 8 of the Prevention of Corruption Act 1988 (for short 'PC Act'), on the file of the Station House Officer, Moinabad Police Station, Cyberabad Police Commissionerate on a report dated 26.10.2022 lodged by respondent No.8 in W.P. No.39767 of 2022. The said report is as under:

“I, Pilot Rohit Reddy, MLA, Tandur Assembly Constituency of Vikarabad District, inform you that I am an MLA from TRS party and representing the above constituency. It is to further inform you that on 26-09-2022, one Ramachandra Bharati @ Satish Sharma native of Delhi and one Nanda Kumar resident of Hyderabad both of them belonging to BJP met me and negotiated with me to not to contest as candidate from TRS party and to join in BJP by resigning from TRS party and to contest in the next elections from BJP for which they offered me an amount of Rs.100 Crores (Hundred Crores) and also offered to give Central Government civil contract works and other High Central Government

positions for monetary benefits and lured me to join in BJP. They also stated that if I am not joining in BJP there will be criminal case and raids by E.D./CBI and the Telangana Government led by TRS party will be toppled by them. Since the above inducement of bribe by a political party to me is unethical, undemocratic and encouraging corruption and polluting the Politics, I decided not to entertain such unethical practice by the above persons. Today i.e. on 26-10-2022, they again contacted me and informed me that they are coming in the afternoon hours to my farmhouse located at Azeez Nagar, Moinabad for negotiation and also informed me to mobilise some other TRS MLAs for offering them bribe of Rs.50 Crores each to join BJP. They also further induced me and other MLAs to receive amounts and to discharge their public duties improperly and dishonestly so that the Telangana Government led by TRS party is destabilized. They informed that three persons namely Ramachandra Bharati @ Satish Sharma of Delhi, one Nanda Kumar and one Simhayaji Swamy of Tirupathi would come to my farm house to finalize the deal of joining in BJP by resigning from TRS party. Therefore, I request you to kindly take necessary legal action against the above persons and the persons behind this conspiracy for offering me bribe to resign from TRS and also to join in BJP by indulging in unethical and undemocratic ways of offering huge amounts as bribe.”

W.P. No.39767 of 2022 :

2.1. This writ petition is filed by the petitioner - Bharatiya Janata Party, Telangana, represented by its State General Secretary Mr. Gujjula Premender Reddy on 27.10.2022 seeking writ of *mandamus* declaring action of the respondents in undertaking biased and unfair investigation in F.I.R. No.455 of 2022 with a sole intention to frame the petitioner political party and damage its reputation at the instance of the ruling party dispensation as being illegal, arbitrary and in gross violation of Articles 14 and 21 of the Constitution of India and also contrary to the settled principles of free and fair investigation and consequently to transfer the investigation in F.I.R. No.455 of 2022 from the file of respondent No.5 to respondent No.7 - the Central Bureau of Investigation, represented by its Director, New Delhi or to constitute a Special Investigation Team (SIT) to conduct enquiry in the said crime in a free and fair manner.

BRIEF AVERMENTS :

2.2. The election commission announced 03.11.2022 as the date for bye-election for 93 - Munugode Assembly Constituency and counting of votes was scheduled on 06.11.2022 vide its schedule for bye-

election No.ECI/PN/73/2022 dated 03.10.2022. During campaign, as the BJP Party was getting overwhelming response from the public of Munugode Assembly Constituency, the ruling TRS Party from the beginning of the election campaign was trying to disrupt campaign of the BJP Party and making several efforts to thwart campaigning in the constituency, but, in spite of the same, the voters of Munugode were responding positively towards the BJP Party. The BJP Party has substantial base in the Telangana State and the people had been rooting for the BJP party as the next alternative to the present dispensation of the TRS Party. On 26.10.2022 evening, few channels, which publicly support the ruling Government, carried out news that four (4) MLAs of the ruling TRS Party are being tried to be lured and poached by the members of the BJP to join the BJP and discussions regarding the same are happening at a farmhouse in Moinabad. The said news was repeatedly aired in the said few channels giving out details of the alleged operation. Thereafter, in the late hours of 26.10.2022, respondent No.2 along with respondent Nos.3 and 4 - the Commissioner of Police Cyberabad Commissionerate, Gachibowli, Hyderabad and the Assistant Commissioner of Police, Rajendranagar Division, Rajendranagar,

Hyderabad respectively arrived at the said farmhouse in Moinabad. Even before the police have arrived at the said farmhouse, certain news channels were already present at the farmhouse and were telecasting live pictures from the farmhouse. Upon respondent No.3 and other officials visiting the farmhouse and on a preliminary search and enquiry at the farmhouse, police apprehended three (3) persons alleged to be workers of the BJP as they were allegedly luring the four (4) TRS MLAs to join its party.

2.3. The four (4) TRS MLAs were left scot free and surprisingly escorted by the respondents to the Hon'ble the Chief Minister's residence at Pragathi Bhavan. Thereafter, respondent No.3 stated in a press meet that the three accused have offered four TRS MLAs a Rs.100 crores cash each to join the BJP in the wake of Munugode bye-election. On further enquiry, it was revealed that respondent No.8 - Mr. Pilot Rohith Reddy, who is an MLA from Tandur Assembly Constituency belonging to TRS Party, lodged a complaint on 26.10.2022 at 11.30 a.m. to the Station House Officer, Moinabad alleging that the accused persons have approached him on 26.09.2022 and tried to lure him to join the BJP by resigning from TRS Party and to

contest in the next elections from BJP for which he would be offered a huge amount of Rs.100 crores; and consequently FIR No.455 of 2022 was registered with Moinabad Police Station.

2.4. The above complaint is politically motivated with ulterior motive to defame and demoralise the BJP in the ensuing by-elections of Munugode Assembly Constituency. The complaint is lodged by respondent No.8 is staged and is firmly believed by the BJP that the complaint has been lodged at the behest of the Hon'ble the Chief Minister Mr. K. Chandra Shekhar Rao, who is also President of the TRS Party, other State Ministers and senior leaders of the TRS Party. The facts and motive behind lodging the complaint can only be unearthed by conducting an enquiry either by the CBI or by the Special Investigation Team (SIT) or by a sitting Judge of the High Court. The BJP fears that investigation would not be conducted in a fair and unbiased manner by the respondents, who are acting on the instructions of the State Government, and therefore, the investigation may be transferred to a neutral agency which is not under the control of the State Government.

WRIT PETITION No.40733 OF 2022

3.1. This writ petition is filed by accused Nos.1 to 3 viz., Ramchandra Bharathi alias Satish Sharma V.K., Kore Nandu Kumar alias Nandu and D.P.S.K.V.N. Simhayaji respectively, in F.I.R. No.455 of 2022, seeking writ of *mandamus* declaring action of the respondents in undertaking investigation in the said F.I.R. on the file of the Station House Officer, Moinabad Police Station in biased and unfair manner as illegal, arbitrary and in gross violation of Articles 14 and 21 of the Constitution of India and also contrary to the settled principles of free and fair investigation, and consequently to transfer the investigation in F.I.R. No.455 of 2022 to respondent No.7 - the Central Bureau of Investigation, represented by its Director, New Delhi or to constitute a Special Investigation Team under the supervision of a sitting Judge for free and fair investigation.

BRIEF AVERMENTS :

3.2. The political motivation in lodging the FIR is evident from the fact that even before the raid was conducted by the respondents, an officer of the rank of Commissioner of Police has addressed the Press

and media who were already present there. The MLAs were set free and were escorted to Pragati Bhavan from the scene of offence i.e., to the Chief Minister's official residence. A request was made by the ACP, Rajendranagar Division, Cyberabad Commissionerate to remand the petitioners in FIR No.455 of 2022. The Special Court for Anti Corruption Bureau Cases, Hyderabad refused to accept the remand on the premise that the procedure contemplated under Section 41-A of Cr.P.C. and the guidelines issued by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹ were not followed. By the order dated 29.10.2022 in Criminal Revision Case No.699 of 2022 filed by the respondents, a learned single Judge of this Court has set aside the order dated 27.10.2022 by the respondents and the petitioners were directed to surrender. The said order was challenged before the Supreme Court in S.L.P. (Criminal) Diary No.34837 of 2022 and is pending adjudication. Some audios were released by the media wherein conversations of respondent No.8 and the accused could be heard which clearly show that phones were tapped. The tapping of the phones is unauthorised and hearing to private conversations of any person is in violation of the provisions of the Indian Telegraphic Act.

¹ (2014) 8 SCC 273

3.3. The investigation is done under close monitoring and supervision of the ruling party, more particularly, under the guidance of the Hon'ble the Chief Minister of Telangana State for political needs. The investigation is not done in a fair manner. The right of the accused for fair and unbiased investigation without interference of any political party has been compromised. In the tussle between both the parties i.e., the TRS and the BJP, the petitioners are the sufferers. There is every scope to fabricate the evidence, create false proofs to see that the accused are convicted by the investigation agency for political gains of the ruling party. The State Government is directly involved in the case and it is necessary that a fair investigation is done, otherwise it would be in violation of Article 21 of the Constitution of India.

W.P. No.42228 of 2022

4.1. This writ petition is filed by Bhusarapu Srinivas, Advocate, seeking writ of *mandamus* declaring the Notice No.455/CR-RJNR/2022 dated 16.11.2022 under Section 41-A of Cr.P.C. issued to him by respondent No.3 - the Assistant Commissioner of Police, Special Investigation Team, Police Commissionerate, Banjara Hills, Hyderabad

though he is not an accused as illegal, arbitrary, without following due procedure, unconstitutional, contrary to the provisions of the Cr.P.C., violative of principles of natural justice and Article 21 of the Constitution of India, and consequently to set aside the said notice and direct the respondents not to insist the petitioner to appear before the SIT without following due process of law.

BRIEF AVERMENTS :

4.2. On 17.11.2022, the Inspector of Police, Moinabad Police Station came to his residence at Sanathnagar, Hyderabad, and served notice under Section 41-A of Cr.P.C. vide notice No.455/CR-RJNR/2022 dated 16.11.2022 in Crime No.455 of 2022. The petitioner is neither accused nor suspect in the said crime. The impugned notice is not maintainable as the notice under Section 41-A of Cr.P.C. is related to accused who are involved in the crime. The said notice is unsustainable as the petitioner cannot be treated as an accused. The police are acting at the instance of the political leaders.

W.P. No.43144 of 2022 :

5.1. This writ petition is also filed by Bhusarapu Srinivas, Advocate, seeking writ of *mandamus* declaring action of respondent No.1 in issuing G.O. Ms. No.63 dated 09.11.2022 as illegal, arbitrary and in violation of Articles 14 and 21 of the Constitution of India, and consequently to set aside the said G.O. and handover the investigation in Crime No.455 of 2022 to respondent No.7 - Central Bureau of Investigation, New Delhi for fair and free investigation.

