

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT: THE HON'BLE JUSTICE JAY SENGUPTA

WPA 702 of 2024

SUPRIYA MANDAL GAYEN ... **PETITIONER**

VS.

THE STATE OF WEST BENGAL & OTHERS ... **RESPONDENTS**

For the petitioner : Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee

For the CBI : Mr. Amajit De
Ms. Hasi Saha

For the State : Mr. Amitesh Banerjee, Sr. Standing Counsel
Ms. Ipsita Banerjee

Heard lastly on : 20.03.2025

Judgment on : 30.06.2025

JAY SENGUPTA, J.

1. This an application under Article 226 of the Constitution of India, *inter alia*, praying for reinvestigation of the case in respect of Nazat Police Station Case No. 142 dated 09.06.2019 under Sections 147,148,149,448,325 and 364 of the Indian Penal Code, Sections 25 and

27 of the Arms Act and added Sections 3(1)(z) and 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 and added Sections 302 and 201 of the Indian Penal Code, by an independent and specialized agency like the Central Bureau of Investigation.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. After the completion of the Lok Sabha Elections in 2019, miscreants belonging from the ruling political party in the State of West Bengal under the leadership of Sahajahan Sk. and Firoz Kamal Gazi were threatening the petitioner that her husband namely, Debdas Mondal and other members of the family that they would not be spared and would be killed as they had supported Bharatiya Janata Party. On 08.06.2019 at about 4.50 pm about 150 - 200 persons under the leadership of Sahajahan Sk and Firoz Kamal Gazi being armed with deadly weapons forcefully entered into the house of the petitioner and started searching for Debdas Mondal. They also ransacked the furniture and other household articles. The leaders of the group namely, Sahajahan Sk and Firoz Kamal Gazi threatened the inmates of the house with dire consequences for supporting the other Party and instructed his men to set the house in fire and as such, fire was set in order to burn alive Debdas Mondal. Seeing this, Debdas Mondal tried to flee away. But, the other accused persons held him and started assaulting him and forcefully took him away from the house. After that, the husband of the petitioner could not be traced. Even after the occurrence of such serious and tragic incidents of such a magnitude on 8.06.2019, the police

authorities being hand in gloves with the ruling dispensation, solely with the intention to shield the miscreants including the prime accused in the case, being Sahajahan Sk, did not take any steps to register any FIR and initiate proceedings. It was only upon the complaint lodged by the brother-in-law of the petitioner that FIR was lodged on 9.06.2019. Because of the inaction on the part of the State police authorities in delaying in investigation and the fact that the body of the husband of the petitioner could not be traced after being kidnapped, the father-in-law of the petitioner was constrained to approach the Hon'ble High Court vide WPA no. 20407 of 2019 under writ of Habeas Corpus. The matter was heard. Meanwhile, the case was transferred to CID, West Bengal on 23.08.2019. Due to the delay in filing the charge sheet and the laches on the part of the investigating officer, vide order dated 24.09.2019, the Learned Court below granted bail to one of the charge sheeted accused person, being Akher Ali Gayen, thereby observing that the statutory period of filing charge sheet had lapsed and that the charge had not yet been filed by the investigating authority. However, the other accused persons as per the charge sheet were absconding and issuance of warrant was pending before the Additional Sessions Judge, 1st Court at Barasat. The investigation itself showed a lot of lacunae such as the delay in filing the charge sheet for which one accused was enlarged on default bail, other five charge sheeted accused persons were absconding, the prime accused person even as per the written complaint, being Sahajahan Sk was not charge sheeted inspite of being an FIR named

accused. While hearing the matter being WPA 20407 of 2019, this Court observed that investigating officer of the Criminal Investigation Department had collected blood samples, photographs and the disinterred body parts to the CFSL Hyderabad for DNA profiling to fix the identity of the deceased, Debdas Mondal. It was only after the father-in-law of the petitioner had approached this Court that the body of the husband of the petitioner was found after matching the long bone and skull recovered from the bank of Dansa river under Sandeshkhali Police Station. The bones and skull of the husband of the petitioner were matched with his parents and after obtaining a report from CFSL Hyderabad, it was found that the DNA profiling of the deceased Debdas Mondal matched with his father, being Basudev Mondal. The application of writ being WPA 20407 of 2024 became infructuous after the completion of investigation and filing of the charge sheet dated 13.07.2022 reflecting that the long bones and skull matched with the deceased Debdas Mondal with Basudev Mondal, the father-in-law of the petitioner. Almost after three years from the date of lodging FIR, the investigating agency submitted a charge sheet, being charge sheet no. 166 of 2022 dated 13.07.2022 under section under Section 147/148/149/302/325/364/201 of Indian Penal Code, read with Section 3 (1) (z) and (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against six accused persons out of which none were named in the FIR and in the written complaint made by the brother-in-law of the petitioner. The other twenty-three persons

