IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLMP No.1464 of 2024
CNR No. ODHC010771862024

Narahari Behera .... Petitioner
Mr. J. Katikia, Advocate

-Versus-

State of Odisha and others .... Opposite Parties
Mr. S. Panda, ASC

CORAM:
JUSTICE R.K. PATTANAIK
DATE OF HEARING:11.08.2026
DATE OF JUDGMENT:13.11.2026

1. Instant petition is filed by the petitioner for issuance of a writ of mandamus directing opposite party No.1 to handover the investigation in connection with Dharmasala P.S. Case No.670 of 2024 corresponding to C.T. Case No.2074 of 2024 pending in the file of the learned J.M.F.C., Chandikhole, Jajpur to the CID CB, Odisha, Cuttack for an impartial and fair investigation on the grounds stated.

2. It is pleaded on record that the petitioner's minor son, who is the deceased, was brutally murdered in a planned way and the investigation has been botched up on account of political interference and as a result, the real assailants have gone scot-free, hence, the demand for a thorough investigation by the CID CB,

Odisha, Cuttack thereby handing over the case to opposite party No.5 for the aforesaid purpose.

3. A copy of the FIR leading to the registration of Dharmasala P.S. Case No. 670 dated 4th September, 2024 under Section 137(2) of BNS is at Annexure-1.

4. From the record, it is made to understand that on 5th September, 2024 at about 6.00 A.M. in the morning, the petitioner, namely, the informant received information about a dead body lying near his shop and on reaching there found it of the deceased son with multiple cut injuries on his body. On an intimation given to opposite party No.4, the case was converted to one under Sections 103(2) and 238(a) BNS. It has been further alleged that the deceased was having love affair with the sister, namely, Halima Khatun of the accused juvenile, whose house is situated near the spot. According to the investigation, the accused juvenile, namely, Md. Sarfaraj Alam, who happens to be the brother of said Halima Khatun was interrogated and during such interrogation, he confessed to have committed the crime. As per the confessional statement, the said accused found his sister above named in a compromising position with the deceased, who was chased by him and was assaulted by means of a 'Katuri'. According to the confession of the said accused, he gave four to five blows on the person of the deceased while chasing him and finally,

when the latter fell down near the canal, returned from there and concealed the said weapon and disclosed about the incident to the accused mother, namely, Jahanara Bibi, who advised him not to reveal the incident to anyone and instead washed the clothes of the accused son and also disturbed the spot of occurrence with an intention to conceal the evidence and to screen the offender. Basing upon such confession, the accused son and mother were arrested. Upon closure of investigation, the chargesheet dated 8th December, 2024 was filed under the alleged offences keeping the further investigation open in terms of Section 193(8) BNSS.

5. The petitioner alleged that the investigation has never gone beyond the confession of the accused CCL. It is claimed that the entire investigation has been confined to the confession only. It is further alleged that the petitioner has reliably learnt that besides the accused persons chargesheeted, others of their family including the sister with whom the deceased had love affair were involved in the crime and it was executed in a planned manner and that involvement of hired killers cannot be ruled out. The accused family is alleged to be strong supporter of the local MLA and according to the petitioner, the police did not go deep into the matter to find out the involvement of other culprits and it was avoided on the premise that there may be outbreak of communal riot. The petitioner claims that time and

again, he requested opposite party No.4 to have a fair investigation but all his attempts were in vain and hence, approached opposite party No.3 with a representation and also the local MLA but there has been no any support received and it strengthened the suspicion regarding the involvement of others in the crime. The copies of the representation addressed to opposite party No.3 and the local MLA are at Annexures-2 and 3 respectively. Further referring to the P.M. Report at Annexure-4 and the nature of injuries received by the deceased, it is claimed that accused CCL, who is 15 year old, alleged to be responsible for causing death of the deceased, is highly improbable. In other words, the involvement of the accused juvenile in the death of the deceased is difficult to believe having regard to the nature and extent of injuries revealed in the P.M. Report, as is pleaded. The petitioner claims that in all probability, the investigation has been derailed and therefore, to unearth the involvement of any others and the exact cause of murder of the deceased, who is the only child of the petitioner, the same is required to be handed over to the CID CB, Odisha. It is suspected that the deceased son was cunningly taken to the house of the accused juvenile and was confined there and was assaulted by means of a sword and subsequently, his body was shifted to the spot, where it was finally found and hence, it is quite impossible on the part of

the juvenile to execute the same by himself and therefore, having regard to the circumstances under which the crime was committed with recovery of incriminating evidence in the spot house, it is absolutely essential that the investigation should be conducted by the CID CB, Odisha in the interest of justice.