BRIEF AVERMENTS :

5.2. As per the remand report of respondent Nos.9 to 11 (accused Nos.1 to 3), respondent No.5 - the Station House Officer, Moinabad Police Station, Ranga Reddy District has conducted an observation panchanama and seizure proceedings on 26.10.2022 at 12.30 hours at the farmhouse of respondent No.8 and completed the proceedings at 14.30 hours and again conducted seizure panchanama on the same day at 19.00 hours onwards and completed the proceedings at 08.30 hours on 27.10.2022.

5.3. As per the observation panchanama, the Mandal Revenue Inspector (MRI) and the Assistant Mandal Revenue Inspector (AMRI) have acted as mediators between 12.30 hours to 14.30 hours on 26.10.2022, however, both of them have signed on 27.10.2022 which clearly show that respondent No.5 conducted false observation panchanama. The FIR was registered at 11.30 hours on 26.10.2022 and date and dispatch of the FIR from Police Station to the Court was shown as 26.10.2022 at 12.30 hours. But, as per the Court seal, the FIR has reached the Court on 27.10.2022 morning. The distance from Moinabad Police Station to Nampally Criminal Courts is about 25 KMs, but it took 18 hours to send the FIR to the Court for the reasons known to respondent No.5 which clearly shows lapse on the part of respondent No.5 in properly investigating the case.

5.4. As seen from the remand report, during the course of seizure panchanama, respondent No.5 has seized mobile phones of respondent Nos.9 to 11 - accused. As per observation panchanama, respondent No.5 installed some electronic spy gadgets at the farmhouse of respondent No.8. Subsequently, in the seizure proceedings, the electronic spy gadgets were seized by respondent No.5 and the same

were marked as C-1 to C-6 in the remand report of the accused. Surprisingly, respondent Nos.4 and 5 have transferred the data from C1 to C6 into pen-drives and handed-over the same to the Chief Minister of the Telangana State who is not an investigation officer or head of the department. The Chief Minister has arranged a press conference, shown the pen drives to the media, transferred the data from the said pen drives into several other pen drives and posted the same to the Hon'ble the Chief Justice, other Judges of the Supreme Court and the High Courts and the political leaders which is against the free and fair investigation contemplated under the Cr.P.C.

5.5. Respondent No.1 issued G.O.Ms.No.63 dated 09.11.2022 appointing respondent Nos.12, 13 and 14 as Members of the SIT. The SIT issued notice under Section 41-A of Cr.P.C. to the petitioner on 17.11.2022 calling upon him to appear before it on 21.11.2022 at 10.30 a.m. The said notice was challenged by the petitioner before the High Court vide W.P. No.42228 of 2022 and the High Court by the order dated 19.11.2022 directed the petitioner to comply with the conditions imposed under Section 41-A of Cr.P.C., and further directed that the petitioner shall not be arrested until further orders.

5.6. As per the notice dated 16.11.2022, the petitioner appeared before the SIT and on the same day, the SIT had issued another notice under Section 41-A of Cr.P.C. mentioning that he has failed to produce certain documents. The petitioner appeared before the SIT on 21.11.2022 and 22.11.2022. The petitioner was examined by the SIT for more than 10 hours per day. The petitioner gave necessary information and despite the same, the SIT is pressurising him to tell the name of Mr. Bandi Sanjay Kumar, Member of Parliament, BJP President Telangana Unit particularly and some other names of the BJP leaders. The petitioner has submitted some documents on 22.11.2022 to the head of the SIT which they acknowledged. The petitioner filed a memo before the SIT to submit the video footage before this Court, but the SIT failed to attest on the memo or produce the same before this Court when W.P. No.42228 of 2022 filed by him came up for hearing on 23.11.2022. The petitioner was enrolled as an advocate in 2002 and since then practising as an Advocate at Karimnagar Courts. Only to defame his reputation, more than 30 officers have come to his residence in his absence with an intention to terrorise him for serving the notice under Section 41-A of Cr.P.C. There was no necessity for the police to come

with such huge force of 30 officers. As the petitioner did not budge to the pressure of the police, they have implicated the petitioner as accused No.7 in the crime. Notice under Section 41-A of Cr.P.C. was issued to the petitioner though he was not an accused and without mentioning that the petitioner is suspect in the crime. As of now, even a single evidence is not collected against the petitioner except his booking a ticket for respondent No.11 (accused No.3) at Hyderabad. On 22.10.2022, a pooja was conducted by respondent No.11 at Hyderabad. The petitioner attended the pooja and he took ticket for respondent No.11 to travel from Hyderabad to Tirupati on 23.10.2022 and also booked return flight ticket for 26.10.2022. Respondent Nos.4 and 5 have failed to conduct preliminary investigation on 26.10.2022 and 27.10.2022. Further, they leaked some important information to the Hon'ble the Chief Minister who in turn conducted a Press Meet and sent pen-drives to all the political leaders in India and the Hon'ble the Chief Justice of India and the Judges of the Hon'ble Supreme Court and the High Courts. The SIT was constituted by respondent No.1 vide G.O. Ms. No.63 dated 09.11.2022 to cover up lapses on the part of the Hon'ble the Chief Minister.

W.P. No.43339 of 2022 :

6.1. This writ petition is filed by Mr. Tushar Vellapally seeking writ of *mandamus* declaring the actions and the investigating pertaining to the FIR No.455 of 2022 registered at Moinabad Police Station by respondent No.3 - SIT constituted by respondent No.1 - the State of Telangana, Home Department as arbitrary, unconstitutional, *ultra vires* the provisions of Cr.P.C. and violation of constitutional principles and consequently set aside all such actions and direct that the investigation in this matter be conducted by respondent No.9 - CBI, New Delhi for free and fair investigation.

BRIEF AVERMENTS :

6.2. There is no recovery of money during seizure panchanama conducted on 26.10.2022 and completed on 27.10.2022. The FIR does not disclose any cognizable offences. The exercise was pre-meditated to achieve oblique motive of political game. The episode has taken place during climax of Munugode bye-elections. As per the remand report of respondent Nos.11 to 13, respondent No.4 conducted an observation panchanama and seizure proceedings on 26.10.2022 at 12.30 hours, at the farmhouse of respondent No.8 and completed the same at

14.30 hours and conducted seizure panchanama on 26.10.2022 from 19.00 hours onwards and completed the proceedings at 08.30 hours on 27.10.2022. Surprisingly, MRI and AMRI, who acted as mediators during 12.30 hours to 14.30 hours on 26.10.2022, signed on the document on 27.10.2022.

6.3. Respondent No.4 conducted false observation panchanama. The FIR was registered at 11.30 hours on 26.10.2022 with Moinabad Police Station and it reached the Court on the next day i.e., 27.10.2022. Though the FIR was dispatched at 12.30 hours on 26.10.2022. Respondent No.4 seized mobile phones of respondent Nos.11 to 13 - accused and transferred the entire data from C-1 to C-6 into pen drives and handed over the same to the Hon'ble the Chief Minister of the Telangana State who is not an investigation officer or head of the department. Respondent Nos.4 and 5 acted at the behest of respondent No.7 and sent CDs and pre-designed materials to the Hon'ble the Chief Justice of India and the High Courts.

6.4. Respondent No.1 issued G.O. Ms. No.63 dated 09.11.2022 by appointing certain officers as Members of the SIT. Constitution of

SIT is to immune the presence of respondent Nos.7 and 8 and other office bearers of the Ruling Party of the State. Constitution of SIT is bad in law and against the Cr.P.C.

6.5. Respondent No.3 issued notice under Section 41-A of Cr.P.C. to the petitioner on 16.11.2022 which was received by the petitioner on the same day at 6.00 p.m. The petitioner was directed to appear before the SIT on 21.11.2022 at 10.30 a.m. The petitioner replied on 21.11.2022 seeking time to appear before the investigation team on health grounds and requested for a date after two weeks. The petitioner was surprised to see from print media that news of LOC was issued against him. Image of the petitioner was tarnished resulting in mental agony to him. The petitioner is a law abiding citizen and President of the Bharatiya Dharam Jan Sena (BDJS). There is a dire need for a premium investigation agency like CBI which is expert and competent to carry out free and fair investigation in this politically sensitive matter as the State has admitted that the present case is a high profile and sensational in nature and involves specific skill sets to carry out investigation. Respondent No.7, the Hon'ble the Chief Minister of the Telangana State is an interested party in the matter. There is not even an iota of evidence

against the petitioner and despite the same, notice under Section 41-A of Cr.P.C. was issued to him. The investigation is monitored by the Chief Minister.

Brief averments in the counter affidavit filed by respondent Nos.1 to 5 deposed by respondent No.4 - Assistant Commissioner of Police, Rajendra Nagar, Cyberabad, in W.P. No.40733 of 2022:

7.1. During pendency of the writ appeal, SIT was constituted by the Government vide G.O.Ms.No.63, Home (Legal) Department dated 09.11.2022 headed by Mr. C.V. Anand, I.P.S., Commissioner of Police, Hyderabad City, and six others viz., (1) Mrs. Rema Rajeshwari, IPS, Superintendent of Police, Nalgonda, (2) Mr. Kalmeshwar Shingenavar, IPS, Deputy Commissioner of Police, Crimes, Cyberabad, (3) Mr. R. Jagadishwar Reddy, Deputy Commissioner of Police, Shamshabad, Cyberabad, (4) Mr. N. Venakteshwarlu, Superintendent of Police, Narayanpet, (5) Mr. B. Gangadhar, Assistant Commissioner of Police, Rajendranagar Division, Cyberabad, and (6) Mr. Laxmi Reddy, Station House Officer, Moinabad Police Station, Cyberabad.

7.2. The SIT has proceeded to investigate Crime No.455 of 2022. In the meanwhile, bail application of the petitioners before the

Special Court was dismissed on 14.11.2022 and they were lodged in Chanchalguda Jail. The concerned Court granted custody of the petitioners to the police for two days i.e., 10.11.2022 and 11.11.2022. The order passed by the Division Bench in W.A. No.742 of 2022 dated 15.11.2022 was challenged by the petitioners before the Hon'ble Supreme Court by filing S.L.P. and they have also filed S.L.P. (Criminal) No.10356 of 2022 against the order passed in Criminal R.C. No.699 of 2022 dated 29.10.2022. By the common order dated 21.11.2022, the Hon'ble Supreme Court disposed of the S.L.P. holding that the observations made in paragraph No.42 of the order in Criminal R.C. No.699 of 2022 dated 29.10.2022 are not in tune with the observations made in **Arnesh Kumar's case** (Supra 1).