including Sahajahan Sk who was named in the FIR as well as in the written complaint and statements under section 161 CrPC and Section 164 CrPC specifically, had not been charge sheeted, but only referred as suspects when there were sufficient materials and incriminating evidences against them to prosecute them. Being aggrieved by such tainted and biased investigation, being conducted by CID, the petitioner, being the wife of the deceased was compelled to once again approach this Court seeking relief to transfer the investigation to an independent investigation department, being CBI for conducting re investigation or fresh investigation. The matter first came up for hearing on 17.01.2024 and this Court was pleased to stay the proceedings before the learned trial Court. However, even after the stay granted by His Lordship, a Supplementary charge sheet was filed on behalf of the investigating agency on 31.03.2024, almost after more than two years of filing charge sheet and four years of lodging FIR. The investigating agency had filed the Supplementary charge sheet against Sahajahan Sk as well against other accused persons, thereby violating the order of this Court. The Court was pleased to direct the investigating agency not to place the Supplementary Charge sheet before the Learned Trial Court. Thus, the manner in which the investigation had been conducted reflected the biased and malafide intention of the investigating agency in conducting the investigation. If such investigation was allowed to be carried on, then the victims would be deprived of justice as the investigating agency would continue to shield the accused persons as previously the FIR named

accused person, being Sahajahan Sk and twenty three others were exonerated even after having incriminating materials against them. This was sheer violation of the provisions of impartial and unbiased investigation which was the basis of any investigation to render justice. In exercise of the jurisdiction under Article 226 of the Constitution of India, the High Courts did not only have the power and jurisdiction, but also had an obligation to protect the fundamental rights of the victims as guaranteed by Part III in general and under Article 21 of the Constitution of India. The mode and manner in which the investigation with respect to the instant case had been carried only to safeguard the prime accused Sahajahan Sk and the leader of ruling party in the State of West Bengal, was arbitrary and malicious in nature. The investigation agency had not charge sheeted twenty-three persons even after being named in the FIR. The written complaint lodged by the father-in-law of the petitioner clearly made out the offence of kidnapping, thereby specifically naming the accused persons. Subsequently, it came to light that the husband of the petitioner was killed. Even after such findings, the investigating agency did not charge sheet the prime accused person, being Sahajahan Sk knowing fully well about his involvement in the offence and having statements against him by the witnesses and the petitioner. It was extremely shocking as to how in a case bearing such importance, the investigation was concluded and charge sheet was given nearly after three years of the investigation. The investigation itself showed a lot of lacunae. It was a settled proposition of law that the High Court could

exercise its constitutional power to transfer investigation from to CBI where the investigation prima facie was found to be tainted and biased. Here, twenty-three FIR named accused persons were not charge sheeted arbitrarily, thereby misleading the investigation and conducting an arbitrary investigation, violating the principles of natural justice. Even, in the FIR, Sections 25/27 of the Arms Act were present whereas while filing the charge sheet. The investigating authority conveniently and whimsically removed the provisions under Arms Act thereby guarding and shielding the accused persons from justice. It was apposite to mention herein that the Opposition filed on behalf of Respondent no. 1,2,3,4,6 and 7 was a bundle of lies only to shield the prime accused being Sahajahan Sk from being implicated in the instant case. This was reflected from the mere fact that the police respondent authorities, out of their whims and fancies, did not charge sheet twenty-three FIR named accused persons including the prime accused person being Sahajahan Sk only because of the fact that he belonged from the ruling party in the State of West Bengal. The submission made by the State that the petitioner had filed the instant writ petition after 18 months from the date of filing of the charge sheet for reinvestigation by the CBI or the NIA and was silent so long which reflected that the petitioner was silent regarding the investigation was absolutely false, fallacious and arbitrary in nature. There was not time bar to approach the Court for transfer of investigation. If the investigation was tainted and appeared to be arbitrary and improper, it was the right of every victim to get justice and