6. Heard Mr. Katikia, learned counsel for the petitioner and Mr. Panda, learned ASC for the State.

7. Mr. Katikia, learned counsel for the petitioner would submit that the deceased was 17 years old and in the night of occurrence, he was found missing after leaving his house at around 6.00 P.M. and did not return till 9.00 P.M. and despite a frantic search by the petitioner, could not be traced out till 2.00 AM. and on the next day morning, the deceased phone was found to be switched off. Referring to the FIR, it is submitted that two to three days prior to the death of the deceased, he was found arguing with someone over phone and on being asked, it was revealed by him about having a quarrel with a friend, namely, Srinibas Khatua @ Nandi and hence the suspicion that he was kidnapped after such quarrel. According to Mr. Katikia, learned counsel, after the FIR was lodged on 4th September, 2024, no such investigation was carried out, as to what had happened over which the deceased had quarrel with his friend. On 5th September, 2024 at 6.00 A.M. the dead body of the deceased was floating

in a nearby water body and referring to the same and circumstances leading to incident, it is reiterated by Mr. Katikia, learned counsel that investigation never proceeded beyond the confession of the juvenile accused. It is claimed that the investigation failed to adopt the necessary procedures to reach at the truth. It is further claimed that the juvenile accused alleged to have given the blows on the face of the deceased while he was chased. The submission is that such blows were expected to land on the backside of the deceased but the injuries as per the P.M. Report were on the head and its front side and by no stretch of imagination, one can believe that the blows on the face could be possible, while he was being chased. It is submitted that the deceased was killed in the night of 3rd September, 2024 and in course of search of the house of the accused blood drops were found along with other incriminating substance collected and seized by the police of 5th September, 2024, hence, there was need for a detailed investigation to find out as to how the deceased was assaulted and had it really been at the spot where it is claimed by the juvenile accused or inside the house of the accused persons. Mr. Katikia, learned counsel submits that the house of the accused was searched and there inside, blood drops were found from the first floor of Room No.1 along with one 'RAKHI' from the roof top of the house and two pieces of yellow colour plastic ropes and even though the said

articles have been seized by the police, no further investigation was conducted as to whether, the alleged assault to the deceased was inside the spot house after confinement. The role of the friend of the deceased, who had dropped him near the house of the accused was not enquired into and despite presence of other suspicious circumstances, the investigation was confined to the confession at the juvenile accused. Further, the claim is that the body of the deceased was found in a 'Nala' in floating position and the death by drowning has been ruled out in view of the forensic report, rather the P.M. Report revealed that there was antemortem injuries and in view of the injuries, it was a homicidal death and with such an argument advanced, Mr. Katikia, learned counsel refers to Chapter-20 of Modi's Medical Jurisprudence and Toxicology. The submission is that the deceased was killed and his body was thrown into the water body and hence, no a case of drowning, inasmuch as, diatom could not be detected. Furthermore, the contention is that no investigation has been carried out with the interrogation of other family members and neither all of them have been questioned nor CDR analysis was made to obtain the call details of the suspected persons, instead, on account of confessional statement of the juvenile accused, the investigation was completed alleging him to be the author of the crime and the mother accused as an abettor. Under the above circumstances, Mr. Katikia,

learned counsel pleads for a fresh investigation into the alleged incident with a primary object to ascertain the involvement of anyone else in the killing of the victim.

