

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3512 OF 2015

Mukta Dabholkar & Anr.

.....Petitioners.

Vs.

The Central Bureau of Investigation & Ors.

.....Respondents

WITH
CRIMINAL APPLICATION (APPW) NO.42 OF 2017
WITH
CRIMINAL APPLICATION (APPW) NO. 152 OF 2017
WITH
INTERIM APPLICATION NO. 2555 OF 2022
WITH
INTERIM APPLICATION NO. 2644 OF 2022

Mr. Abhay Nevagi with Mr. Amit Singh, Mr. Kabeer Pansare, Ms. Shivangi Deshmukh i/by Abhay Nevagi and Associates, for the Petitioners.

Mr. Subhash Jha i/by Law Global for Applicant in IA No. 2644 of 2022.

Mr. Ghanshyam Upadhyay i/by Law Juris for Applicant in IA No.2555 of 2022.

Mr. Anil Singh, Additional Solicitor General with Mr. Sandesh Patil i/by Mr. D.P.Singh for the CBI.

CORAM : A. S. Gadkari And
Prakash D. Naik, JJ.

RESERVED ON : 31st March, 2023.
PRONOUNCED ON : 18th April, 2023.

Order (Per A.S. Gadkari, J.) :-

1) Petitioners are daughter and son of Dr. Narendra Dabholkar, who was shot dead on 20th August 2013 at about 7.30 a.m. in Pune by

unidentified assailants. By the present Petition, the Petitioners have prayed for issuance of a Writ of Mandamus or any other Writ Order or Direction in the nature of Mandamus appointing an independent Special Investigation Team lead by Officer of CBI holding rank equivalent to Additional Director General of Police, Maharashtra and comprising of Officer of higher rank of impeccable credentials to conduct investigation into the conspiracy and murder of Dr. Narendra Dabholkar and to take all necessary consequential steps/actions pertaining thereto ; Monitor the investigation to be carried out by the Special Investigation Team sought to be constituted through the present Petition and for other consequential reliefs.

2) Heard Mr. Nevagi learned counsel for the Petitioners, Mr. Jha learned counsel for the Applicant in IA No. 2644 of 2022, Mr. Upadhyay learned counsel for the Applicant in IA No.2555 of 2022 and Mr. Anil Singh, learned Additional Solicitor General for the CBI. Perused record produced before us.

3) In the present case, by an Order dated 9th May, 2014 passed in Criminal PIL No.7 of 2014, this Court had directed the investigation of present crime i.e. CR No.154 of 2013 originally registered with Deccan Police Station, Pune, be transferred to Central Bureau of Investigation i.e. Respondent No.1 herein. Accordingly, investigation is subsequently carried out by the Respondent No.1. Record indicates that, various Orders earlier to this have been passed giving directions to the Respondent No.1 and other

agencies and the said Orders have been complied with.

4) Mr. Nevagi, learned counsel for the Petitioners fairly submitted that, all the earlier Orders passed in the present Petition have been complied with. He submitted that, the cases of four murders i.e. Dr. Narendra Dabholkar, Comrade Pansare, Gauri Lankesh, Professor M.M. Kalburgi and Nalasopara case were committed in an organized manner. The charge-sheets filed in these cases establish that, the motive behind the murders is to eliminate certain people or rationalists systematically. That, all the said cases are interconnected and the mastermind behind it is not yet arrested. He submitted that, present is a case of extra-ordinary nature and therefore monitoring investigation may be continued by keeping the present Petition pending. In support of his contentions, he relied on the decisions of the Hon'ble Supreme Court namely *(i) Union of India & Anr. Vs. Major Bahadur Singh reported in (2006) 1 SCC 368 : 2006 SCC (L&S) 959 : 2005 SCC OnLine SC 1669; (ii) Rubabbuddin Sheikh Vs. State of Gujarat & Ors. Reported in (2010) 2 SCC 200; (iii) Centre For Public Interest Litigation & Ors. Vs. Union of India & Ors. Reported in (2012) 3 SCC 104 and; (iv) Shahid Balwa Vs. Union of India & Ors. Reported in (2014) 2 SCC 687.*