for that the victim could approach the Court any time before trial commenced for re investigation or de novo investigation by an independent agency. It seemed that even after transfer of investigation to CID, proper investigation was not conducted because of which while filing charge sheet, the names of prime accused persons were not included even after having strong corroborative statements and eye witnesses against them. This was nothing but sheer attempt to shield the accused purely of their allegiance with the ruling party in the State of West Bengal. Moreover, the State respondent authorities had admitted in their Affidavit in Opposition filed that they had omitted the names of the persons who were named in the written complaint and FIR. Moreover, it has been stated in the Affidavit of Opposition filed by the State Respondent that investigation could be transferred if there was justified reason by the Court to believe that the investigation had not been conducted properly. Moreover, it had been admitted by the State respondent that the Court could exercise constitutional powers for transferring an investigation from State investigating agency to other independent investigating agency like CBI only in rare and exceptional circumstances such as where high officials of State authorities were involved or the accusation itself was against the top officials of the investigating agency thereby allowing them to influence the investigation and further that it was so necessary to do justice and to instil confidence on the investigation or where the investigation was prima facie found to be tainted/biased. This clearly reflected upon the admission made by the

State respondents with regard to transfer of Investigation. The present case was one that shocked the conscience of the people and the continuance of such barbarism was still prevalent. The petitioner had time and again proved and submitted that the investigation agency only intended to conduct biased investigation, investigation was tainted and appears to be arbitrary and improper, it was the right of every victim to get justice. The petitioner had time and again proved and submitted that the investigation agency only intended to conduct biased investigation, upon being influenced by the high and the mighty belonging to the ruling dispensation. As such, in the interest of justice, the petitioner humbly prayed to transfer the investigation to an independent agency such as the CBI so that fresh investigation could be conducted to unearth the truth and punish the offenders of such heinous crimes. It was apposite to state herein that a case was instituted at the behest of the Enforcement Directorate upon the incident dated 5.01.2024 where the officials of Enforcement Directorate were attacked by the men and agents of the leader of the ruling party in the State of West Bengal; Sahajahan Sk, being Nazat Police Station case no. 8 of 2024, Nazat Police Station case no. 9 of 2024 thereby seeking for transfer of Investigation to CBI vide WPA 802 of 2024. The matter was heard by this Court. The Single Bench vide order dated 17.01.2024, was pleased to disposed of the writ petitioner by constituting a Special Investigating Team consisting of officers of CBI and State Police. Being aggrieved by such order, the Enforcement Directorate preferred an appeal against the order, being

MAT 169 of 2024 and the State of West Bengal and State Police Authorities also preferred an appeal against the same impugned order vide MAT 191 of 2024. The Division Bench presided over by the Hon'ble Chief Justice observed that the case involved highly politically powerful persons including Sahajahan Sk. For the same, fair, honest and complete investigation was required which could alone retain public confidence in the impartial working of the State Agencies. The Court while transferring the investigation to CBI further observed that it had become imperative and absolutely necessary for doing complete justice and enforcing the fundamental rights of the public in general and public of the locality that the cases were transferred to the CBI for investigation and to proceed further. An appeal in the form of Special Leave to Appeal was preferred before the Hon'ble Supreme Court vide no. 5875-5876/2024 and Their Lordships, vide order dated 11.03.2024 dismissed the Writ petition and upheld the judgment passed by the High Court at Calcutta. Meanwhile, Sahajahan was arrested by CID West Bengal on 28.02.2024. It is also to mention that a criminal revision was also filed by the Enforcement Directorate to quash the FIR no. being 7 of 2024 vide CRR 164 of 2024 started against their Officers and the Single Bench had stayed the FIR no. 7 of 2024. Further, the stand taken by the State respondent authorities in their Affidavit of Opposition was contradicting that in the Supplementary Affidavit filed by them. In the Affidavit in Opposition filed by the State authorities, they had, on repeated occasions stated that the investigation was proper and impartial and further that