8. Mr. Panda, learned ASC, on the other hand, would submit that the detailed investigation has been conducted and there is nothing to suspect the involvement of the juvenile accused, who without anyone's influence, described the alleged incident and on the basis of such disclosure made, he was taken to custody and chargesheeted along with the accused mother, who allegedly played a role of abettor. The further submission is that the said accused, who after being informed by the juvenile son, committed certain overt acts to make the evidence disappear and hence, has been implicated and there has been no any evidence revealed about the involvement of his other family members. The incriminating materials collected at the crime scene have been subjected to forensic examination and upon receiving the C.E. & Diatom Test Reports, the chargesheet was filed keeping the investigation open under Section 193 BNSS. According to Mr. Panda, learned ASC, it is a case of pure and simple assault by the juvenile accused finding his sister in the company of the deceased in a compromising position and no other evidence was available to suggest involvement of his other family members and hence, no need for any investigation to be handed over to the CID CB, Odisha. It is further submitted that

the confessional statement of the juvenile accused leading to the discovery of the weapon of offence connects to the alleged incident and probablizes the assault with the nature of injuries sustained by the deceased and as such, in absence of any suspicious circumstances, it is not a case of investigation by the CID CD, Odisha, as is pleaded.

9. Perused the CE Report and the findings therein and the result of examination reveals that the exhibits with human blood stain could not determine its group due to degradation of the samples sent. The Serology Report and the opinion of DNA profiling have been enclosed therewith for reference. Similarly, the blood stains could not be detected in some of the exhibits after forensic test. The diatom could not be noticed as well. From the said reports, it is suggested that the death of the deceased is not on account of drowning but a homicidal one for having suffered the injuries described in the P.M. Report. The question is whether such death of the deceased was primarily at the behest of the juvenile accused or in connivance with other family members being involved besides his mother? The petitioner suspects the involvement of the family of the accused and also outsiders alleging that the crime has been committed in a planned manner and the body of the deceased was disposed of much later and that the circumstances leading to the recovery of the body of the deceased further suggests that the death was not

after any such assault by the juvenile accused but a killing having taken place inside their house and thereafter, secretly disposing it of and thrown into the 'Nala'. No one found the dead body for nearly two days, hence, the suspicion is that the deceased was killed inside the spot house and his body was surreptitiously removed from there and thrown into the water body, otherwise, it could have been noticed in the next day morning itself and therefore, the demand for investigation by the CID CB, Odisha.

10. Mr. Katikia, learned counsel relied on the following decisions, such as, **Hasanbhai Valibhai Qureshi Vrs. State of Gujarat and others (2004) 5 SCC 347** and **Dharam Pal Vrs. State of Haryana and others (2016) 4 SCC 160** to contend that in order to instill faith in the victim's family, investigation by any other agency is essential. It is contended that the power of a Constitutional Court to direct de novo or further investigation or reinvestigation by some other agency other than the local police may be directed in a given to ensure fair and just investigation.

11. In **Hasanbhai Valibhai Qureshi** (supra), the Apex Court concluded that further investigation may be considered and not to be denied merely for the fact that it may delay the trial and in a case, where such investigation is necessary and the police can conduct such investigation even though a Court has taken

cognizance of the offences alleged. It has also been concluded therein that when fresh facts (absence in earlier investigation) come to light, the police is required to inform the Court and seek permission to make further investigation. In **Dharam Pal** (supra), the Apex Court held and observed that commencement of trial and examination of some witnesses cannot be an absolute impediment for exercising Constitutional power as such jurisdiction is meant to ensure fair investigation and when it is necessary, further investigation or de novo or reinvestigation may be directed by some other Investigating Agency. In the case (supra), the Apex Court referred to one of its earlier decisions in **State of West Bengal Vrs Committee for Protection of Democratic Rights, West Bengal and others (2010) 3SCC 571**, wherein, the contention was that a detailed chargesheet had been filed and thereafter a supplementary chargesheet to bring whom the guilt of the accused and for the direction given for further investigation held and concluded in accordance with Section 173(8) Cr.P.C and thus, no need for any investigation by such other agency, it was opined that regard being had to the nature of crime and the persons involved the investigation could not be said to be satisfactory thereby repealing such contention advanced with the chargesheets being filed further observing that such investigation by the CBI is necessary

in the circumstances in order to instill confidence in the minds of the victim and also public at large.