7.3. On receipt of complaint at 11.30 hours on 26.10.2022 from Mr. Pilot Rohit Reddy, M.L.A., Tandur Assembly Constituency, Crime No.455 of 2022 was registered. Since the offences include Section 8 of the PC Act, investigation was taken up by respondent No.4 - the A.C.P., Rajendranagar. The investigation officer recorded statement of the *de facto* complainant, secured presence of the mediators, conducted scene

of crime observation panchanama, seized pre-arranged electronic spy gadgets from the hall along with two voice recorders from the *de facto* complainant under seizure panchanama. On playing the seized video recorders before accused Nos.1 to 3, it clearly disclosed the conversation of offering Rs.50 crores to each of the MLAs of TRS party besides offer of other monetary benefits by accused Nos.1 to 3 if the MLAs get shifted to BJP. It also contains voice of accused No.1 stating that they have done defection in similar manner in Karnataka, Delhi and other States. Voice recorders further disclose the phone call made by accused No.1 to accused No. 5 - Tushar (petitioner in W.P. No.43339 of 2022). In the conversation, it was clear that name of Mr. Santosh, BJP (accused No.4) and his importance in the national party etc., was spoken.

7.4. When questioned about the recorded conversation, accused Nos.1 to 3 remained silent and did not speak anything. On enquiry by the investigating officer, accused Nos.1 to 3 produced their mobile phones which were marked as C-7 to C-10. The screenshots / material relating to the case found in the mobile

phones were taken print outs and seized in the form of Made up file Nos.1 to 4 respectively. On searching the car of the accused parked outside the hall, the investigating officer found some papers, a diary and a laptop etc., in the rear seat of the car. On verification of the papers, there were 27 sheets containing information relating to Telangana politics, names of 50 MLAs of TRS Party and Congress and related information, list of 119 MLAs of Telangana State, information about Dr. Nandu Kumar Kore - accused No.2 and his social activities relating to BJP. The vehicle related documents of the Creta Car registered in the name of one Mr. Dilip Kumar Gandavaram. The said papers were seized in the form of made up file No.5 duly attested by the mediators and the investigating officer.

7.5. Further one diary of 2022 was found in the rear side of the above car. It has entries of journeys of accused No.1 during the month of October 2022. Sheet pertains to 26.10.2022 has handwritings reflecting as *“Delhi to Hydeabad. Appointment and meeting as directed by Nandu, Return to Delhi.”* The diary was

seized as made up file No.6. The laptop was seized by marking it as C-11.

7.6. From the evidence collected during the course of investigation, it was revealed that accused Nos.1 to 3 are found to be attempting to overthrow democratically elected Governments belonging to opposition political parties of BJP by unconstitutional and undemocratic mechanism and means. Thus, accused Nos.1 to 3, with the assistance of other conspirators whom yet to be identified, have hatched a larger criminal conspiracy to lure the MLAs of TRS Party. As a part of their criminal conspiracy, accused Nos.1 and 2 started negotiations with the *de facto complainant* offering to pay Rs.100 crores to him and Rs.50 crores to each MLAs whoever wishes to shift to BJP from TRS Party. Accused Nos.1 and 2 criminally intimidated the *de facto complainant* with the ED and the CBI raids if he did not accept the proposal and also threatened to topple the ruling State Government. The *de facto complainant* shared the information with his colleague MLAs i.e., (1) Mr. Guvvala Balraj, (2) Mr. B. Harshavardhan Reddy, and (3) Mr. Rega Kantha Rao who came forward to assist

him. Meanwhile, accused Nos.1 and 2 contacted the *de facto* complainant and informed that they would visit his farmhouse along with accused No.3 on 26.10.2022. At about 15:10 hours, accused Nos.1 to 3 reached the farmhouse of the *de facto* complainant at Aziz Nagar village, Moinabad Mandal and started negotiations with the *de facto* complainant to finalise the deal. After sometime, the three MLAs arrived at the scene of crime and joined the meeting to assist the *de facto* complainant. There were discussions between the MLAs and accused persons about luring of TRS MLAs to shift to BJP. After meeting was over at about 18:30 hours, accused Nos.1 to 3 were nabbed, incriminating material relating to commission of offence was seized and seizure panchanama was drawn. The activities of accused Nos.1 to 3 *prima facie* disclose offences punishable under Sections 120-B 171-B read with Section 171-E, 506 read with Section 34 of IPC and Section 8 of PC Act. After complying with the formalities of arrest, the accused were produced before the ACB Court. The learned Judge refused to remand them to judicial custody on

the ground of violation of mandatory procedure under Section 41-A of Cr.P.C. and ordered for their release.

7.7. Aggrieved by the said order, the State filed Criminal R.C. No.699 of 2022 which was allowed by the order dated 29.10.2022 directing the accused to surrender before the police and to produce them before the concerned Magistrate.

7.8. There is no truth in the allegation that investigation is being done in an unfair and biased manner. The bald allegations are bereft of any material or supported by any material on record. Respondent No.3 being superior officer visited place of offence at later hours but not before the raid was conducted as alleged by the petitioners. It is denied that the *de facto* complainant along with other MLAs let free and were escorted to Pragathi Bhavan from the scene of offence. It is further denied that the phones were being trapped. The Constitution Bench of the Hon'ble Supreme Court in **State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal**² has laid down certain

² (2010) 3 SCC 571

principles. In **Rhea Chakraborty v. State of Bihar**³ in Transfer Petition (Criminal) No.225 of 2020, the Hon'ble Supreme Court by the order dated 19.08.2022 held that transfer of investigation cannot be routine exercise and should be done in exceptional circumstances.

7.9. The Government has issued G.O. Ms. No.51 dated 30.08.2022 withdrawing all previous general consents issued by the previous Governments for entrusting matters to the CBI. The State is bound to act in accordance with law and action of the State cannot be questioned. Voluminous evidence has been gathered and role of each and every person in the matter of conspiracy is being examined and suspects have been put on notice under Section 41-A of Cr.P.C. Instead of appearing before the investigating officers, the accused have challenged the notices under Section 41-A of Cr.P.C. and had been avoiding lawful process without justification and attempting to deviate investigation by falsely invoking jurisdiction of this Court.

³ (2020) 20 SCC 184

8.1. Most of the averments in the counter affidavit filed in W.P. No.39767 of 2022, W.P.No.43144 of 2022, 42228 and 43339 of 2022 are similar to the averments in the counter affidavit filed in W.P. No.40733 of 2022, as such, need not be referred again to avoid repetition.

8.2. In the counter affidavit in W.P. No.39767 of 2022, it was stated that mediators while signing seizure panchanama inadvertently put the date as 27.10.2022 instead of 26.10.2022. In the counter affidavit in W.P. No.43144 of 2022, it was further stated that during the course of investigation, the SIT has collected scientific evidence and other evidence, thereby *prima facie* case is made out against accused Nos.4, 5, 6 and 7, and therefore, they were arraigned as accused, and accordingly a memo was filed by the investigating officer before the concerned Court on 22.11.2022.

9. Heard Mr. J. Prabhakar, learned senior counsel, appearing for Mr. M. Vishnuvardhan Reddy, learned counsel for the petitioner in W.P. No.39767 of 2022; Mr. Mahesh Jethmalani, learned senior counsel, appearing for Mr. M.V.V. Baswa Raj, learned counsel for the petitioners in W.P. No.40733 of 2022; Mr. Uday Holla, learned senior counsel,

appearing for Mr. Ponnamp Ashok Goud and Mr. V. Ram Mohan Reddy, learned counsel for the petitioner in W.P. No.42228 of 2022 and 43144 of 2022; Mr. P.P. Hegde and Mr. S.D. Sanjay, learned senior counsel, appearing for Ms. Bandaru Hima Varshini, learned counsel for the petitioner in W.P. No.43339 of 2022; Mr. Dushyanth Dave, learned senior counsel, appearing for learned Advocate General for the State of Telangana; learned Advocate General and learned Additional Advocate General for the State of Telangana (official respondents of the State in all the writ petitions); Mr. Gadi Praveen Kumar, Deputy Solicitor General for India appearing for Union of India; and Mr. A. Prabhakar Rao, learned counsel for respondent No.8 - *de facto* complainant viz., Mr. Pilot Rohit Reddy, and perused the material on record.

Submissions of Mr. Mahesh Jethmalani, learned senior counsel, appearing for the petitioner in W.P. No.40733 of 2022 :

10.1. F.I.R. No.455 of 2022 was registered with Moinabad Police Station for the offences punishable under Sections 120-B, 171-B read with 171-E and 506 read with Section 34 of IPC and Section 8 of PC Act. All the offences are punishable with less than seven (7) years of imprisonment. Sections 171-B and 171-E are covered under Chapter

IX-A of IPC dealing with the offences relating to elections. The offences under Sections 171-B and 171-E are attracted only when there is an allegation of bribing a voter while exercising voting right which is not the case herein. There is total non-application of mind. Thus, it can be seen, the very initiation of criminal process by registering FIR No.455 of 2022 for the offences which are not attracted creates doubt on the fairness and impartiality of the investigating authorities.

10.2. To attract the offence under Section 8 of the PC Act, there should be motive to induce a public servant to perform improper public duty and there should be *mens rea* involved, though it cannot be denied that the MLAs are public servants. It is not stated as to what is the public duty which is subverted by the accused. Section 8 of the PC Act is not applicable. Assuming that bribe was intended to be paid, it is not stated what is the public duty that was being performed by the MLAs. Joining in another party is not a public duty, so also, it is not a duty to State or community. None of the offences mentioned in the FIR are attracted to the instant case. The investigation smacks of unfairness. Article 21 of the Constitution of India protects not only rights of the victims but also the accused. Both victim and accused are equally placed

in the context of fair and impartial investigation. There is a delay of one month in reporting commission of offences. According to the informant, the offer of bribe was made on 26.09.2022. Having waited for one month, the report was lodged on 26.10.2022.

10.3. The circumstances and the events which are unfurled indicate that everything was pre-meditated during this one month period and at the instance of higher ups in the Government and political dispensation, FIR was lodged. In criminal justice system, there was always a presumption of innocence in favour of the accused. Public flaunting of incidents and events caused prejudice to the accused. Leaking of excerpts of investigation to the media is not unbiased and not in accordance with the law and it was a serious lapse on the part of the State dispensation and the Hon'ble the Chief Minister to which the learned senior counsel appearing for the State has tendered apology in W.A. No.749 of 2022.

10.4. Mr. Mahesh Jethmalani, learned senior counsel, relied on the decisions of the Hon'ble Supreme Court in **Babubhai v. State of**

Gujarat⁴, Mohan Lal v. State of Gujarat⁵ and Pooja Pal v. Union of India⁶.