the petitioner knew about the charge sheet much prior, but had deliberately raised it at present. However, if this be so that the investigation conducted by them and charge sheet submitted as a result, was not biased and was impartial, then the need for filing supplementary charge sheet extinguished. It reflected that the filing of the supplementary charge sheet was the result of the instant writ petition filed by the petitioner seeking for proper, fair and impartial investigation as the prime accused person, including Sahajahan Sk and others, against whom specific allegations were made out, were not charge sheeted. Thus, such actions of the State Respondents were absolutely contradictory to their Affidavit in Opposition submitted and was an afterthought of the writ petition filed by the petitioner and subsequent observations made by the Bench as it reflected that their intention behind filing the supplementary charge sheet suddenly even when investigation was stayed by the Bench was only to make the writ petition infructuous. Under such circumstances and considering the precedents and the series of criminal cases filed against Sahajahan Sk, it was imperative that for the ends of justice and fair investigation, the case was transferred to CBI for re-investigation as the present investigation reflected the malafide intention of the investigation agencies. Reliance on the point of transfer of investigation to the CBI was placed on i) Priyanka Tibrewal v. The State of West Bengal and Others, WPA 4011 of 2024, WPA (P) 104 of 2024, WPA (P) 78 of 2024, WPA (P) 93 of 2024, ii) Vinay Tyagi v. Irshad Ali alias Deepak and Others reported in (2013) 5 SCC

762, iii) Vinubhai Haribhai Malaviya v. State of Gujarat reported in (2019) 17 SCC 1, iv) Babubhai v. State of Gujarat and Others, (2010) 12 SCC 254. To further clarify the facts, it was pertinent to state that the occurrence of the incident was on 08.06.2019 at around 4.50 pm. at the house of the petitioner. First Information Report was registered as Nazat Police Station Case No. 142 of 2019 dated 09.06.2019 under Sections 147/148/149/448/325/364 of the Indian Penal Code read with Section 25/27 of the Arms Act and adding Section 3(1) (z) and Section 2 (v) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act. Charge Sheet no. 166 of 2022 dated 13.07.2022 was filed under Sections 147/148/149/302/325/364/201/302 of Indian Penal Code, read with Section 3 (1) (z) and (2) (v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. Charge sheet was not filed under Sections 25/27 of Arms Act whereas the FIR contained the said provisions and the same was clearly reflected from the written complaint. Name of accused persons in the FIR were i) Sahajahan Sk, ii) Firoz Kamal Gazi, iii) Siauddin Mollah, iv) Abdul Kader Mollah, v) Akher Gayen (charge sheeted accused person), vi) Hasanujjaman Mollah (charge sheeted accused person), vii) Motiur Rahman Mollah, viii) Raju Mollah, ix) Alamgir Sk, x) Kutubuddin Sk, xi) Nur Islam Mollah, xii) Hasibur Mollah, xiii) Siraj Sk, xiv) Gobinda Mondal, xv) Sapan Mridha, xvi) Ajamuddin Mollah, xvii) Jafar Ali Mollah, xviii) Shaukar Mollah, xix) Satyajoti Sanyal, xx) Raja Sanyal, xxi) Dhrubajoti Sanyal, xxii) Ranjit Das, xxiii) Dilip Malik, xxiv), Gour Ray, xxv) Kedar Sardar. Names of the

persons charge sheeted were i) Akher Gayen, ii) Hasanujjaman Mollah, iii) Azad Sk, iv) Majed Sk, v) Habib Mistry, vi) Shantanu Mondal. Other than Akher Gayen and Hasanujjaman Mollah, other four charge sheeted persons were not named in the FIR. 23 accused persons as were named in the FIR including the prime accused person, Sahajahan Sk were not charge sheeted and only named as suspected. (Serial no. 1-4, 7-25 from the list of names of accused persons mentioned in the FIR above-stated.) An additional feature was that the accused persons kidnapped the deceased victim and the long bone and skull of the deceased victim were recovered from the banks of Dansa river under Sandeshkhali Police Station which was matched with the father of the deceased victim. The petitioner in writ petition being WPA no. 703 of 2024 and WPA 702 of 2024 approached this Hon'ble Bench with a prayer for reinvestigation to be conducted by a specialised agency being Central Bureau of Investigation on the aforesaid grounds.