12. If certain circumstances unerringly suggest that investigation is not accomplished satisfactorily, further investigation or a reinvestigation may be directed by a Constitutional Court. As earlier discussed, referring to the case laws cited (supra), investigation may be handed over to any other agency when certain facts revealed incomplete investigation or completion of investigation without taking judicial notice of some facts which could have thrown light regarding involvement of some others in the commission of the crime, or that in a case where, it is highly improbable to believe and accept the fact that the alleged incident is an outcome of involvement of the accused only and none else when it is read in juxtaposition to the material evidence collected during investigation.

13. The body of the deceased was found floating in a 'Nala'. The said fact is not in dispute. It is revealed from the Inquest Report that the deceased was found inside the water body. The P.M. Report reveals external injuries ante mortem in nature to have been received by the deceased possibly by a sharp cutting weapon. The time since death is between 36 to 48 hours of autopsy. The medical opinion has been collected by the IO and it is suggested therein that the death is an account of fatal injuries received by the

victim probably caused by the weapon of offence. The juvenile accused made the confession during investigation. Such confession is not admissible in view of Section 25 of the Indian Evidence Act. But the statement of the said accused is admissible only to the extent as to the leading to discovery of the weapon of offence. The record reveals that the weapon i.e. 'Katuri' was recovered at the instance of the juvenile accused. Such revelation has been made by the police after interrogation of the said accused. The seizure memo dated 11th September, 2024 suggests that the weapon of offence was discovered with the help of the accused juvenile, namely, Raja @ Md. Sarfaraj Alam. The statements of the witnesses to the recovery have been recorded during investigation. The juvenile accused claimed that he found the deceased in a compromising position with his sister and hence, chased and while he was running to escape, assaulted him. The seizure of blood stains from the spot house is also revealed. The seizure memo dated 5th September, 2024 suggests that blood stains were collected from the floor of Room No.1 of the house of Md. Iqbal Alam, namely, father of the juvenile. Along with that, the said seizure memo further reveals a 'Rakhi' collected from the roof of the cattle shed of the house and blood stained yellow colour plastic rope from the spot itself. The plea of the petitioner is that the said articles even

though seized after being collected from the spot have not been subjected to forensic examination.

14. As it is made to understand, the case at hand is predominantly rested on the confession of the juvenile accused and disclosure made by him to the accused mother. As per the statement of the sister of the juvenile accused examined during investigation, the deceased was dropped near their house by one of his friends but not disclosing such other facts about her meeting him, which is quite obvious. The juvenile accused is about 15 years old by then and he said to have chased the deceased and assaulted It is claimed by the accused's sister that both of them spent time together for about 10 minutes and thereafter, the deceased left and did not reply to her message and later found him dead near the 'Nala'. But as it appears, the investigation is entirely dependent on the disclosure made by the juvenile accused. Under what circumstances, the blood drops were found inside the spot house have not been described at the end of the investigation. No evidence is on record to suggest that the investigation to have been conducted with the thorough scrutiny of the CDR details. Admittedly, the body was found after two nights and it was with the injuries on the person of the deceased. How and under what circumstances, the body of the deceased was found in a 'Nala' in a floating condition is something which needed a satisfactory explanation. According to

the juvenile accused, he chased and assaulted the deceased couple of times and he stumbled upon the ridge and fell near the 'Nala'. If such is the disclosure made, which is again not admissible as evidence being a confession, recovery of the dead body in a floating position found in a 'Nala' owes an explanation. The suspicion of the petitioner is that the juvenile accused could not have orchestrated the crime single handedly in disposing of the body of the deceased into the 'Nala'. Furthermore, the death is not on account of any drowning as suggested from the Diatom Test Report. The investigation ought to have thrown light with the collection of evidence particularly with regard to the recovery of the dead body from the Nala as it could not have been disposed of by the juvenile accused himself. If the assault was outside the house, was it that the blood stains were found after the juvenile accused returned home with the weapon of offence. The investigation ought to have been in a direction to find out and ascertain as to whether such evidence like blood stains inside the house of the accused had really to do anything with the involvement of others including other family members of the accused persons. Under the above circumstances, a question would arise whether investigation should have been more extensive instead of concluding it primarily relying on the disclosure made by the juvenile accused. Having regard to the submissions of learned counsel for the respective

parties and the principles delineated by the Apex Court in the decisions (supra), it has to be considered whether the investigation is adequate and needs no further inquiry or handing over of the same to the CID CB.