10.5. The learned senior counsel submitted that stage of investigation is not relevant factor to be considered for transferring investigation. The police in the instant case have breached their limits. There is no transparency. It may not be possible for the accused to complain of unfairness after the investigation is completed. There may be political compulsions for TRS party and there are allegations of attempts being made to overthrow the present dispensation. However, the accused herein are ordinary people. The investigation is being conducted in a prejudicial manner. The authorities have publicised the issue and have given colour of political hangover. Despite all the offences are punishable with less than seven years of imprisonment, the investigating officers have violated the procedure prescribed under Section 41-A of Cr.P.C. and the authoritative pronouncement of the Hon'ble Supreme Court in **Arnesh Kumar's case** (Supra 1). The law on Section 41-A of Cr.P.C. is very clear. In spite of the same, the investigation officers instead of

⁴ (2010) 12 SCC 254

⁵ 2018 (17) SCC 627

⁶ (2016) 3 SCC 135

issuing notice under Section 41-A of Cr.P.C., produced the accused for remand before the Special Court. The remand was refused. The order of the Special Court was challenged before this Court in Criminal Revision Case No.699 of 2022 and the same was allowed by the order dated 15.11.2022. Thereafter, in S.L.P. (Criminal) No.10356 of 2022 preferred by the accused, the Hon'ble Supreme Court set aside the aforesaid order passed by this Court in Criminal Revision Case No.699 of 2022 pointing out that there is violation of the provision under Section 41-A of Cr.P.C. by the investigation officers. The material on record clearly reveals that investigation documents have been leaked directly or indirectly. The material which is in possession of the police was found with some other authorities, the Hon'ble the Chief Minister of Telangana and the media. The petitioners are not insisting that there should be investigation only by the CBI. This Court may exercise discretion and transfer the investigation to any other agency.

**Submissions of Mr. Dushyant Dave, learned senior counsel,
appearing for the respondents in W.P. No.40733 of 2022 :**

11.1. The investigation is at the preliminary stage and no case is made out warranting interference by this Court. There are serious disputed questions of fact and normally, a Writ Court would not interfere in such situations. Scuttling of investigation at the initial stage is not in public interest. Merely because BJP, which is a National Party, is involved, directly or indirectly, it cannot be said that the matter has got nation wide political ramifications. Poaching of MLA's is a serious issue and is an insult to the Constitution. It breaks the federal fabric of the Constitution. On the point of Constitutional morality, investigation should go on.

11.2. FIR was lodged on 26.10.2022. Police were bound to investigate as per the law laid down by the Supreme Court in **Lalitha Kumari v. State of U.P.**⁷. BJP approached this Court on 27.10.2022. It is the consistent stand of the BJP that it has got nothing to do with the accused and on this sole ground, the writ petition deserves to be dismissed at the threshold. The High Court

⁷ 2014 (2) SCC 1

has to follow the principles of Constitution. The Special Investigation Team (SIT) is conducting meticulous investigation and there is damning evidence of involvement of the accused. The petitioner should have an unimpeachable case seeking transfer of investigation to CBI. No case is made out to transfer the case to CBI. The pleadings are very vague. The press meet addressed by the Chief Minister is regrettable. However, the same has not caused any prejudice to the petitioner or the accused. The SIT is appointed to investigate the case. There is no material placed before this Court to say that the State Police are acting without any credibility. The investigation is at the nascent stage. Malafides are not proved. The petitioner has remedies available under the Criminal Procedure Code, 1973. Given a chance, every accused alleges *mala fides* on the part of the investigation. The grievance of the accused, if any, will be decided at the appropriate stage by the Courts but not at the stage of investigation. Functions of the police and judiciary are complementary. Investigation cannot be interfered at the nascent stage as held by the Hon'ble Supreme Court in **Romila Thapar v. Union of India**⁸.

⁸ (2018) 10 SCC 753

11.3. The High Courts are bound to follow the orders of the Supreme Court and inherent powers cannot be exercised arbitrarily. Malafides and allegations cannot be mere assertions and they have to be proved as held in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra**⁹. BJP as an organization is not involved in the criminal case. It is neither an accused nor an informant nor a third party. It does not have *locus standi* to file this writ petition. The transfer of investigation would be done only in the rarest of the rare cases. The investigation is to be continued to unravel the truth as democracy is sought to be stifled, interfered with and destroyed. An attempt made to bribe the MLA's is a serious thing and shakes the foundation of the democracy. The MLA's are performing Constitutional duty. They receive pension, rail and Air travel concession. Thus, the contention that the MLA's are not performing official duty, within the meaning of Section 8 of the PC Act is baseless and the same would be travesty of justice. Public duty and official duty are interchangeable. Once the accused have come before this Court, a third party does not have any *locus standi* as held in **Romila Thapar's** case (Supra 8).

⁹ 2021 SCC OnLine SC 315

11.4. There is no violation of Section 41-A Cr.P.C by the investigation officer or SIT. The judgment in **Arnesh Kumar**'s case is not properly understood. There is no necessity to give gist of the charge before issuing Section 41-A notice. The offences mentioned in the FIR have taken place in the presence of the police officer. They are cognizable and non-bailable and as such, the accused can straight away be arrested. The observations in para 12 of **Arnesh Kumar**'s case have to be treated obiter and not binding precedent. Section 41-A Cr.P.C has to be read in harmony with Sections 154 and 157 Cr.P.C and cannot be read in isolation. The judiciary cannot interfere in the investigation. There is ample evidence to proceed with the investigation in the form of call records and CCTV footages. The writ petition is filed in abuse of process of law.

11.5. Mr. Dushyant Dave, learned senior counsel, has also relied on the following decisions of the Hon'ble Supreme Court:

1. **State of Bihar v. P.P. Sharma, IAS**¹⁰,
2. **Haryana v. Bhajan Lal**¹¹
3. **Divine Retreat Centre v. State of Kerala**¹²

¹⁰ 1992 Supp (1) SCC 222

¹¹ 1992 Supp (1) SCC 335

4. **Romila Thapar's case** (Supra 8)
5. **Arnab Ranjan Goswami v. Union of India**¹³
6. **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**¹⁴
7. **Rajendra Prasad Jain v. Sheel Bhadra Yajee**¹⁵
8. **P.V. Narasimha Rao v. State (CBI/SPE)**¹⁶
9. **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Limited**¹⁷, and
10. **Amit Kapoor v. Ramesh Chander**¹⁸

Submissions of Mr. Uday Holla, learned senior counsel, appearing for the petitioner in WP No.43144 of 2022 :

12.1. Accused No.2 was released on bail in Crime No.455 of 2022. Immediately another crime was registered with the Banjara Hills Police Station. The SIT officials, who are no way concerned with the said FIR, came to the Banjara Hills Police Station and interrogated accused No.2. Notice under Section 41-A of Cr.P.C. shall indicate reasonable grounds. The petitioner was not an accused in F.I.R. No.455 of 2022 on the date when the notice under Section 41-A of Cr.P.C. was

¹² (2008) 3 SCC 542

¹³ (2020) 14 SCC 12

¹⁴ (1978) 1 SCC 405

¹⁵ (1967) 3 SCR 19 : AIR 1967 SC 1445 : 1967 Cri LJ 1218

¹⁶ 1998(4) SCC 626

¹⁷ (1985) 1 SCC 260 : 1985 SCC (Tax) 75

¹⁸ (2012) 9 SCC 460

issued to him. High level officials are witnesses. Sending Compact Discs (CDs) to various High Courts and Hon'ble Supreme Court was uncalled for and unwarranted. Unfairness is writ large from the day one of investigation. Mere apology of the learned senior counsel for the State would not undo the damage caused to the accused. There is discrepancy in the date written by the witnesses in the observation panchanama which is not properly explained and proves *mala fides* on the part of the investigating officials since inception.

12.2. No doubt, when BJP filed W.P. No.39767 of 2022, the crime was at the initial stages of the investigation. However, as of now, more than forty (40) days elapsed. Hence, now, it cannot be said that the investigation is at the initial stage. Even according to Mr. Dushyant Dave, learned senior counsel appearing for the respondents, voluminous evidence has been collected by the SIT. The case arises out of trap proceedings under the PC Act. Thus, there is no merit in the contention of Mr. Dushyant Dave, learned senior counsel appearing for the respondents, that investigation is at the initial stage. This Court has to take judicial note of the fact that Her Excellency Governor for the State of Telangana has gone on record complaining of phone tapping in

connection with the present crime. Reputation of the petitioner who has twenty (20) years of practice at Bar is sullied. The news has been flashed in all major newspapers and television channels from 26.10.2022 onwards. The Hon'ble the Chief Minister for the State of Telangana had access to the documents that are part of investigation. It was not only proclaimed by the Hon'ble the Chief Minister in his address to the Press that thousands of documents, whatsapp messages and pictures have been collected during the course of investigation, but the same is openly circulated to the news media. The name of the petitioner is cropped up time and again. The video recordings circulated by the Hon'ble Chief Minister to several Constitutional functionaries in the country and to the media are available in all news channels and even uploaded in YouTube. The investigation officers have to be fair not only to the State but also to the accused. They are henchmen of the State. There is lack of fairness and investigation of the present crime is tainted with absolute bias.

12.3. High Officials, witnesses and none other than the Hon'ble the Chief Minister are personally involved in the instant case. Thus, to do complete justice, investigation has to be transferred to another agency.

12.4. Investigation by a neutral agency will reveal the truth. Three (3) out of four (4) M.L.As., who were allegedly poached were elected from Congress Party and later on switched over to TRS Party. In the tussle between the TRS Party and the BJP, rights of the accused are being infringed. There are no fetters placed on the jurisdiction of this Court in transferring investigation to a neutral agency. Most of the decisions relied on by Mr. Dushyant Dave, learned senior counsel appearing for the respondents, arise out of jurisdiction under Section 482 of Cr.P.C. and not relevant for the present case. Jurisdiction under Section 482 of Cr.P.C. stands on a different footing. The counter filed by the police is silent on the aspect as to who handed over CDs / documents to the Hon'ble Chief Minister. As there is no answer forthcoming from the respondents as to who has given CDs and pen-drive to the Hon'ble the Chief Minister, adverse inference has to be drawn. The entire information / evidence allegedly collected during investigation that too in trap/raid video recorded proceedings are in public domain.