3. Learned senior counsel appearing on behalf of the State submitted as follows. The writ petitioner filed this writ petition after a delay of more than 5 years with regard to an incident that happened on 08.06.2019. The writ petitioner alleged that on 08.06.2019, 150-200 persons under the leadership of Sahajahan Sk. and Firoz Kamal Gazi being armed with deadly weapons entered the house of the petitioner and started searching Debdas Mondal. They also entered into the rooms of the house and ransacked the furniture and other household articles. The leader of the group namely, Sahajahan Sk. and Firoz Kamal Gazi threatened the

inmates of the house of dire consequences for supporting Bharatiya Janata Party and instructed his men to set fire in the house and as such, fire was set in order to burn alive Debdas Mondal, but seeing this Debdas Mondal tried to flee away. But, the other accused persons held him and started assaulting him and forcefully took him away from the house and after that, the husband of the petitioner could not be traced. That on the basis of a written complaint lodged by the brother in law of the petitioner, being Nemai Mondal with the Officer-In-Charge, Nazat Police Station, the FIR named accused persons were arrayed as accused in connection with Nazat Police Station Case No. 142 of 2019 dated 09.06.2019 under Section 147/148/149/448/325/364 of the Indian Penal Code and Section 25/27 of the Arms Act and adding Section 3(1)(z) and Section 2(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. The respondents stated that the petitioners approached the High Court after 5 years from the date of the incident. Such delay was not explained in the pleadings of the writ petition. It was a well settled principle that a litigant should approach the Court of law at the very first instance. The writ petitioner had grievances with regard to investigation which had commenced in June, 2019. Chargesheet was filed on 13.07.2022. However, the petitioner filed this instant writ petition as late as 2024. It was an undisputed fact that the cause of action of the said writ petition is 09.06.2019 and the respondents stated that without proper explanation as to why the petitioner approached the High Court so late, the said writ petition should not be allowed. The petitioners had not

provided any reason for the inordinate delay. Till date petitioner had not taken any steps before the learned Magistrate stating their grievance with regard to investigation. Once the investigation process was set in motion, the provisions of the Code of Criminal Procedure were sufficient to take care of all exigencies. Moreover, the learned Magistrate had ample power under such Code to direct transfer of investigation, if required. But, nothing of that sort was sought for by the petitioner. Therefore, alternative remedy being available to the petitioner, no cause had been shown as to invite the Writ Court to exercise its extraordinary jurisdiction in granting relief to the petitioner. The petitioner had not made out any case whereby it was stated that conscionable justice would not be rendered before the learned Magistrate and thus the writ petitioner approached this Hon'ble Court. Transfer of investigation was an exception, not a rule. Order to conduct investigation by CBI was not to be passed as a matter of routine merely because the party leveled allegations against local police. The extraordinary power in handing over investigation by CBI must be exercised cautiously and in exceptional circumstances. In the instant case, firstly, the petitioner leveled no allegation against the current Investigating Agency, being the CID, WB and secondly, the petitioner failed to make a case where in the Writ Court could be invited for an interference. In the instant case, the chargesheet had already been filed on 13.07.2022 while keeping provisions open for continuing investigation against the others who were named in the FIR. Hence, in such a circumstance, the Writ Court should

lay its hand off from interfering in the matter. Be that as it may, the present investigation officer had continued with the investigation and had made breakthrough development in the instant case. In fact, the present investigation officer had prepared a supplementary chargesheet which was ready to be filed before learned Magistrate subject to the leave of this Court. On the basis of the chargesheet and the supplementary chargesheet the 23 persons who were marked as 'suspect' were now made accused on the basis of materials available. Furthermore, Sk. Sahajahan had also been made an accused in the said case. The grievance of the writ petitioner made in the writ petition could no longer exist, as on today. All the issues had been taken care of. In such a situation, it was humbly stated that leave be given to file the supplementary chargesheet before the learned Magistrate and let the investigation take its own course. Reliance was placed on Himanshu Kumar and Others vs. State of Chhatisgarh and Other reported at 2022 SCC Online SC 884. By way of clarification, it was further stated that Nazat Police Station Case No. 142/19 dated 09.06.2019 under Sections 147/148/149/448/325/364 Indian Penal Code and Sections 25/27 Arms Act adding Section 3(1)(z) and 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 and Sections 302/201 Indian Penal Code. Date and time of occurrence was 08.06.2019 was at about 16.50 hrs. Place of occurrence was at the house of the complainant at Nolkora Bhangipara. The IO took all informative steps to trace out of the abducted Debdas Mondal. During investigation,

