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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2972/2024**

J. DALVIN SURESH

.....Petitioner

Through: Mr. Abhijit Anand, Ms. Prachi Mittal,
Advts.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Rajesh Kumar, SPP for the CBI
with Mohd. Changez Ali Khan, Ms.
Mishika, Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

27.11.2024

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1. The present petition has been filed by the complainant/petitioner challenging the impugned order dated 20.09.2024 passed by learned ACJM-02, Rouse Avenue Courts, New Delhi in Misc. Crl. 68/2024 whereby the request for change of the case IO for proper investigation by CBI and appointing an officer not below the rank of Inspector General was dismissed.
2. The present case has arisen out of a very unfortunate incident in which three civil service aspirants, including the son of the present petitioner, died due to drowning in the basement of RAU's IAS Study Circle, situated at BP- 11, Old Rajinder Nagar, Central District, New Delhi where allegedly an illegal library was running. Pursuant to the said incident dated 27.07.2024, the FIR No.151/2024 registered on 28.07.2024 PS Rajinder Nagar, New Delhi under Sections



105/106(1)/115(2)/290/3(5) Bharatiya Nyaya Sanhita (BNS), 2023 against accused Abhishek Gupta and Ors.

3. The Division Bench Of this Court in WP(C) 10550/2024 transferred the investigation of said FIR to the CBI. Pursuant to the investigation, a case bearing RC 048 2024 S 0008 was registered dated 06.08.2024, and the case was entrusted to ASP R. S. Solanki. After the completion of the investigation, the chargesheet was filed.
4. The petitioner is aggrieved of the manner in which the investigation is being conducted by the CBI. Learned counsel for the petitioner submits that IO has not conducted free and fair investigation, which is fundamental right of the petitioner. Learned counsel submits that even the directions of the Division Bench passed in WP(C)10050/2024 had not been followed. Learned counsel further submitted that even the building site plan has not been seized, nor has the CCTV Footage been seized. Learned counsel has also invited the attention of various deficiencies in the investigation. Learned counsel submits that since the investigation is not being conducted in a free and fair manner, the investigation officer may be changed.
5. The CBI in its detailed reply has submitted that though the charge sheet has been filed against the six accused persons i.e. Abhishek Gupta, Deshpal Singh, Parvinder Singh, Sarabjit Singh, Tajinder Singh, Harvinder Singh. However, the investigation of this Case has been kept open under Section 193 (9) of BNSS, 2023 for further investigation on the aspect of criminal negligence, dereliction of duties and corrupt practices indulged into by the public servants of MCD, DFS Delhi and other concerned departments and other related



aspects, which is under progress.

6. It has been specifically stated by the CBI that the investigation was done in a free and fair manner by following due process of law. The investigation is already being monitored by the Secretary, CVC, pursuant to the Directions of the Division Bench of this Court. It has also been stated that the CBI has already submitted two status reports in sealed cover containing the developments of the investigation before the Division Bench being WP(C) 10550/2024. It has further been submitted that the CBI has an established system of thorough supervision and close monitoring of investigation of cases by senior level officers and the investigation of this Case is also being closely monitored by senior officers of CBI.
7. Mr. Rajesh Kumar, learned SPP for the CBI, submits that, in fact, the petitioner, without being privy to certain facts, has mentioned that officials of MCD have not been interrogated. Sh. Rajesh Kumar learned SPP, submits that the manner in which the investigation is to be conducted is the prerogative of the investigating agency, and while the further investigation is being conducted, it is prejudicial even to the complainant and to the petitioner to place doubts over the manner in which the investigation is being conducted. Learned counsel submits that the allegations of the petitioner that the CBI is shielding corrupt officers of the MCD, DFS Delhi, and Delhi Police are totally false and malicious. Learned SPP stated at Bar on instructions that the angle of corruption is being investigated and an appropriate report shall be filed at an appropriate stage.
8. The perusal of the reply filed by the CBI explicitly makes it clear that



though the chargesheet has been filed, further investigation is being conducted, and this is being monitored by the CVC. The CBI, which is the premier investigating agency of this country, has investigated numerous sensitive cases, and experience would tell that the CBI has established system and norm of supervision at every stage. No doubt that the petitioner has a fundamental right to a free and fair investigation, however, at the same time, the petitioner cannot be made privy to the integrities of the investigation being conducted. The manner in which the investigation is to be conducted is the prerogative of the investigation. Rather, in the given case, raising questions and flagging issues while the investigation is in progress may be detrimental to the interest of the issues that are being investigated. The issue does not concern to the petitioner only; the issue is the larger issue for this reason, the Division Bench of this Court transferred the investigation to the CBI. The petitioner has to have faith in the investigating agency. However, at the same time, CBI must address the concerns of the petitioner. Petitioner shall be at liberty to give his representation/statement to the I.O, highlighting his concerns.

9. This Court hopes and trusts that CBI will keep the faith of the petitioner. The Court is conscious of the fact that the complainant or the petitioner in the present case may have some genuine concerns. In order to balance the rights, Director CBI is requested to appoint a senior officer to have regular monitoring of the investigation being conducted by the CBI. I consider that no further directions are required to be passed in the present petition.



10. However, before parting, the Court considers that in the impugned order, the learned ACJM-02, Rouse Avenue Courts, New Delhi, has dismissed the application of the petitioner on the ground that since, under Section 156(3), no direction can be given to the CBI to register an FIR and conduct investigation, the Court of the learned MM cannot monitor the investigation. This Court considers that this observation of the learned MM may not be in accordance with the law. It is correct that learned MM cannot direct the CBI to the registration of the FIR. However, once the CBI has registered the case and conducting an investigation, the concerned Court of learned MM will have all the power to monitor the investigation in accordance with the law and established principles as laid down by the judgments of the constitutional bench.

11. With these observations, the present petition along with pending applications stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 27, 2024

Pallavi/HT