

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 5th OF AUGUST, 2022

WRIT PETITION NO. 18055 OF 2022

Between:-

**LAXMAN YADAV S/O LATE SHRI
JANKI PRASAD YADAV, AGED 50
YERAS, OCCUPATION
SHOPKEEPER, R/O 225, HOLIPURA
DATIA, DISTRICT DATIA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PRASHANT SHARMA - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
DEPARTMENT OF HOME, VALLABH
BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTER,
JAHANGIRABAD, BHOPAL (MADHYA
PRADESH)**
- 3. SUPERINTENDENT OF POLICE,
DATIA, DISTRICT DATIA (MADHYA
PRADESH)**
- 4. DHAWAL SINGH CHOUHAN, STATION**

**HOUSE OFFICER, POLICE STATION
DATIA, CIVIL LINES, DATIA
DISTRICT DATIA (MADHYA
PRADESH)**

- 5. WILLIAM SARAS, POLICE STATION
DATIA CIVIL LINES, DATIA,
DISTRICT DATIA (MADHYA
PRADESH)**

.....RESPONDENTS

**(SHRI A.K. NIRANKARI – GOVERNMENT ADVOCATE FOR
STATE)**

*This petition coming on for hearing this day, the Court passed the
following:*

ORDER

This petition under Article 226 of the Constitution of India has
been filed seeking following relief:-

- i. The investigation of Crime number 240/2022, 241/2022 lodged at P.S. Datia Civil Lines, Datia be transferred to independent investigating agency; and/or
 - ii. The respondent authority be directed to inquire into conduct of respondent officials in registration of criminal case against the petitioner;
 - iii. Respondent authority be directed to take disciplinary action against respondent no. 4 and 5 in relation to their act and conduct further enquiry be initiated and if they are found involved in act of crime appropriate action be directed to be initiated.
 - iv. The CCTV footage / record be directed to be protected of date 4-7-2022 from 12:00 AM to 6: AM.
- Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted.”

2. It is submitted by the counsel for the petitioner that within a span of 6 minutes, three FIRs have been registered against him, i.e., Crime No.239/2022, Crime No.240/2022 and Crime No.241/2022. It was deliberately done with a solitary intention to deprive the petitioner to canvass in favour of his wife who was contesting the election for the post of Councilor in Municipal Council, Datia. It is submitted that the FIRs in question have been registered under the pressure of Ruling Party and, therefore, the investigation should be transferred to other Agency.

3. Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that when the house of the petitioner was searched, it was found that huge quantity of contraband, liquor as well as illegal weapon were kept in his house and, accordingly, three FIRs have been registered. Crime No.239/2022 has been registered by Police Station Datia Civil Lines, District Datia for offence under Section 34(2) of M.P. Excise Act, Crime No.240/2022 has been registered by Police Station Datia Civil Lines, District Datia for offence under Section 25(1) of Arms Act and Crime No.241/2022 has been registered by Police Station Datia Civil Lines, District Datia for offence under Section 8/20 of NDPS Act. It is submitted that it is clear from the FIR recorded in Crime No. 241/2022 that it was specifically mentioned that when the house of the petitioner was raided, there was a smell of country made liquor as well as *ganja*. 500 grams of ganja was seized from the possession of the applicant. Accordingly, Crime No.241/2022 was registered against the petitioner. Similarly, one country made loaded *Katta* of .315 bore was also seized from the house of the applicant. Since the applicant was not having any license for possessing the same, therefore, Crime

No.240/2022 has been registered against the petitioner. Similarly, 7 boxes of country made liquor containing 350 quarters were also seized from the possession of the applicant and, accordingly, Crime No.239/2022 has been registered. Since it was found that the applicant has committed three different offences under different statutes, therefore, three different FIRs have been registered. Whether the Investigating Agency should have registered a solitary FIR pointing out the commission of aforesaid offences or it was right in registering three different FIR for different offences will not attribute any malafide to the Investigating Officer. The applicant being an accused has no right to get the Investigating Agency changed even otherwise there is no procedural lapse in the matter. Since all the illegal articles, i.e., illicit liquor, *ganja* and *Katta* were found in a single raid, therefore, it cannot be said that the petitioner was deliberately framed in three different crimes.

4. Heard the learned counsel for the parties.

5. It appears that the house of the petitioner was raided and it was found that the applicant was in possession of 63 bulk liters of country made liquor, 500 grams of ganja and one .315 bore loaded Katta. If the Investigating Officer in his wisdom has registered 3 offences, then it cannot be said that the act of the Investigating Officer was malafide or deliberate against the applicant. Furthermore, the Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

“24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In *Narmada Bai v. State of Gujarat*, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating

agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)

“64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them.”

(emphasis supplied)

25. Again in *Sanjiv Rajendra Bhatt v. Union of India*, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)

“68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha, Mayawati v. Union of India, Dinubhai Boghabhai Solanki v. State of Gujarat, CBI v. Rajesh Gandhi, CCI v. SAIL and Janata Dal v. H.S. Chowdhary.”

(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in *E. Sivakumar v. Union of India*, while dealing with the appeal preferred by the “accused” challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

“10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra, in particular, para 11 of the reported decision wherein the Court

observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.”

27. This Court in *Divine Retreat Centre v. State of Kerala*, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in *State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*¹³ In paragraph 70 of the said decision, the Constitution Bench observed thus:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 38 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned,

although no inflexible guidelines can be laid down to decide whether or not such power 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 the 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.”

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39 Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation

and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that 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.....”

6. This Court in the case of **Prabal Dogra vs. Superintendent of Police, Gwalior and State of M.P.** by order dated **30.11.2017** passed in **M.Cr.C.No.10446/2017** has held that the accused has no say in the matter of investigation.

7. Since the petitioner, who has been arrayed as an accused in the impugned FIR, has no right to seek a direction from this Court for conducting the investigation in a particular manner and even otherwise, in the light of the judgment passed by the Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary** reported in **AIR 2014 SC 666**, this Court cannot supervise the investigation, this Court is of the

considered opinion that prayer sought by the applicant cannot be granted.

8. Since the petitioner has failed to point out any illegality on the part of the Investigating Agency, no case is made out for transferring the investigation to any Investigating Agency.

9. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Abhi