some parts of dead body of Dedbas Mondal were recovered on 16.02.2020. Finally the IO – Shri Sandip Kr. Sinha Roy (since retired on 31.12.2022) Dy. SP (North), CID, WB submitted charge sheet against 06 accused persons as a prima facie charge was established against them vide Nazat Police Station Charge Sheet No. 166/22 dated 13.07.2022 under Section 147/148/149/448/325/364/201/302 Indian Penal Code and adding Section 3(1)(z) and 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, and 23 persons had been mentioned in FIR who were shown as suspects. The investigation was kept open under the provision of 173(8) Cr.P.C. The investigation kept open under Section 173(8) Cr.P.C was endorsed to Shri Sankar Prasad Ghorai, Dy. SP (North), CID, WB who took up its investigation on 15.02.2024 vide Org. No. 136/CI dated 07.02.2024. During further investigation on 24.03.2024, the present IO examined and recorded the statement under Section 161 Cr.P.C. of following witnesses. i) Nemai Mondal s/o Basudeb Mondal of Nolkora, Bhangipara Police Station – Nazat, District-24 Parganas (North), ii) Naren Mondal s/o – Amulya Mondal of Nolkora Bhangipara, PS – Nazat, iii) Rabin Das s/o – Parikshit Das PS – Nazat, Dist – North 24 Pgs. As per order of superiors vide Memo No. 1617/CS dated 31.03.2024, a supplementary charge-sheet was prepared in this case vide Nazat PS CS No. 166A dated 31.03.2024 under Section 147/148/149/448/325/364/201/302 Indian Penal Code and adding Section 3(1)(z) and 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 against the following 25 accused

persons including 23 FIR named for submitting before Additional District Session Judges 1st Court, Barasat (Special Court) to stand trial in the open court of law. Serial No. 01 to 23 (in the proposed Supplementary Charge Sheet) were named in FIR Serial No. 24 and 25 (in proposed Supplementary Charge Sheet) were transpired from the statement of witnesses recorded under Section 161 Cr.P.C. A prayer for issuing production warrant against the above noted four accused persons mentioned in Serial No. 1, 4, 8 and 23 (in the proposed Supplementary Charge Sheet) would be submitted before the Court. Another prayer for issuing WPA against the accused as mentioned in serial no. 2, 3, 5, 6, 7, 9 to 22, 24 and 25 (in proposed Supplementary Charge Sheet) would be submitted before the learned Court.

4. Learned counsel appearing on behalf of the CBI submitted that in the event the Court directs further investigation or reinvestigation to be conducted by them, they shall be able to do the same in accordance with law.

5. I heard the learned counsels appearing for the respective parties and perused the application, the affidavits, the written note of submissions and the case diary including the chargesheet and the proposed chargesheet prepared for submission by the Investigating Agency.

6. At the very outset, it is made abundantly clear that this Court has all the power to direct further investigation into the alleged offences and

if necessary, engage an independent and specialized agency like the Central Bureau of Investigation for such purpose. A constitutional Court can also direct reinvestigation into alleged offences provided a case is made out for the same. Such settled position of law has not been disputed by the respondents whose counterpoint is that these powers can be exercised only in exceptional cases.

7. So far as the question of delay is concerned, it is hardly an absolute bar in seeking justice for a victim, that too in a gruesome case of murder. Here, this Court had to be approached earlier in 2019. Thus, it has been an ongoing process. The State cannot expect that each and every time they commit an error or perpetrate injustice in a case, a citizen would have to rush to the Court forthwith every time, whatever comes. That apart, the ominous presence of the prime accused Sahajahan Sk in the area before his arrest in 2024 could not be overlooked. It was only after his arrest in the earlier case of mob violence that complaints could be lodged against him about alleged land-grabbing, sexual exploitation of women and other atrocities.