15. The Constitutional courts can order a fresh or further investigation by an independent agency, if major contradictions, such as, physical evidence indicating the crime might have taken place inside a house while the prosecution claims it to have happened outside and the same is not clarified, etc. or in a given circumstance, to prevent miscarriage of justice. Under Section 173(8) of the CrPC, now Section 193(9) of the BNSS), a Magistrate can order further investigation by the same police, if new facts emerge. Such is not the case herein as nothing is brought to the notice of this Court about any such development having taken place, in the meantime. The Courts' exercise the power for reinvestigation or further investigation sparingly and only when the initial investigation appears tainted, biased or fundamentally flawed or based on evidence, which is inadmissible.

16. Under Indian Evidence law, a confession made to a police officer is completely inadmissible. Even if recorded before a Magistrate, a confession standalone is considered a weak piece of evidence and requires independent corroboration from physical or circumstantial facts. Furthermore, the exact place of

occurrence is a foundational fact in any criminal prosecution. If physical or forensic evidence could potentially prove the crime happened inside a house, while the prosecution's chargesheet claims it outside, it creates a fatal inconsistency. According to the settled position of law, further investigation or its transfer to an independent agency can be directed even after the chargesheet is filed provided there appears a glaring contradiction or inconsistency between the physical evidence and the prosecution's narrative.

17. When the sole basis of a chargesheet is a confession and the prosecution's claim scene of crime (outside) directly contradicts physical evidence (inside a house), the investigation is legally considered perfunctory. In such a situation, under Section 173(8) CrPC read with Section 193(9) of the BNSS, a Magistrate can direct further investigation by the same police agency before trial commences, but cannot order a re-investigation or transfer the probe to a different agency like the CBI or CID. If evidence is confined to suit a confession while ignoring forensic or physical evidence, a direction may be had for re-investigation or further investigation since failure in ensuring a fair investigation is in gross violation of Article 21 of the Constitution of India. As earlier discussed, a confession made to a police officer is completely inadmissible and even a judicial confession under Section 183 BNSS cannot sustain a

conviction, if it is contradicted by medical or physical evidence on the place of occurrence.

18. The Apex Court have laid down principles on post-chargesheet transfers and defective investigation. In **Vinay Tyagi Vrs. Irshad Ali and others (2013) 5 SCC 762**, there is a clarification on the distinction between further investigation and re-investigation. In **Dharam Pal** (supra), it is held that the Constitutional courts can transfer investigation to an independent agency like the CBI even after the chargesheet has been filed and trial has commenced, if doing so appears necessary to ensure a fair trial and uphold public confidence. In **Pooja Pal Vrs. Union of India and others (2016) 3 SCC 135**, the Apex Court ruled that filing a chargesheet does not curtail the extra-ordinary jurisdiction of a High Court or the Supreme Court to hand over the probe to another agency, if the initial police investigation was biased, incomplete, or designed to shield the real truth. In **Hasanbhai Valibhai Qureshi** (supra), it has been emphasized that the prime consideration for ordering further investigation is to arrive at the truth and to do substantial justice and procedural technicalities or delays cannot bar a probe into crucial overlooked evidence. In **Babubhai Vrs. State of Gujarat and others (2010) 12 SCC 254**, it is held that a tainted and biased investigation vitiates the entire trial process, and where the investigating agency manipulates the facts or scene of occurrence, the Court must step in to order a fair

probe. In **Bharati Tamang Vrs. Union of India and others (2013) 15 SCC 578**, it has been ruled that if deficiency in investigation or prosecution is visible, or if the police try to shield the real culprits by fabricating the scene or story, the Constitutional courts must intervene and order further investigation or transfer it to an independent agency, even after the chargesheet is filed to ensure a fair trial. In fact, in **Pooja Pal** (supra), the Apex Court held that a fair investigation is a fundamental right under Article 21 of the Constitution. Even after a chargesheet is submitted, if the investigation suffers from glaring loopholes or ignores vital physical evidence, the investigation may be entrusted to an independent agency to instill public confidence.

