

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 12 OF 2023**

Raju Sidhaya Sulire

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr.Ram Upadhyay i/b. Law Competere Consultus for Petitioner.

Ms.M.H. Mhatre, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.****DATE : 9th February 2023.****P.C. :**

1. By the present Petition, the Petitioner, an accused in C.R. No. I-135 of 2018, dated 18th May 2018, registered with Arnala Sagari Police Station, District Palghar has prayed for 'transfer of investigation of said crime to any other competent and impartial Investigating Officer; to direct investigation under Prevention of Money Laundering Act against Respondent Nos.3, 4, 5 & 6 i.e. co-accused; to recover crime money for refund to the flat purchasers and to issue show cause notice to Investigating Officer Mr.Shivaji Patil, Assistant Police Inspector (EOW) Palghar to explain about the faulty investigation.

2. Heard Mr.Ram Upadhyay, learned counsel for Petitioner and Ms.M.H. Mhatre, learned A.P.P. for Respondent-State. Perused record.

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. It is trite law 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)*.

In the present case, admittedly after completion of investigation police have submitted chargesheet. A bare perusal of documents annexed to the Petition *prima-facie* indicates that, the investigation of the present crime has been properly done by the Investigating Officer.

5. Mr.Upadhyay, learned counsel for Petitioner submitted that, the Petitioner being an accused has equal right to seek transfer of investigation and this Court by exercising its powers under Article 226 of the Constitution of India 'should and/or must' do so for protecting the right of accused. In support of his contentions, he relied upon the decision of the Hon'ble Supreme Court in the case of *Babubhai & Ors. Vs. State of Gujrat & Ors.*, reported in MANU/SC/0643/2010 : (2010) 1 SCC 254 and *Devendra Nath*

Singh Vs. State of Bihar & Ors., reported in MANU/SC/1306/2022 : AIR 2022 SC 5344. He therefore prayed that, the Petition may be allowed in terms of prayer Clauses noted herein above.

There cannot be any second opinion about the principles of law enunciated by the Hon'ble Supreme Court in the aforesaid two decisions. That the concept of fair investigation and fair trial are concomitant to preserve all the fundamental rights of the accused under Article 21 of the Constitution of India.

However, the facts involved in the said two decisions totally differ from the facts in the case in hand. A minute perusal of both the said decisions would indicate that, it has not been held therein that, accused has right to seek transfer of investigation and/or to choose Investigating Agency of his own choice. Therefore the reliance placed by the Petitioner on the said decisions is of no avail to him.

6. In view thereof, we find that, there are no merits in the Petition. Petition is accordingly dismissed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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