8. This is a rarest of rare case where in spite of there being ample evidence including the statement of eye witness that the prime accused Sahajahan Sk, an infamous anti-social of the locality having tremendous political influence and muscle power and ability to organize violent mobs, had led the attack on the victims and abducted the prime victim/deceased whose dead body was subsequently recovered, the Investigating Agency chose to merely keep him as a suspect along with

some others and not to file a chargesheet against him in the first occasion and for so long. It was only after such ludicrous outcome of investigation had been pointed out before this Court at the behest of the petitioner that the Investigation Agency, without taking leave of this Court, tried to file a chargesheet against the said accused and similar others before the Trial Court, but finally decided to keep the same only ready for filing.

9. It is needless to mention that the above act of non submission of the chargesheet against the prime accused in the first place was a complete travesty of justice.

10. It is elementary that if a person is caught in the act, the same cannot be wished away if he thereafter shows an attempt, that too a feeble one, to undo such wrong.

11. On merits, a careful perusal of the FIR and the materials collected during the first investigation clearly show that a *prima facie* case is made out against all the accused those who are now being attempted to be arraigned in the case all together. In support of the prosecution case, there are statements of witnesses including those of purported eye and/or pre-occurrence witnesses. The most important was the detailed account given by the de-facto complainant in the FIR. He was an alleged eye-witness. This was sufficient per se to implicate the prime accused. That apart, there were seizure lists for recoveries made and above all, the

medical evidence including the postmortem report and the DNA matching report.

12. This is despite the apprehension of the petitioner that the case might not have been investigated properly or all the relevant witnesses might not have been examined and the best evidence not collected. However, a proper investigation would have yielded further corroborative evidence and made the prosecution case foolproof.

13. When a brazenly faulty and biased conclusion can be arrived at during the first investigation of leaving out the prime accused, then the whole approach of the Investigating Agency in investigating the gruesome case of murder would become suspect and the aggrieved/petitioner would be quite justified in seeking further investigation by another investigating agency.

14. In this context, it is germane to refer to the initial allegations leveled by the petitioner including that the FIR was registered in time. In fact, this Court had to be approached earlier to seek appropriate further relief in this regard in 2019. Moreover, even the first charge sheet was filed belatedly resulting in the arrested accused getting statutory bail.

15. Although the de-facto complainant's FIR dated 09.06.2019 specifically contained the names of the prime accused Sahajahan Sk. and others, they were left out from the first charge sheet. Further statements were recorded on 23.08.2019 and 09.09.2019 excluding the above names. There was no reason or logic for the informant to have actually

made such further statements. Several similar other statements were allegedly recorded of other purported witnesses under Section 161 of the Code, which quite expectedly excluded the names of those accused. However, on 24.03.2024, the CID decided to record statements of the same de-facto complainant and two others namely, X (name withheld) and Y (name withheld), which contained those names and then decided to proceed towards filing the supplementary charge sheet.

16. The above facts show that the FIR and the statements including that of the Informant recorded immediately before the police prepared the Supplementary Charge Sheet implicated Sahajahan Sk and those others, but the earlier Section 161 statements hardly did so.

17. First, these bring the earlier statements of witnesses recorded by the police under Section 161 of the Code under a cloud of suspicion. These raise a reasonable doubt about whether such statements of witnesses were correctly recorded by the Investigating Officer.

18. Secondly, if the police wanted to correct the wrong filing charge sheet against the left out accused, they had all the opportunity and time to collect further evidence and to have statements of witnesses recorded before a learned Magistrate.

19. The existence of such suspicious exonerative statements allegedly recorded under Section 161 of the Code could be detrimental to the cause of justice as the Trial Court might decide to disbelieve any improvement to this made by a witness during trial, which might actually

be the correct version. One way of solving the crisis is to have reinvestigation done in order to allay all doubts. The other option is to expect further statements of all such witnesses to be recorded before a Magistrate. But, the present investigating agency did not do so.

