

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 580 OF 2023

Vigin Verghese S/o. Shri. K. V. Verghese

...Petitioner

V/s.

Union Of India And Anr.

...Respondents

Mr. Ayaz Khan a/w Ms. Zehra Charania for Petitioner.

Mr. Advait M. Sethna a/w Ms. Ruju R. Thakkar, Mr. Rangan Majumdar, Mr. Sandeep Raman, Ms. Prema Thakkar, for Respondent No.1.

Mr. S.S. Hulke, A.P.P. for the Respondent-State.

CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.DATE : 3rd MARCH, 2023.**P.C.:-**

1. By the present Petition, the Petitioner, an accused in Crime F. No.

DRI/MZU/C/INT-93-2022 has prayed for the following reliefs :

“a) Issue the writ of mandamus directing the Respondents to procure the investigation papers and documents from the Investigating Agencies at South Africa with respect to the seizures made in India by the Respondents qua the Petitioner in F. No. DRI/MZU/C/INT-93-2022.

b) Issue the writ of mandamus directing the Respondents to file the documents with the Trial Court which are procured from the Investigating Agencies at South Africa with respect to the seizures made in India by the Respondents qua the Petitioner in F. No. DRI/MZU/C/INT-93-2022.”

2. Heard Mr. Ayaz Khan, learned counsel for Petitioner, Mr. Advait Sethna for Respondent No.1-Union of India and Mr. S.S. Hulke, learned A.P.P. for Respondent No.2-State. Perused record and Affidavit-in-Reply dated 28.02.2023 filed by Deputy Director of Respondent No.1.

3. It is trite position of law that, the accused has no right to have any say as regards the manner and method of investigation. That the accused has no participation as a matter of right during the course of investigation of a case instituted on a police report till the investigation culminates. Accused cannot choose Investigating Agency. That, accused persons do not have a say in the matter of appointment of an Investigating Agency. The accused persons cannot choose as to which Investigating Agency must investigate the alleged offence committed by them. Accused has no right with reference to the manner of investigation or mode of prosecution. Reliance is placed on the decisions of the Hon'ble Supreme Court, namely, (i) Union of India & Anr. Vs. W.N.Chadha, reported in AIR 1993 SC 1082; (ii) Divine Retreat Centre Vs. State of Kerala & Ors., reported in AIR 2008 SC 1614; (iii) Narmadabai Vs. State of Gujrat & Ors., reported in AIR 2011 SC 1804; (iv) Sanjiv R. Bhatt Vs. Union of India & Ors., reported in (2016) 1 SCC 1.

4. The Hon'ble Supreme Court in the case of Romila Thapar Vs. Union of India & Ors., reported in (2018) 10 SCC 753, has held that, neither the accused, complainant nor the informant are entitled to choose their own

Investigating Agency, to investigate the crime, in which they are interested. That the accused cannot ask for changing the Investigating Agency or do the investigation in a particular manner, including Court monitored investigation. In the said decision, the Hon'ble Supreme Court has relied on the decisions in the cases of Divine Retreat Centre Vs. State of Kerala (supra) and Narmadabai Vs. State of Gujrat (supra).

In the case of Arnab R. Goswami Vs. Union of India & Ors., reported in (2020) 14 SCC 12, the Hon'ble Supreme Court has held that, displeasure of accused person about manner in which the investigation proceeds or an unsubstantiated allegation of a conflict of interest with the police conducting the investigation must not derail the legitimate course of law and warrant extraordinary power of the Court to transfer the investigation to C.B.I.. In the said decision, the Hon'ble Supreme Court has relied upon the decision in the case of Romila Thapar Vs. Union of India & Ors. (supra).

5. In this background, Mr. Khan, learned counsel for the Petitioner submitted that, the Petitioner though being an accused is only requesting this Court to direct the investigating agency to procure necessary documents from their counter part in South Africa.

6. It clearly appears to us that, such request is made only to built up the defence of Petitioner at the inception of investigation by invoking jurisdiction of this Court under Article 226 of the Constitution of India. It is needles to mention that, the investigating agency during the course of

investigation will collect all the necessary and relevant evidence including the documents thereof. For collecting evidence during the course of investigation the direction by this Court at the behest/request of an accused is not at all necessary. At the time of filing of charge-sheet/complaint, the investigating agency will annex to it the evidence which is in the form of statements and other material as the case may be. It is further the settled position of law that, the defence of an accused/prospective accused in a probable trial cannot be adjudicated in a Petition under Article 226 of the Constitution of India.

7. According to us, Present Petition is wholly misconceived and is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)