19. In fact, in **Puja Pal** case, the Apex Court held and observed in the following words, such as, the precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like the CBI, submission of the chargesheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victims and the public in general in the justice administering mechanism is unquestionably absolute and hallowed by time. Such a measure however can by no means be a matter of course or routine but has to

be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour by treating all alike; in the decisions cited on behalf of the CBI as well, this Court in **K. Saravanan Karuppasamy** *and another Vrs. State of Tamil Nadu and others 2014 10 SCC 406* and **Sudipta Lenka** *Vrs. State of Odisha and others 2014 11 SCC 527* supra (italicized for reference) recounted the above propositions underpinning the primacy of credibility and confidence in investigations and a need for complete justice and enforcement of fundamental rights judged on the touchstone of high public interest and the paramountcy of the rule of law; the judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like the CBI, whether or not the probe into a criminal offence by the local/state police is pending or completed, irrespective of the pendency of the resultant trial have concretized over the years, applicability whereof however is contingent on the factual setting involved and the desideratum for vigilant, sensitized and evenhanded justice to the parties; the exhaustive references of the citations seemingly repetitive though, assuredly attest the conceptual consisting in the expositions and enunciations on the issue highlighting the cause of

justice as the ultimate determinant for the course to be adopted.

20. In the present case, this Court finds that the entire case revolves around the confessional disclosure of the juvenile, who claimed to have committed the crime. Law does not allow a confession as admissible but the discovery made as a result is considered a piece of evidence subject to its scrutiny during trial. The circumstances, such as, incriminating evidence found inside the house of the accused persons but absence of any clear and definite conclusion about its presence and probative value; recovery of the body of the deceased nearby floating in a water body having not been noticed immediately after his disappearance; contrast claim of the juvenile not able to connect as to how the deceased was found in a floating condition, which is possible in ordinary circumstances only if the body is disposed of or shifted from the crime scene; absence of any evidence to clarify as to how the incriminating articles were found inside the house when the crime said to be committed outside etc. Whether, it was possible for a juvenile to execute the assault or anyone else's involvement in the death of the deceased, considering the circumstances under which the dead body was found and recovered, needs a clarification, which is conspicuously absent. Excessive dependence on a confession would be fatal to a prosecution during trial, hence, always safe to have additional evidence in

place. Whether, the materials on record really clears the cloud of suspicion only with the involvement of the juvenile accused? All the doubts illustrated hereinabove deservedly needs a reply, hence, considering the materials on record, this Court is inclined and in favour of a thorough probe and further investigation by the CID CB to elicit the truth on the death of the deceased and at the same time, to ensure ruling out involvement of anyone else in the commission of the crime.

21. Accordingly, it is ordered.

22. In the result, the CRLMP stands disposed of with a direction for further investigation in connection with Dharmasala P.S. Case No.670 of 2024 corresponding to C.T. Case No.2074 of 2024 pending in the file of the learned J.M.F.C., Chandikhole, Jajpur by the CID CB, Odisha. It is further directed that the chargesheet and connected materials collected during investigation by the local police shall forthwith be handed over to opposite party No.5 for further investigation, which shall be concluded within a reasonable time may be upon filing of additional/supplementary chargesheet.

(R.K. Pattanaik)
Judge

Balaram

Signature Not Verified
Digitally Signed
Signed by: BALARAM BEHERA
Designation: Personal Assistant
Reason: Authentication
Location: OHC, CUTTACK
Date: 17-Nov-2026 18:00:35