

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-9808-2022

Reserved on: 13.12.2023

Pronounced on: 04.01.2024

2024: PHHC: 000030

MUSTAK

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Abhinav Sood, Advocate, for the petitioner.
Mr.Parveen Kumar Aggarwal, DAG, Haryana.
Mr.Rajeev Anand, Advocate, for respondent-CBI

DEEPAK GUPTA, J.

Petitioner is the unfortunate father of an 8 years of old boy named Rizwan, who is alleged to have been brutally and savagely murdered in a gruesome manner, but the investigating agencies are unable to reach to the culprit.

2. By way of this petition filed under Section 482 CrPC, petitioner prays for issuance of the appropriate directions for conducting fair, free and impartial investigation in case FIR No.409 dated 24.12.2021 under Section 365 IPC, to which Sections 302 and 201 IPC were added later on, registered at Police Station Mundkati, District Palwal.

3. According to the petitioner, on 23.12.2021, his son Rizwan, aged 8 years, had gone to Mosque of village Sarai Khatela at about 5:30 PM, when he was kidnapped. FIR No.409 dated 24.12.2021 under Section 365 IPC was registered in this regard at Police Station Mundkati. On 30.12.2021, decomposed dead body of Rizwan was found from the fields of

village Nagla Ahsanpur. Sections 302 and 201 IPC were added to the FIR, as minor son of the petitioner was brutally and severally murdered in gruesome manner.

4. It is alleged by the petitioner that his son has been murdered under a criminal conspiracy to get revenge from him by the complainant party of FIR No.608 dated 31.07.2017, registered at Police Station Sadar Palwal, Tehsil and District Palwal, under Sections 379A (1)/ 147/ 148/ 149/ 268/285/323/506 IPC and Section 25 of the Arms Act, in which petitioner had been falsely implicated. It is further alleged that after postmortem examination of Rizwan and his last rights, a Panchayat was convened, in which Mubeen son of Kundan disclosed the names of Irshad son of Safi Mohammad; and Sahun son of Kamru to be involved in the commission of murder of Rizwan. Investigating Officer of the case was informed in this regard, but said IO-respondent No.6-Rambir Dagar, told the petitioner that he had been offered money by Mubeen and Irshad in order to save them. Police later questioned Mubeen, who disclosed the names of private respondents No.7 to 13 to be involved in the incident, but no action was taken.

5. Status report was called from the respondent-State. As per the report filed by way of affidavit dated 29.06.2022 of Shri Rajesh Duggal, IPS, Superintendent of Police, Palwal, Palwal, matter was duly investigated. The Board of Doctors, who conducted the postmortem examination, did not furnish cause of death for want of chemical and histopathological examination report. A Special Investigation Team was constituted for the purpose. Status report further says that in view of the supplementary statement dated 25.01.2022 made by the petitioner naming Mosim,

Mubeen, Irshad and Sahun as suspect behind the kidnapping and murder of his son, they were joined in the investigation and interrogated thoroughly. Their call details records were also obtained and perused, but no connecting incriminating material evidence could be found against them. Matter was still under investigation for want of report from the histopathological division.

6. In view of the aforesaid report submitted by the police, fresh status report was called. As per the fresh status report dated 07.02.2023, filed by way of affidavit of Sh. Sajjan Singh, HPS, Deputy Superintendent of Police, Palwal, the report from the histopathological division was still awaited. Besides, suspects Mosim, Mubeen, Irshad and Sahun were put through brain mapping/polygraph test at CFSL(CBI), Delhi, but the report was still awaited. Matter was accordingly adjourned again.