20. That apart, although Section 201 of the Indian Penal Code was added as a charge, no effective investigation was done in this regard. In such peculiar circumstances as mentioned above where despite the presence of evidence in abundance against the prime accused, he was not proceeded against as an accused in the chargesheet, it would be an absolute imperative to find out whether there was any concerted effort or conspiracy behind such act. Was anyone trying to destroy evidence to keep the prime accused out of the fray? The process of investigation and its outcome cannot be the handiwork of the concerned Investigating Officer alone, especially in such an important case, although he may be primarily responsible for the same. This had to pass through the higher authorities. Therefore, it is required to be found out as to whether anyone was purposely and deliberately trying to save the prime accused Sahajahan Sk and other such accused from getting implicated in this case and going out of the way to have an incomplete chargesheet filed towards achieving such end. No further investigation whatsoever has been done in this regard.

21. The case at hand involves extreme depredations and perpetration of most brazen and brutal atrocities by the alleged miscreants. It deserves much more than the ramshackle investigation done by the

police that arguably had a stench of taint. Therefore, further investigation or re-investigation is an absolute imperative.

22. It is also germane to note that in respect of the earlier criminal cases filed against the said accused Sahajahan Sk, the Courts finally directed the central agencies to conduct such investigation after expressing disapproval against the State agencies. Pertinently, this Court had earlier constituted a Special Investigation Team consisting of officers from the CBI and the State agency to investigate alleged offences committed by the prime accused in respect of the mob violence that took place when officials of the ED went to investigate the said accused, but were attacked instead. The Division Bench of this Court finally directed the CBI to conduct such investigation after making certain scathing observations against the State police. This order was affirmed by the Hon'ble Supreme Court.

23. In fact, in this case too, first the local police then the CID failed in their duties that resulted in shielding of the influential accused. Then, after filing of the instant writ petition, the CID failed to properly account for the earlier faulty investigation and to look into the issue of possible consequent destruction of evidence. Effectively, they included the rest accused in the Supplementary Chargesheet on evidence collected earlier along with some subsequent statements recorded later and tried to show that the injustice that was perpetrated was being remedied, although without admitting such wrong. They ought to have done a more thorough

investigation, asked the de-facto complainant to throw further light and had further statements recorded before a Magistrate.

24. Equally disturbing was the attempt to file supplementary charge sheet without taking the leave of this Court inspite of there being an order of stay. It was only after this Court expressed surprise at such information provided on behalf of the petitioner on 01.04.2024 that the police desisted from proceeding further and only kept the proposed supplementary charge sheet ready for filing. In fact, it was submitted on behalf of the State that such attempt had been made due to some misunderstanding.

25. It appears that whenever allegations are levelled against the said accused Sahajahan Sk, the State police tend to falter, be it in the above referred case of mob violence against the ED Officials or in the instant case. In this, no distinction can be made between the local police (as in the said earlier case) or the CID (as in the present case).

26. In the present case too, which has even more serious charges, I find that the police failed to take action against the prime accused at different stages, leading to gross miscarriage of justice. It would, thus, not be in the interest of justice to again give the reins of investigation to them. Therefore, in order to instil confidence in the public and to ensure that justice is meted out to all, it would be fit and proper to direct the CBI to conduct the further investigation of the instant case.

27. This Court has taken note of the fact that some investigation was done after the patently illegal act of deleting the prime accused from the chargesheet was detected and canvassed before this Court. Some evidence had also been collected during the first investigation. Therefore, directing *de novo* investigation or reinvestigation may only complicate things further by leading to omission of untainted relevant evidence. It would, therefore, be in the interest of justice that the further investigation is conducted by independent agency. It will be for them to decide whether to have statements of all relevant witnesses including those examined earlier recorded before a Magistrate. It shall also be open to them to examine more witnesses or leave out unreliable ones in their report/s.

28. In view of the above discussions, I direct the CBI to conduct further investigation in this case with the hope that they would treat the case with utmost seriousness that it deserves. The CBI shall constitute a Special Investigation Team in this regard at the earliest and the further investigation shall be done under the supervision of a senior officer of the rank of Joint Director. The further investigation shall be monitored by the jurisdictional Court. The CBI shall also be at liberty to take steps for ensuring protection of witnesses. The State respondents are directed to handover the case diary and all materials collected during investigation to the CBI forthwith.

29. With these observations and directions, the writ petition is disposed of.

30. Urgent certified copy of this order be supplied to the learned counsels for the parties upon compliance of usual formalities.

(JAY SENGUPTA, J.)