12.5. The learned senior counsel relied on the following decisions of the Hon'ble Supreme Court:

1. **Subrata Chatteraj v. Union of India**¹⁹
2. **Standard Chartered Bank v. Andhra Bank Financial Services Limited**²⁰
3. **Naseem Bano (SMT) v. State of U.P.**²¹,
4. **Darshini Shikshana Samasthe (Registered), Sringeri, Chikmagalur v. State of Karnataka**²² (Karnataka High Court)
5. **Vinay Tyagi v. Irshad Ali**²³
6. **Babubhai's case** (Supra 4)
7. **Ankush Maruti Shinde v. State of Maharashtra**²⁴
8. **Sasti Gayen v. State of West Bengal**²⁵, and
9. **Rubabbuddin Sheikh v. State of Gujarat**²⁶

Submissions of Mr. S.D. Sanjay, learned senior counsel, appearing for the petitioner in W.P. No.43339 of 2022 :

13.1. Mr. S.D. Sanjay, learned senior counsel, submitted the respondent No.7 - Hon'ble Chief Minister of the State, is personally involved in the matter and it cannot be said that the investigation is fair

¹⁹ 2014 (8) SCC 768

²⁰ (2016) 1 SCC 207

²¹ 1993 Supp (4) SCC 46

²² 1996 SCC OnLine Kar 154

²³ (2013) 5 SCC 762

²⁴ (2019) 15 SCC 470

²⁵ 2022 SCC OnLine Cal 3361

²⁶ (2010) 2 SCC 200

and impartial and without any interference by the political authorities. The SIT is under the direct control of the respondent No.7. FIR was registered on 26.10.2022. The Chief Minister held press conference on 03.11.2022. The video clippings were displayed by the Chief Minister for three hours and the pen drives and CDs were circulated to the press reporters in the press meet. In his one hour address, the Chief Minister spoke about attempts made by BJP, several top functionaries and Central Ministers with the support of the Prime Minister to overthrow the Government of Telangana. The petitioner is not an accused and for achieving political mileage, the respondents are seeking to expand the scope of investigation. The petitioner is a resident of Kerala and President of a registered political party. He has contested as a candidate against Rahul Gandhi. The act of the Chief Minister in leaking the investigation material to the press and sending copies of the same to the Hon'ble Chief Justice of Supreme Court, other Judges of the Supreme Court, other High Courts and other Constitutional functionaries is antithesis to Constitutional rights of the petitioner and other accused. It is an unwarranted act, which shows that the Chief Minister is personally interested in the matter. Thus, fair investigation is doubtful.

The Chief Minister has publicly claimed that the accused are involved in the crime and they have been acting at the behest of BJP. The Hon'ble Chief Minister is acting as a prosecutor and informant and wants to brand the accused as conspirators attempting to overthrow the Government. The petitioner's name is taken by the Chief Minister during the press meet.

13.2. Learned senior counsel, referred to Rules 2(b)(c), Rule 3, Rule 2(e)(d)(f) of the All India Services (Discipline and Appeal) Rules, 1969 and Rule 3 of the Indian Police Service (Cadre) Rules, 1954 and contended that the IPS officers working in the Government are under the control of the Chief Minister. Their appointment, promotion, transfer, deputation and suspension are under the control of the Government. Thus, when the Chief Minister himself has publicly declared that the petitioner is an accused and involved in the crime, it would be improbable that the petitioner would be subjected to fair and impartial investigation. Even according to the Chief Minister, the issue which led to registration of crime has nation wide ramifications. In his one hour address, the Chief Minister has repeatedly stated that democracy is being destroyed by the ruling party dispensation at the Centre. That eight (8)

State Governments have been overthrown and he has evidence of thousands of pages to prove that the accused persons in this crime have hatched a larger conspiracy to overthrow the Telangana Government. Even according to the Government, it is a high profile case and thus, the investigation was transferred to SIT.

13.3. The learned senior counsel submitted that the press conference is a green signal to the SIT. The address of none other than the Chief Minister, who is a high Constitutional functionary, branding the petitioner as accused will have direct impact on the investigation agency. The apology tendered by Mr. Dushyant Dave, learned senior counsel, appearing for the learned Advocate General for the State, before the Division Bench of this Court in WA.No.749 of 2022 dated 15.11.2022 cannot undo the damage done to the accused persons. The SIT is not acting independently. No prejudice would be caused to any person if investigation is transferred to CBI. It is not only the victim but also the accused has got right to seek transfer of investigation. The parameters for the accused and the victim are same while seeking transfer of investigation. In the instant case, the investigation is at the threshold and there is no bar for this Court to transfer the investigation.

Merely because the investigation is at the nascent stage, it cannot be said that it is not biased. The petitioner has made out a case for transfer of investigation. The material collected by the police during the investigation is shared with the Chief Minister, which is a serious lapse and incomprehensible and contrary to the provisions of Cr.P.C. Not only that, the petitioner is referred to as accused by media, LOC is opened against him, which demonstrates malice on the part of the respondents.

Submissions of Mr. J. Prabhakar, learned senior counsel, appearing for Mr. M. Vishnuvardhan Reddy, learned counsel for the petitioner in W.P. No.39767 of 2022:

14.1. There are several suspicious circumstances which cast a serious doubt on genuineness of the complaint lodged in Crime No.455 of 2022 and fairness in the investigation.

14.2. In the counter affidavit filed by the State in I.A. No.2 of 2022 in W.P. No.39767 of 2022, one of the annexures is copy of the complaint in Crime No.455 of 2022 which contained signatures of two witnesses who are MRI and AMRI. These are the witnesses who signed as mediators to observation and seizure panchanamas on 26 and 27.10.2022. However, in the original FIR, signatures of these two

witnesses are not found. Two theories emerge from this discrepancy. First one is presence of witnesses when complaint is lodged which is unusual. Secondly, signature of witnesses are taken to see that the *de facto* complainant would not change his version. There is no explanation as to how the investigation documents / CDs have been handedover to the Hon'ble the Chief Minister. The action of investigation officials is contrary to the procedure of search and seizure provided under Section 100 of Cr.P.C. In terms of sub-sections (4), (5), and (6) of the said provision, the investigation officer, at the best, can handover list of the seized materials / documents to the *de facto* complainant and not copies of the CDs / documents.

14.3. The learned Additional Advocate General, in the course of arguments, submitted that CDs might have been handedover by the *de facto* complainant Mr. Pilot Rohith Reddy to the Hon'ble Chief Minister. But, such assertions are not found in the counter affidavit of the complainant - State. There cannot be any doubt that the investigating officers have handed-over the CDs and that too before any investigation is completed to the Hon'ble Chief Minister.

14.4. Thus, it cannot be said that there is transparency and fairness in the investigation. The police acted in contravention of the procedure contemplated under Section 165 Cr.P.C. and the Police Standing Orders - 512 and 540. The investigation officers are required to maintain secrecy. The SIT is consisting of officers of the State. Even before investigation is completed, names of the accused and suspected persons are referred in the Press Conference of the Hon'ble the Chief Minister.

14.5. The subsequent events also can be taken into consideration to decide whether there is element of bias and unfairness on the part of investigating officers. The most relevant being statement of the *de facto* complainant - LW.1 recorded under Section 164 of Cr.P.C. after filing of the writ petitions.

14.6. As per G.O. Ms. No.268, Home Department, dated 12.09.2003, it is the concerned Assistant Commissioner of Police, who is designated as Commissioner of Police, ACB Wing, has to conduct investigation and not the regular police. Even if the regular police registers case, it should be transferred to ACB Wing. If any other officer

was to be entrusted with investigation, the same could have been done under Section 17 of the PC Act. G.O. Ms. No.63 was not issued under Section 17 of the PC Act.

Submissions of Mr. B.S. Prasad, learned Advocate General for the State of Telangana:

15. As per G.O. Ms. No.268 and the provisions of the PC Act, the regular police are not denuded of power to conduct investigation. The investigation by the regular police of the rank of Assistant Commissioner of Police is permissible under Section 17 of the PC Act. In any case, the SIT is constituted by the Government to conduct investigation. Assuming that there is any irregularity, the same would stand rectified by constitution of SIT.s There are number of cases earlier investigated and prosecuted by the Crime Investigation Department and Central Crime Station in our State.

Submissions of Mr. J. Ramchander Rao, learned Additional Advocate General for the State of Telangana :

16. The investigation cannot be stalled at the threshold. The truth will come out in the investigation and the writ petitions are

premature. The allegations of unfairness and bias in the investigation are very vague. This Court would not conduct roving enquiry in writ jurisdiction. The CDs / video recordings are not relevant for the purpose of this case and would not cause any prejudice to the accused.

Submissions of Mr. A. Prabhakar Rao, learned counsel appearing for respondent No.8 in W.P. No.39767 of 2022 :

17. This is a serious case of inducement of MLAs by corrupt means. The BJP is not the accused and has nothing to do with the crime. FIR was lodged on 26.10.2022 and on the very next day i.e., 27.10.2022, the writ petition was filed by the BJP. Assuming that there is any defect in investigation, accused can always take advantage of the same. They can file discharge or quash petition at the appropriate time and they can also seek compensation for malicious prosecution. Normally, the Courts would not interfere when investigation is at the preliminary stage. After filing charge sheet, it will be known whether there is any bias. The writ petition is premature. The SIT is not doing anything contrary to law. Prejudice will be caused to the *de facto* complainant if investigation is stalled at this stage or transferred to any other agency.

Reply Arguments of Mr. Mahesh Jetmalani, learned senior counsel:

18.1. Most of the cases relied upon by Mr. Dushyant Dave, learned senior counsel, arise under Section 482 Cr.P.C. jurisdiction. In exceptional cases, this Court has power under Article 226 of the Constitution of India to transfer investigation when Constitutional rights of the accused are violated. There always need not be existence of actual bias. This Court has to see whether prejudice is caused to the accused from his point of view. If the accused is able to make out a case of legitimate and reasonable apprehension that the investigation is not being done in an independent and unbiased manner and there is interference by powerful and influential, which exist in the present case, the same has to be considered for transfer of investigation to CBI.

18.2. The surveillance cameras, tape recorders, which were kept in the farmhouse of Mr. Pilot Rohit Reddy during trap on 26.10.2022, were all pre-meditated. Section 157 Cr.P.C. mandates that FIR registered should be forthwith sent to the concerned Magistrate. The FIR was lodged at 11.30 Hours on 26.10.2022, it was dispatched to the Court at 12.30 Hours but it reached the Magistrate at 06.30 AM on 27.10.2022. Raid was conducted between 3.30 PM and 6.30 PM.

No money was seized or paid. No one knows the contents of tape recorders. The tape recording evidence cannot be taken as evidence until forensic evidence is collected. On 27.10.2022, the Commissioner of Police leaked the videos to the press, which has given its own version, thereby, prejudicing the minds of the public. The solitary purpose of investigation is to discover the truth, which is defeated in the instant case. The leakage of video clippings to the media by the Chief Minister is highly objectionable. Apart from that sending such video recordings to the Hon'ble Chief Justice of Supreme Court, other Judges of the Supreme Court and High Courts is a determined attempt to politicize the issue, for which, Mr. Dushyant Dave, learned senior counsel appearing for the State, has tendered apology.