7. An additional status report by way of affidavit dated 01.07.2023 of Sh. Sajjan Singh, Deputy Superintendent of Police, Palwal was filed and then this Court passed the following order on 24.07.2023: -

*“Additional status report, in compliance of the order dated 16.02.2023, has been filed by way of affidavit dated 01.07.2023 of Shri Sajjan Singh, Deputy Superintendent of Police, Palwal, District Palwal, on behalf of respondent Nos.1 to 3 and 5, as per which, report dated 05.04.2022 by the Department of Pathology, SHKM Govt. Medical College, Nalhar (Annexure R- 5); and report dated 02.05.2023 by the Toxicology Division received from RFSL, Bhondsi, Gurugram (Annexure R-6) were produced before the Medical Board, **who opined about the cause of death to the effect that no definite opinion could be given, though the circumstantial evidences can be taken into consideration. The report of Medical Board is Annexure R-7. It is further stated in the said report that **polygraph examination of Mohsin Khan, Mubin Khan and Irshad Khan and Sahun Khan was found to be negative.*****

It is contended by learned counsel for the petitioner that no effort has been made by the SIT to collect any CCTV footage of the vicinity of the mosque, where the deceased had gone. No effort has been made to join any person, who might have seen the deceased or might have seen the kidnapping. However, it is conceded by learned counsel for the petitioner that as per his prayer, SIT has already been constituted.

The request of learned counsel for the petitioner to order for transferring the investigation to some other independent agency, cannot be considered at this stage.

Let the Head of the SIT file a fresh affidavit as to the lapses as pointed out by counsel for the petitioner to the effect that whether any CCTV was found in the vicinity or whether there was any last seen evidence.

Adjourned to 04.09.2023.”

8. In compliance of the aforesaid order, additional status report by way of an affidavit dated 04.09.2023 of Shri Sandeep Mor, Deputy Superintendent of Police, District Palwal, was filed, as per which no CCTV footage was discovered by the investigating agency nor any last seen evidence was detected. As per the report, fair investigation has been carried out and optimum efforts have been made to put logical end to the investigation.

9. As is evident from all the status reports, as have been produced before this Court by the investigating agency of the respondent-State, they have failed to reach to the culprit. It is neither the case of the respondents that death of Rizwan was natural nor this is the conclusion of the board of doctors, who conducted the postmortem examination. Thus, net result is that despite the fact that unnatural death of a minor boy named Rizwan, aged 8 years, has been caused, but investigating agencies have failed to crack the case.

10. Ld. counsel for the petitioner has prayed that in all the aforesaid circumstances, when even the Special Investigation Team constituted by the respondent/State has failed to trace the murderer and failed to find out any incriminating evidence against the private respondents, so the case be hand over to some independent agency like CBI.

11. Ld. State counsel submits that the matter has been investigating in right earnest, but concedes that no concrete incriminating evidence could be found against anybody. Ld. State counsel also submits that in case petitioner is not satisfied with investigation, he may approach the jurisdiction Magistrate.

12. Notice was also issued to the CBI, Chandigarh Office. Sh. Rajeev Anand, Advocate, appeared and submitted his no objection to handover the investigation of the case to the CBI.

13. In ***Himanshu Kumar and others Vs. State of Chhattisgarh and others, 2022 SCC OnLine SC 884***, Hon'ble Supreme Court considered the circumstances in which High Court should exercise its power in transferring an investigation from the State Investigating Agency to any other independent agency like CBI and held as under:

*“44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the **State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571**, has*

made the following observations pointing out the situations where the prayer for investigation by the CBI should be allowed:

*“70.... In so far 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 powers 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 the above decision, it was also pointed out that the same court in **Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya & Anr., (2002) 5 SCC 521**, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency.*

46. *In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.*

47. *The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of **Committee for Protection of Democratic Rights, West Bengal (supra)** as*

*adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that **though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment.** The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.*

48. *The above principle has been reiterated in **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480.** Dr. B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held:*

*“13. ...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. ...”***

49. *Elaborating on this principle, this Court further observed:*

“17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional

cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

50. *The Court reiterated that an investigation may be transferred to the CBI only in “rare and exceptional cases”. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.” This observation must be read with the observations made by the Constitution Bench in the case of Committee for Protection of Democratic Rights, West Bengal (supra), that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.*

51. *In Romila Thapar v. Union of India, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (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, (2011) 5 SCC 79, Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1, E. Sivakumar v. Union of India, (2018) 7 SCC 365, and Divine Retreat Centre v. State of Kerala, 2008) 3 SCC 542. This Court observed:*

“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.”