5) Mr. Jha, learned counsel appearing for the intervenor in Interim Application No.2644 of 2022 submitted that, once the charge-sheet is filed, monitoring of investigation even by a Constitutional Court should come to an end. In support of his contentions, he relied on the

decisions of the Hon'ble Supreme Court namely, (i) *Vineet Narain & Ors. Vs. Union of India & Anr. reported in (1998) 1 SCC 226*; (ii) *National Human Rights Commission Vs. State of Gujarat & Ors. reported in (2009) 6 SCC 342*; (iii) *Kunga Nima Lepcha & Ors. Vs. State of Sikkim & Ors. reported in (2010) 4 SCC 513*; (iv) *K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai & Ors. reported in (2013) 12 SCC 480*; (v) *Sushila Devi Vs. State of Rajasthan & Ors. reported in (2014) 1 SCC 269*; (vi) *Manohar Lal Sharma Vs. Principal Secretary & Ors. reported in (2014) 2 SCC 532 and*; (vii) *Shahid Balwa Vs. Union of India & Ors. (Supra)*

6) Mr. Upadhyay, learned counsel appearing for the Intervenor in Interim Application No.2555 of 2022 submitted that, in view of the law laid down by the Hon'ble Supreme Court in the cases relied upon by Mr. Jha, no further monitoring by this Court is necessary. He submitted that, the trial Court will get influenced while conducting trial if monitoring by this Court in the present case continues even hereinafter.

7) Record indicates that, all the accused persons in the present crime have been arrested and the Respondent No.1 has submitted charge-sheet as contemplated under Section 173(2) of the Cr.P.C.. There are in all 5 accused persons who are being tried. The prosecution has cited 33 witnesses in the list submitted along with charge-sheet. The trial of present case i.e. Sessions Case No.706 of 2016 has already commenced and is in progress before the learned Special Court (U.A.P.A.), Pune. As per Notes of

Arguments dated 29th March, 2023 according to the Petitioners, 18 witnesses have already been examined and less than 5 witnesses are left to be examined.

8) It is to be noted here that, on 30th January, 2023, Mr. Singh, the learned Additional Solicitor General of India on instructions from the Investigating Officer of the present crime had submitted that, the Investigating Officer has forwarded an Investigation Completion Report to the Head Quarters of CBI and response thereto was awaited. On 20th February, 2023 it was submitted before this Court that, the CBI requires further four weeks time to reach a final conclusion. It appears that, till date the Head Quarters of CBI has not taken any decision on the report submitted by the Investigating Officer.

9) It is thus clear that, the investigation of the present crime has already been completed and the trial of it is steadily progressing. As of 29th March, 2023, prosecution had already examined 18 witnesses. Even as per the submissions of the learned counsel for the Petitioners, the monitoring of the present crime is necessary only for the purpose of tracing out the alleged mastermind behind the aforestated four murders.

10) The Hon'ble Supreme Court in the case of *Vineet Narain & Ors. (Supra)* has held that, the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary process of the law would then take over. The ratio laid

down by the Hon'ble Supreme Court has been relied by it in subsequent cases.

In the case of *K.V. Rajendran (Supra)* in paragraph No.13, the Hon'ble Supreme Court has held as under:-

“13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the

court make any expression of its opinion on merit relating to any accusation against any individual.”

In the case of *Sushila Devi (Supra)* in paragraph No.28, the Hon’ble Supreme Court has held as under:-

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

In the case of *Shahid Balwa (Supra)*, the Hon’ble Supreme Court has observed that, it has taken the consistent view that once charge-sheet is submitted in the proper Court, the process of court-monitoring investigation comes to an end and it is for that Court to take cognizance of

the same and deal with the matter.

11) After applying the ratio enunciated by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the present case as noted hereinabove, this Court is of the view that, further monitoring on the investigation of the present crime is not necessary.

Petition is accordingly disposed off.

12) In view of disposal of Petition itself, Criminal Application (APPW) Nos.42 of 2017, 152 OF 2017, Interim Application Nos.2555 of 2022 and 2644 of 2022 do not survive and are also disposed off.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

SANJIV
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MASHALKAR

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