18.3. It is not denied by the police that video recordings circulated by the Hon'ble Chief Minister were collected by the police during investigation. The unproved evidence, which is flaunted to public, media and press at an early stage, militates against the concept of presumption of innocence of the accused. The rights of the accused are prejudiced with media trial. The fault of the part of the Chief Minister is admitted and apologized but that would not suffice as there is no answer

as to how the material has landed in the office of the Chief Minister. The petitioner has reasonable and legitimate apprehension, which is the test that needs to be applied here.

19.1 SEQUENCE OF EVENTS RELEVANT FOR ADJUDICATION OF THESE WRIT PETITIONS :

1. F.I.R. No.455 of 2022 was registered on 26.10.2022, on the complaint lodged by Mr. Pilot Rohit Redy, M.L.A., Tandur Assembly Constituency of Vikarabad belonging to TRS Party at 11.30 hours, by the Station House Officer, Moinabad Police Station.
2. Observation Panchanama were commenced on 26.10.2022 at 12:30 hours and concluded at 14:30 hours wherein four (4) electronic spy gadgets were installed in the farmhouse of the *de facto* complainant Mr. Rohit Reddy at Moinabad by ACP, Rajendranagar. Apart from that two voice recorders were provided to the *de facto* complainant for recording conversation with the accused. These are in the nature of 'Pre Trap Proceedings'.

3. Seizure proceedings / panchanama were drafted on 26.10.2022 at 19:00 hours and concluded at 08:30 hours on 27.10.2022 wherein electronic spy gadgets with video recordings (C-1 to C-4), voice recorders (C-5, C6), mobile phones of the accused (C-7 to C-10), Laptop of the accused (C-11), documents, diary etc., in made up files and Hyundai Creta Car (C-12) were seized.
4. On 29.10.2022 in W.P. No.39767 of 2022, this Court passed order deferring the investigation till counter is filed. The matter was adjourned to 04.11.2022.
5. Press Meet was addressed by the Hon'ble the Chief Minister on 03.11.2022.
6. The order of this Court dated 29.10.2022 in W.P. No.39767 of 2022 deferring investigation was vacated by the order dated 08.11.2022.
7. The Hon'ble Chief Minister has circulated recorded videos of the trap proceedings in CDs and pen drives to the Hon'ble the Chief Justice of India, Hon'ble Judges of the Supreme Court, Hon'ble the Chief Justice of the High Court of Telangana State and other States and many Constitutional Functionaries all over the country.

8. W.A. No.749 of 2022 was filed by the accused persons challenging the order of this Court dated 08.11.2022 in W.P. No.39767 of 2022.
9. During hearing of writ appeal, Mr. Dushyant Dave, learned senior counsel, has expressed regrets on behalf of the Hon'ble Chief Minister of the Telangana State for sending the recorded videos to various Constitutional Functionaries.
10. By the order dated 15.11.2022 in W.A. No.749 of 2022, the learned Division Bench directed this Court to monitor investigation of the SIT in FIR No.455 of 2022 from time to time.
11. The accused persons approached the Hon'ble Supreme Court in S.L.P. (Criminal) No.10356 of 2022 challenging the order in W.A. No.749 of 2022.
12. The order of another learned single Judge of this Court in Criminal R.C. No.699 of 2022 (setting aside order of the trial Court refusing to accept remand) was also challenged by the accused persons before the Hon'ble Supreme Court.

13. Common order dated 21.11.2022 was passed by the Hon'ble Supreme Court in S.L.P. (Criminal) No.10356 of 2022 and Diary No.37248 of 2022 holding that observations made by the learned single Judge in Criminal R.C. No. No.699 of 2022 are contrary to the judgment in **Anresh Kumar's case** (Supra 1). The order passed in W.A. No.749 of 2022 was set aside by directing this Court to pass final orders in the writ petition seeking transfer of investigation.

19.2. The video recordings uploaded in the CD in three separate files / folders have been received as additional evidence vide order dated 26.12.2022 in I.A. No.2 of 2022 in W.P.No.43144 of 2022.

19.3. The video recordings in the CD consists of following links and named as under:

- a) <https://www.youtube.com/watch?v=VKPfCg6b6qU>

CM KCR Full Speech Over BJP Operation Lotus | Moinabad Farmhouse MLas Buying Case Videos | T News

- b) <https://www.youtube.com/watch?v=5612Dyud14>

Rs.100 Crore Deal Original Video Released By CM KCR | Moinabad Farm House Deal | TV5 News

c) <https://www.youtube.com/watch?v=TbLfyiXHKzA>

CP Stephen Ravindra About TRS MLAs And BJP Leaders 100
Crore Deal | Munugode Bypoll Effect| SakshiTV

Excerpts of Press Meet of the Hon'ble Chief Minister :

20. The Hon'ble Chief Minister of Telangana has addressed Press in the presence of TRS Party leaders, Ministers and MLAs. It was an official Press Conference. There were several media persons in the Press Conference. He stated that voluminous evidence is collected in the criminal case and the same has been sent in the form of CDs to the Hon'ble the Chief Justice of the Supreme Court of India and other High Courts, CBI, ED, CVC, media agencies, the Chief Ministers of the country and various Party presidents. There is an attempt made by the BJP to murder democracy. The Hon'ble Prime Minister openly proclaimed during his speech in the West Bengal that 40 MLAs of TMC Party are in touch with the BJP. The BJP leaders are claiming that they have made Mr. Eknath Shinde as Chief Minister of Maharashtra State and by doing same operation, eight Governments have been overthrown. This conspiracy was going on since several days. It is not a simple case. It is an organised crime. One of the persons, whose name is

continuously taken in the conversation is Tushar (petitioner in W.P. No.43339 of 2022) who contested against Mr. Rahul Gandhi.

20.1. The Hon'ble Chief Minister has requested the judicial system not to take this case lightly. He further stated that the Congress Party MLAs who have joined the TRS Party was not in unethical or illegal manner and was in accordance with the Constitution. The accused persons viz., Ramchandra Bharathi, Simhayaji and one Hyderabad Broker have taken names of Mr. B.L. Santhosh, Mr. Amit Shah and Mr. J.D. Naddha. There are pictures of Mr. Amit Shah with Mr. Tushar. The data which was received runs into thousands of pages and there is a need to ensure that no tampering of evidence takes place. It is a heinous crime committed by the BJP, as such, everyone has to wage a war and it cannot be taken as a petty issue.

20.2. In the second video file, Mr. Stephen Ravindra, Commissioner of Police, Cyberabad, informed the Press that there was an attempt made by the accused to poach MLAs and the accused were trapped and arrested. The accused tried to induce the TRS Party MLAs

to join BJP. More information will be revealed after further investigation.

20.3. The third video file contains the discussion / conversation between the three (3) accused persons and four (4) MLAs who were allegedly poached. The video runs for about an hour. There were several discussions between the accused and the MLAs. The major part of discussion was between accused No.1 and the MLAs. Accused No.1 was found explaining sequence of events and future plans allegedly offering crores of rupees to the MLAs for switching over their loyalties to BJP and contesting on BJP tickets in the next elections.

20.4. As seen in the first video, though, intermittently, the Hon'ble the Chief Minister spoke about involvement of top BJP officials including the Hon'ble Prime Minister and the Home Minister and said that thousands of documents were collected to prove involvement of BJP, in the opinion of this Court, there is nothing objectionable except statements regarding evidence collected in the form of video recording (third video); so also nothing objectionable is found in the address made by Mr. Setephen Ravindra, Commissioner of Police in the Press Meet.

20.5. However, coming to the third video file, it needs to be noted that the said video was recorded secretly by installing electronic spy gadgets (C-1 to C-6) during the trap proceedings in the farmhouse of the *de facto* complainant Mr. Pilot Rohith Reddy. None of the learned counsel appearing for the respondents have disputed this fact.

21. It was specifically asserted in paragraph No.5 of the writ affidavit in W.P. No.43144 of 2022 and paragraph Nos.6, 7 and 8 of the writ affidavit in W.P. No.43339 of 2022 that the Assistant Commissioner of Police, Rajendranagar has transferred data from C-1 to C-6 pen drives and handed over them to the Chief Minister of the Telangana who has sent CDs to various Constitutional Functionaries. These assertions have not been denied in the counter affidavits filed in these two writ petitions. Even during the arguments, Mr. Dushyant Dave, learned senior counsel, appearing for the State, the learned Advocate General and the learned Additional Advocate General for the State have not refuted the above assertions.

22. The judgments relied on by Mr. Uday Holla, learned senior counsel, on failure of respondents in specifically denying the averments of the petitioner/s are referred herein:

23.1. In **Standard Chartered Bank’s case** (Supra 20), the Hon’ble Supreme Court held as under:

“**31.** There needs to be specific denial by a witness as to the suggestion regarding the happening of a meeting for the Special Court to arrive at the conclusion that the meeting did not take place. Order 8 Rule 5 of the Code of Civil Procedure, 1908 deals with this aspect, which is reproduced hereunder:

“**5. *Specific denial.***—(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.”

It is a settled position of law that if an allegation made in the plaint is not specifically denied in the written statement, it is treated as admitted, as was also held by this Court in *Balraj Taneja v. Sunil Madan* [(1999) 8 SCC 396].”

23.2. In **Naseem Bano’s case** (Supra 21), the Hon’ble Supreme Court held as under:

“**9.** The aforesaid reply would show that on behalf of respondents 1 to 4, it was not disputed that 40 per cent posts which have to be filled up by promotion had not

been filled up and the denial of promotion to the appellant was justified on the sole ground that she was not qualified to be promoted to L.T. grade. This shows that in the pleadings before the High Court, there was no contest on the question that the post of L.T. grade which was sanctioned on August 29, 1977 was required to be filled up by promotion for the reason that 40 per cent posts had not been so filled. Even though there was no contest on this question the High Court has gone into it and has held that the appellant has failed to establish her case that at the time of the appointment of respondent 6 by direct recruitment 40 per cent of the total number of posts in the College were not filled up by promotion as prescribed by Regulation 5(2)(a) of the Regulations. Since no dispute was raised on behalf of respondents 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40 per cent of the total number of posts had not been filled by promotion, inasmuch as the said averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by respondents.”

23.3. In Darshini Shikshana Samasthe (Registered), Sringeri, Chikmagalur (Supra 22), the High Court of Karnataka at Bangalore, held as under:

“7. It is well-settled principle of law as laid down in many cases by the Supreme Court including in the case of *Smt. Naseem Bano v. State of Uttar Pradesh* [AIR 1993 SC 2592 : 1993 Supp. (4) SCC 46.] , to the effect that if averments are made in the writ petition on affidavit and if those allegations have not been controverted or denied by the respondents; High Court should proceed on the basis that the averments are admitted by the respondents. Similar view has earlier been expressed by the Allahabad High Court in the case of *Juggi Lal Kamla Pat v. Ram Janki Gupta* [AIR 1962 All. 407.] and in the case of *Surendra Tiwari v. State of Uttar Pradesh* [1994 All. L.J. 547.] , as well as by this Court in *L. Nagaraj v. Corporation of City of Bangalore* [1995 (1) Kar. L.J. 337.] , that the “averments made on affidavit, which required to be controverted or denied and if those allegations are not denied or not controverted on affidavit, the Court should proceed with the presumption that those allegations are correct.”

24. In the light of above pronouncements and uncontroverted averments in the writ affidavit about handing over / leakage of CDs and pen drives containing video recordings of electronic spy gadgets (C-1 to C-6), adverse inference has to be drawn that the same have been handedover by the investigating officer - ACP, Rajendranagar to the Hon’ble Chief Minister.

25. As noted in the preceding paragraphs, several decisions have been relied upon by the learned counsel appearing on either side and having carefully perused all the decisions, the following judgments which are relevant and having bearing on the subject involved in this *lis* are referred to.

Judgments relied on behalf of the petitioners seeking transfer of investigation:

26.1. In **Babubhai's case** (Supra 4), the Hon'ble Supreme Court held as under:

“29. On appreciation/consideration of the material available on record, the High Court recorded the aforesaid findings of fact and came to the following conclusion:

“The manner in which the investigation has been carried out as well as the manner in which these cases have been conducted before this Court, clearly indicate that the investigation is not fair and impartial and as such the investigating agency cannot be permitted to continue.”

Thus, it is evident from the above that not only investigation in respect of both the FIRs had not been fair and has caused serious prejudice to one party but even

before the High Court conduct of the party and investigating agency has not been fair.

32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer “is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth”. (Vide *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : 1960 Cri LJ 1239] , *Jamuna Chaudhary v. State of Bihar* [(1974) 3 SCC 774 : 1974 SCC (Cri) 250 : AIR 1974 SC 1822] , SCC at p. 780, para 11 and *Mahmood v. State of U.P.* [(1976) 1 SCC 542 : 1976 SCC (Cri) 72 : AIR 1976 SC 69])

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating

agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”

26.2. In **Mohan Lal’s case** (Supra 5), the Hon’ble Supreme Court held as under:

“17. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of

the investigation would therefore be a foregone conclusion.”

26.3. In Pooja Pal’s case (Supra 6), the Hon’ble Supreme Court has held as under:

89. Prior thereto, in the same vein, it was ruled in *Samaj Parivartan Samudaya v. State of Karnataka* [*Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

90. That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in *Rattiram v. State of M.P.* [*Rattiram v. State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] It was postulated that the criminal jurisprudence with the

passage of time has laid emphasis on victimology, which fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.

91. This Court in *NHRC v. State of Gujarat* [*NHRC v. State of Gujarat*, (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44] did proclaim unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d'être* for their existence.

92. That the pre-eminence of truth is the guiding star in a judicial process forming the foundation of justice, had been aptly propounded by this Court in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira* [*Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] . It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same. Emphasising that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of the truth. While referring with approval, the revealing observation made in *Ritesh Tewari v. State of U.P.* [*Ritesh*

Tewari v. State of U.P., (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315] that every trial is voyage of discovery in which truth is the quest, the following passage of Lord Denning scripted in *Jones v. National Coal Board* [*Jones v. National Coal Board*, (1957) 2 QB 55 : (1957) 2 WLR 760 : (1957) 2 All ER 155 (CA)] was extracted in affirmation : (*Maria Margarida case* [*Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] , SCC p. 384, para 39)

“39. ... ‘... It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth.’ (*Jones case* [*Jones v. National Coal Board*, (1957) 2 QB 55 : (1957) 2 WLR 760 : (1957) 2 All ER 155 (CA)] , QB p. 64)”

26.4. In **Ankush Maruti Shinde’s case** (Supra 24), the Hon’ble Supreme Court held as under:

“**10.** It has to be uppermost kept in mind that impartial and truthful investigation is imperative. It is judiciously acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. The role of the police is to be one for protection of

life, liberty and property of citizens, that investigation of offences being one of its foremost duties. That the aim of investigation is ultimately to search for truth and to bring the offender to book.

10.1. Apart from ensuring that the offences do not go unpunished, it is the duty of the prosecution to ensure fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the court for just determination of the truth so that due justice prevails. It is the responsibility of the investigating agency to ensure that every investigation is fair and does not erode the freedom of an individual, except in accordance with law. One of the established facets of a just, fair and transparent investigation is the right of an accused to ask for all such documents that he may be entitled to under the scheme contemplated by CrPC.

10.2. Nothing is allowed by the law which is contrary to the truth. In Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudences of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human rights at a much higher pedestal and the accused is presumed to be innocent till proven guilty. The alleged accused is entitled to fair and true investigation and fair trial and the prosecution is expected to play a balanced role in the trial

of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

10.6. The prosecution/investigating agency is expected to act in an honest and fair manner without hiding anything from the accused as well as the courts, which may go against the prosecution. Their ultimate aim should not be to get conviction by hook or crook.”

26.5. In **Sasti Gayen’s case** (Supra 25), the Hon’ble Supreme Court held as under:

“**24.** Thus, Hon’ble Supreme Court in the matter of *Pooja Pal* (supra) has settled that the fair trial includes fair investigation and if the investigation is not effective, purposeful, objective or fair, it becomes the obligation of the Court to order further investigation or reinvestigation as the case may be to discover the truth and prevent miscarriage of justice. It has further been held in this case that notwithstanding the pendency of trial and availability of power of the Trial Court under Sections 311 and 391 of the Cr.P.C. read with Section 161 of the Evidence Act, if it is imperative necessity to rule out any possibility of denial of justice to the parties and to instil and sustain the

confidence of community at large, CBI can be directed to investigate the incidents.”

26.7. In **Subrata Chatteraj’s case** (Supra 19), the Hon’ble Supreme Court held as under:

“**9.** It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.”

26.8. In **Rubabbuddin Sheikh’s case** (Supra 26), the Hon’ble Supreme Court held as under:

“**60.** Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court

in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”

Judgments relied on by the respondents - State opposing transfer of investigation :

27.1. In P.P. Sharma’s case (Supra 10), the Hon’ble Supreme Court held as under:

“**50.** Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority

must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

27.2. In **Bhajan Lal’s case** (Supra 11), the Hon’ble Supreme Court held as under:

“105. Reverting to the present case, the allegations made in the complaint, in our considered opinion, do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases

formulated above calling for the exercise of extraordinary or inherent powers of the High Court to quash the FIR itself.

108. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on November 21, 1987. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C.J. in *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288, 318 : 1987 SCC (Cri) 82] may be referred to : (SCC p. 318, para 16)

“It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

27.3. In **Divine Retreat Centre’s case** (Supra 12), the Hon’ble Supreme Court held as under:

“18. The learned Senior Counsel proceeded to contend that the directions issued by the High Court could not have been issued even in a public interest litigation under Article 226 of the Constitution of India. On merits, the learned Senior Counsel submitted that neither the complaint of the victim nor the anonymous petition discloses any irregularity in the matter of investigation. The directions issued by the learned Judge are inquisitorial in nature and sweeping in their width and amplitude directing the special investigation team (SIT) to find out as to whether the appellant committed any crime and if so to investigate into such crime. Such a course is impermissible in law.

27. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.”

27.4. In **Romila Thapar's case** (Supra 8), the Hon'ble Supreme Court held as under:

“29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) — regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) has been seriously disputed by the investigating agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it

would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the court for obtaining remand by the police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the accused concerned (A-16 to A-20). Amongst them, Sudha Bhardwaj (A-19), Varvara Rao (A-16), Arun Ferreira (A-18) and Vernon Gonsalves (A-17) have filed signed statements praying that the reliefs claimed in the subject

writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the accused concerned is not in a position or incapacitated to take recourse to legal remedy and not otherwise.

27.5. In **Arnab Ranjan Goswami's case** (Supra 13), the Hon'ble Supreme Court held as under:

“42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances”. Speaking for a Constitution Bench in *State of W.B. v. Committee for Protection of Democratic Rights* [*State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] (“CPDR,

West Bengal”), D.K. Jain, J. observed : (SCC p. 602, para 70)

“70. ... despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again *it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.* Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

(emphasis supplied)

45. In *Romila Thapar v. Union of India* [*Romila Thapar v. Union of India*, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , A.M. Khanwilkar, J. speaking for a three-Judge Bench of this Court (one of us, Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused “does not have a say in the matter of appointment of investigating agency”. In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat* [*Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , *Sanjiv Rajendra Bhatt v. Union of India* [*Sanjiv Rajendra Bhatt v. Union of India*, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , *E. Sivakumar v. Union of India* [*E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] and *Divine Retreat Centre v. State of Kerala* [*Divine Retreat Centre v. State of Kerala*, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] . This Court observed : (*Romila Thapar case* [*Romila Thapar v. Union of India*, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , SCC p. 776, para 30)

“30. ... the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation.”

46. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used “sparingly” and only “in exceptional circumstances”.

In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the petitioner seeks a transfer of the investigation. The grounds urged for transfer are:

27.6. In **P.V. Narasimha Rao’s case** (Supra 16), the Hon’ble

Supreme Court held as under:

“98. On the basis of the aforesaid discussion we arrive at the following conclusion:

1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.

2. A Member of Parliament is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.

3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.”

28. Whether the BJP has got *locus standi* to institute W.P. No.39767 of 2022?

29. It is the contention of the learned counsel appearing for the respondents State – Police that action of the BJP, Telangana State Unit, in rushing to the Court within a day, on 27.10.2022, after registration of F.I.R. on 26.10.2022, at the nascent stage speaks volumes about their ill intentions and conduct. It is noticed that the BJP, as an organisation/party, is not an accused. In criminal law, any individual who has arraigned as an accused can be an aggrieved person. By the

time, the writ petition was filed, though names of prominent persons of BJP have been taken, that by itself cannot give a colour of political vendetta. Mr. Dushyant Dave, learned senior counsel, has also emphasized that even if names of the prominent BJP leaders have been taken in the remand report and documents collected during investigation, there was no material placed before this Court to say that investigation is tainted. Assuming that there is some grievance, it is for the aggrieved person to approach this Court and not the BJP.

30. The contention of the learned senior counsel appearing for the BJP is that names of the Hon'ble Prime Minister, the Home Minister and important persons in the BJP are repeatedly taken by the Hon'ble the Chief Minister of the Telangana State during the Press Conference. The issue will have nationwide ramifications. The Hon'ble the Chief Minister has openly stated that war has to be waged against the BJP and Central Government. In the opinion of this Court, these are not the factors to be considered in the instant case.

31. The allegations in W.P. No.39767 of 2022 and other writ petitions, so far as *mala fides* are concerned are very vague. As rightly

contended by Mr. Dushyant Dave, learned senior counsel, appearing for the State of Telangana, *mala fides* on the point of political vendetta are not made out in the facts and circumstances of the case. It also needs to be pointed out that the accused persons are before this Court in W.P. No.40733 of 2022 seeking the same relief of transfer of investigation.

32. In **Romila Thapar's case** (Supra 8), it was held in paragraph No.30, which is extracted above, that third party cannot be permitted to espouse cause of the accused when the accused themselves are pursuing the writ petition.

33. Therefore, in view of the law laid down by the Hon'ble Supreme Court in **Romila Thapar's case** (Supra 8), W.P. No.39767 of 2022 is not maintainable.

34. In a system governed by law, every person or authority is subservient to Constitutional principles. The safeguards provided to the accused persons under Articles 20 and 21 of the Constitution of India have been reinforced from time to time by various authoritative pronouncements, some of which are referred above. Protection given

to the accused from very inception when he is arrested by the police officer and mandate under Article 20 of the Constitution of India read with Section 167 Cr.P.C. to produce the accused before the Magistrate within 24 hours of his arrest is a pointer to emphasise that from very inception of the criminal proceedings, the accused has Constitutional and statutory safeguards.

35. Several arguments have been advanced contending that action of the State authorities is *mala fide*, tainted and biased. Few instances like service notice under Section 41-A of Cr.P.C. even when request was made to defer proceedings on health grounds, LOC opened by the police against some of the accused, investigation officers of the SIT coming with a force of 30 policemen to interrogate the accused in connection with another crime on the file of Banjara Hills Police Station, violation of guidelines issued by the Supreme Court in **Arnesh Kumar**'s case, cannot be considered to be so serious giving rise to cause of action for transfer of investigation. So also the press conference addressed by the Chief Minister where serious imputations made against BJP taking names of the Hon'ble Prime Minister, Home

Minister and other top functionaries of BJP cannot be relevant factors for transfer of investigation.

36. FIR discloses commission of cognizable offence and investigation is bound to be done in accordance with law. Police excesses, investigation officers acting unusually and beyond jurisdiction violating judicial precedents can be remedied from time to time and rightly so, orders have been passed by this Court and other Benches of this Court granting interim protection of arrest pursuant to Section 41-A of Cr.P.C notices. It is stated that accused Nos.1 to 3 are released on bail. So far as other accused, against whom Section 41-A of Cr.P.C. notices were issued, are concerned, it is stated that stay has been granted by other Benches of this Court in separate cases. Thus, it cannot be said that any prejudice is caused to the accused on the aspect of violation of provisions of law, more particularly, Section 41-A Cr.P.C and judgment of the Hon'ble Supreme Court in **Arnesh Kumar**'s case.

37. The words spoken by the Hon'ble Chief Minister and agony expressed repeatedly saying that democracy is being

murdered and several other statements imputing the top leaders of the BJP in the contemporary political scenario are nothing unusual. With a conscious mind this Court refrains to make any further observations on the speech of the Hon'ble Chief Minister, though the same has been repeatedly pointed out by the learned counsel appearing for the petitioners, by keeping in mind the prejudice that may cause to the *de facto* complainant / victims.

38. In the above conspectus, the issue boils down to the third folder of CD/Pen Drives, which have been taken on record by this Court and circulated by the Chief Minister to the Hon'ble Chief Justice of India, the Hon'ble Chief Justice of this Court and the Hon'ble Chief Justices of other States. The controversy regarding poaching of MLA's is, no doubt, a serious one. The official press conference arranged by the Chief Minister and speaking about the sequence of events and the attempt made to poach ruling party MLA's is understandable. What is required to be seen is whether the procedure established by law has been breached. The manner in which the video recordings through electronic spy gadgets and the documents (C-1 to C-6) have been

uploaded in the public domain tested on the view point of accused would certainly cause prejudice to them. Though the investigation is at the preliminary stage, crucial documents, which were in the nature of pre-trap proceedings, have come out open in public.

39. None of the learned counsel appearing for the State have clarified or explained to the Court as to how these CDs and pen drives are surfaced in the Press Meet of the Hon'ble Chief Minister. Not only in the pleadings, even in the oral submissions, the respondents have maintained stoic silence and have chosen to be very cautious on the leakage of investigation material. A veiled attempt was made by the learned Additional Advocate General stating that the *de facto* complainant might have handed over the CDs / pen drives to the Hon'ble Chief Minister.

40. Mr. A. Prabhakar Rao, learned counsel appearing for the *de facto* complainant - respondent No.8 in W.P. No.39767 of 2022, has also stated that the *de facto* complainant might have handed over the CDs, but there is no clear assertion and evidence to that effect. The contentions of Mr. J. Prabhakar, learned senior counsel appearing for one of the

petitioners, with reference to procedure of search and handing over only the list of documents to the *de facto* complainant under Cr.P.C. and instructions in the Police Manual have not been controverted by the learned counsel for the respondents. Moreover, nothing is argued before this Court as to at what stage and under what provisions of Cr.P.C., the *de facto* complainant could have access to the documents and material seized during the investigation. The crime was registered on 26.10.2022. The electronic spy gadgets were seized on 26/27.10.2022 containing the video recording (third file) which are in the nature of trap proceedings, and undoubtedly crucial and critical part of investigation, should not have been handed over to any third party. In the political tussle between the BJP and the TRS Party, the Constitutional and statutory rights of the accused seems to have been forgotten. The investigation officers have committed serious lapses. It appears, to cover up such lapses, SIT was constituted on 09.11.2022. When accused are condemned publicly and branded as conspirators levelling serious allegations by none other than the Hon'ble Chief Minister by conducting Press Meet and circulating the videos to the important Constitutional Functionaries, even before charge sheet is filed and at the initial stages of

the investigation, it cannot be said that investigation is being done in an unbiased and fair manner.

41. As contended by Mr. Mahesh Jethmalani, learned senior counsel, in W.P. No.40733 of 2022, actual bias need not be proved and it would suffice if legitimate and reasonable apprehension of bias, taint and unfair investigation is made out by the accused. In **Babubhai's case** (Supra 4), investigation was transferred. In the said decision, it was held that not only fair trial but investigation is also part of Constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. It is not necessary that actual bias should be proved and issue has to be examined from the view point of the accused to see whether any prejudice is caused or not. However, apprehension of the accused about unfair and biased investigation should not be unrealistic but genuine as held by the Hon'ble Supreme Court in **Mohan Lal's case** (Supra 5). In the instant case, the events which have unfolded from the date of registration of crime on 26.10.2022 till the Press Conference of the Hon'ble Chief Minister on 03.11.2022, making the investigation CDs / material public without any hesitation would cause reasonable

apprehension in the mind of the accused about fair and unbiased investigation.

42. In these circumstances, this Court is of the view that serious prejudice is caused to the accused, who are branded publicly as conspirators, thereby, depriving their rights to effectively defend the criminal proceedings and availing their legal remedies under law. These events run contrary to the fundamental concept of criminal law jurisprudence that every accused is deemed to be innocent until proven guilty. As noted above, the learned counsel for the respondents have not pointed out any provisions of the Cr.P.C. nor offered any plausible explanation or theory as to how the third video CDs / pen drives which have been seized under mediators' report panchanama on 27.10.2022 in F.I.R. No.455 of 2022 have been handed over to the Hon'ble Chief Minister. Who has handed over the same, when and how, remains a mystery. In spite of that, to say that no prejudice is caused to the accused is unreasonable and unacceptable. If action of the police is not in accordance with the procedure established by law, even at the initial stages, this Court, exercising jurisdiction under Article 226

of the Constitution of India, should not shirk its responsibility to set rights things. The contention of the learned counsel for the State - Police that the petitioners have remedies under law and they may challenge the proceedings at the appropriate time and the investigation at this nascent stage should not be interfered cannot be sustained. The rights of the accused stand as a high pedestal in the criminal law jurisprudence as held by the Hon'ble Supreme Court in **Ankush Maruti Shinde's case** (Supra 24). Having found serious lapses and leakage of investigation material / CDs, it is difficult to accept the contention of the learned counsel for the respondents - State that this Court should lay off its hands merely because the investigation is at preliminary stage. Rights of the accused to have fair and unbiased investigation are defeated in this case which is in violation of Articles 14 and 21 of the Constitution of India.

43. In the opinion of this Court, constitution of SIT under G.O. Ms. No.63 which act under the Government will not alter the situation, more particularly, when an authority none other than the Hon'ble Chief Minister himself has openly circulated the videos

and branded the accused and members of the organised crime as conspirators. The entire episode and turn out of events is something unprecedented and incomprehensible and unhesitatingly, this Court holds that the accused have made out a case for transfer of investigation. So far as other points raised by the learned counsel regarding violation of G.O. Ms. No.268 etc., and that investigation by regular police is not permissible under the PC Act are not considered as the pleadings to that effect in the writ affidavits are very vague; in any event, they are not necessary to be dealt with in the light of the above observations.

44.1. For the aforesaid reasons, W.P. Nos.40733, 43144 and 43339 of 2022 are allowed. G.O.Ms. No.63 Home (Legal) Department dated 09.11.2022 appointing SIT is quashed. The investigation in FIR.No.455 of 2022 shall be forthwith transferred to the Central Bureau of Investigation, who shall proceed with *de novo* investigation taking into consideration the report lodged by Mr. Pilot Rohit Reddy in FIR.No.455 of 2022, observation panchanama dated 26.10.2022 and mediator's panchanama dated 27.10.2022. The remaining investigation done by Assistant

Commissioner of Police, Rajendranagar Division; the Station House Officer, Moinabad Police Station, and the SIT are also quashed.

44.2. As discussed above, W.P. No.39767 of 2022 is not maintainable and is accordingly dismissed.

44.3. In view of the orders in W.P. No.43144 of 2022, no orders are required to be passed in W.P. No.42228 of 2022, and therefore, the same is closed.

45. At this point of time, a request is made by the learned Advocate General for the State to suspend this order till its certified copy is furnished. Therefore, this order is suspended, as prayed for.

As a sequel thereto, miscellaneous applications, if any, pending in these writ petitions stand closed.

B. VIJAYSEN REDDY, J

December 26, 2022.

**NOTE: LR COPY TO BE MARKED.
(BO) PV/DSK**