52. *It has been held by this Court in CBI & another v. Rajesh Gandhi and another, 1997 Cr.L.J 63, that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.*

53. *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 the CBI, we are*

guided by the parameters laid down by this Court for the exercise of that extraordinary power.”

14. Further, in ***Anant Thakur Karmuse Vs. State of Maharashtra and others***, (2023) 5 SCC 802, after referring to the principles as laid down in the case of ***Himanshu Kumar (Supra)***, it has been held by the Hon’ble Supreme Court that power to order fresh, de novo or re-investigation is vested with the Constitutional Courts; and the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure fair and just investigation.

15. In ***Mithilesh Kumar Singh Vs. State of Rajasthan and others***, (2015) 9 SCC 795, it has been held that though Court does not direct transfer of investigation just for the asking nor the same is transferred only to satisfy the ego or vindicate the prestige of a party interested in such investigation, but the decision whether transfer should or should not be ordered, rests on the Court’s satisfaction depending upon facts and circumstances of a given case. It was held further that it is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extra ordinary powers.

16. Keeping in mind the precedents as laid down by Hon’ble Apex Court, following principles emerge:

- The power to transfer an investigation is extraordinary and must be used “sparingly”, cautiously and only “in exceptional circumstances”.
- No one can insist that an offence be investigated by a particular agency. An aggrieved person can only claim that the alleged offence

be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

- Transfer of investigation is not to be directed by the Court just for the asking nor the same is transferred only to satisfy the ego or vindicate the prestige of a party interested in such investigation, but the decision whether transfer should or should not be ordered, rests on the Court's satisfaction depending upon facts and circumstances of a given case.
- The power to order fresh, de novo or re-investigation is vested with the Constitutional Courts; and the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure fair and just investigation.
- Though satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the pre-condition for a direction for further investigation or reinvestigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment
- Following **exceptional situations** may be considered while ordering transfer of investigation:
 - where it becomes necessary to provide credibility and instil confidence in the public mind, in the 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, or
 - when the Court feels that the investigation by the police authorities is not in a proper direction, or
 - when high police officials are involved in the alleged crime, 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. ...”

- when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation.

17. Applying the above legal principles to the facts of present case, as has been noticed above, minor son aged 8 years of the petitioner is alleged to have been brutally murdered in gruesome manner. It is neither the stand of the respondent-State nor the opinion of the Board of Doctors, which conducted the postmortem examination that it was a natural death. The Status reports filed by the respondent/State from time to time would clearly indicate that State Investigating Agency, despite constituting a Special Investigating Team has also come to a dead end and is unable to crack the case so as to reach the culprit. As per the Status reports, no incriminating material has been found against the suspects named by the petitioner. In these circumstances, it has become necessary to provide credibility and instil confidence in the public mind, in the investigation and also for doing complete justice and enforcing the fundamental rights of the petitioner.

18. In the aforesaid circumstances, when even the Special investigation team constituted by the State Investigating Agency is unable to reach to the culprit, it will be quite unjustifiable to relegate the petitioner to approach the jurisdictional Magistrate to file a private complaint. Interest of justice demands that some expert agency, like CBI, should be entrusted with the investigation of the case in order to reach the truth. Investigation of the case is accordingly directed to be transferred to the CBI.

19. Registry is directed to supply copy of the petition along with reply/affidavits of the respondents/State filed from time to time & the documents attached therewith, to the authorised officer of the CBI in presence of its Advocate. Superintendent of Police, Palwal is directed to ensure handing over the complete record of the case to CBI within 2 weeks positively. Necessary secretarial assistance to CBI be also ensured by SP, Palwal.

20. In view of the above, the present petition is disposed of with direction to the CBI to conduct free and impartial investigation in the matter and to proceed further in accordance with law.

04.01.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |