

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 28th OF NOVEMBER, 2022

WRIT PETITION No.7097 OF 2022

Between:-

**ASHOK RAWAT S/O LATE SHRI SURESH
RAWAT, AGED 35 YEARS, OCCUPATION
AGRICULTURIST, R/O BAJNA POST
BAJNA, TAHSIL BHITARWAR, DISTRICT
GWALIOR (MADHYA PRADESH).**

.....PETITIONER

(BY SHRI NIRMAL SHARMA - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
DEPARTMENT OF HOME,
VALLABH BHAVAN, BHOPAL (M.P.)**
- 2. DIRECTOR GENERAL OF
POLICE, POLICE HEADQUARTERS,
BHOPAL (M.P.)**
- 3. SUPERINTENDENT OF
POLICE, GWALIOR, DISTT.
GWALIOR (M.P.)**
- 4. STATION HOUSE OFFICER,
POLICE STATION BHITARWAR,
DISTRICT GWALIOR (M.P.)**
- 5. CENTRAL BUREAU OF
INVESTIGATION, THROUGH
DIRECTOR, CENTRAL BUREAU OF
INVESTIGATION, BHOPAL (M.P.)**

.....RESPONDENTS

**(BY SHRI A.K. NIRANKARI ADVOCATE FOR STATE &
SHRI SHASHANK INDAPURKAR – ADVOCATE FOR CBI)**

Heard on : 24th – November -2022
Delivered on :

*This writ petition coming on for hearing this day, **Hon'ble Shri Justice G.S. Ahluwalia**, passed the following:*

JUDGEMENT

1. This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :

(i) That respondent may kindly be directed to initiate departmental action against culprits of Crime No.295/2019 and conclude the same within stipulated time.

(ii) The investigation of Crime No. 295/2019 Registered at Police Station Bhitwar, District Gwalior be transferred to CBI for further investigation and accordingly, they be directed to submit final report within stipulated period.

(iii) That respondent be further directed to pay compensation to the petitioner/victim of such custodial death to the tune of RS. 1 crore which be further directed to be recovered from pocket of culprits.

(iv) That cost of the litigation may also kindly be awarded to the petitioner.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.

2. According to the petitioner, the facts necessary for disposal of present petition in short are that on 10-8-2019, some argument took place between the father of Petitioner and one Khemu Shakya as they were

having adjoining land. Over the said dispute, both of them went to Police Station Belgada. The police officials of Police Station Belgada, lodged the report of Khemu and the father of the petitioner was taken in custody. When the father of the petitioner insisted for lodging his report also, then the police personals, instead of registering his complaint, mercilessly beaten him, as a result he lost his life due to injuries received in the assault. Petitioner, immediately reported the incident to higher officials but no action was taken and after great efforts of the petitioner and his family members, FIR for offence under Section 302 of IPC was lodged against the S.H.O., Police Station Belgada and five other police personals. Thereafter, the matter was transferred to Police Station Bhitwarwar. The copy of FIR has also been annexed with the petition.

3. It is the contention of the Petitioner, that inspite of the fact that more than 3 years have passed, but the police has not filed the final report.

4. Accordingly, this Court by order dated 11-4-2022, issued notice. Thereafter, on 13-6-2022, the police filed the status report with an observation that the death of the deceased took place inside the lockup room due to negligent act as well as because of the fact that the deceased was kept in illegal detention. On 16-11-2022, the State Counsel prayed for time to file status report. Since, no further status report was filed, therefore, on 23-11-2022, following order was passed :

The alleged custodial death took place in the year 2019.

Unfortunately, the investigation has not come to an end.

Under these circumstances the State Counsel is directed to keep the case diary available on 24-11-2022 at 10:15AM.

The Investigating Officer shall remain present before this Court on the next date.

The State Counsel is also directed to address on the following question :

(i) Whether any other parallel enquiry including the Magisterial Enquiry shall have any effect on the outcome of the investigation which is being done under the provisions of Cr.P.C. or not?

5. Today, Shri Sanjay Chaturvedi, S.D.O. (P) Karera, Distt. Shivpuri is present along with the case diary.

6. Accordingly, the investigating officer was directed to read out the proceedings of investigation done by the investigating officers. It is submitted by Shri Sanjay Chaturvedi, that earlier Shri Atmaram Sharma, S.D.O.(P), Karera, Shivpuri was investigating the matter. Thereafter, the investigation was taken over by Shri G. D. Sharma, S.D.O.(P) Karera, Distt. Shivpuri and at present he is the investigating officer.

7. The respondents have filed their fresh status report on 24-11-2022. In the status report it is submitted that a status report was already filed on 10-6-2022. The present investigating officer took over the investigation, on 22-6-2022, however, he was busy in 3 tier panchayat elections from 27-5-2022 till 4-8-2022. Because of election duty, some delay has taken place, therefore, the investigating officer tenders his unconditional apology. The investigating officer, could not go through the case diary upto 16-8-2022, as he was busy in election duty. On 2-9-2022, the Distt. Prosecution Office, gave its legal opinion and on 23-11-2022, offence under Sections 306, 342 of IPC and under Section 7 of Prevention of

Corruption Act were added and accordingly, sanction has been sought for prosecution of A.S.I. Vijay Singh Rajput the then S.H.O., Head Constable Arun Mishra, Constable Dharmendra, Constable Neeraj Prajapati, Constable Vijay Kushwaha, and Sainik Ehsaan Khan.

8. It is submitted by Shri Sanjay Chaturvedi, S.D.O.(P) Karera, Distt. Shivpuri, that he has not seen the CCTV footage of the Police Station, although they are available. It is submitted that it is true that he did not do anything till 21-11-2022 and only when he received an information on 23-11-2022, that he has to appear before the High Court along with the police diary, thereafter, he rushed to Gwalior and without any further investigation and without considering the directions issued by the Distt. Prosecution Officer, he immediately added offences under Sections 306,341 of IPC and under Section 7 of Prevention of Corruption Act. The investigating officer clearly **admitted that he did not investigate the matter inspite of the fact that report of the Magisterial/Judicial Enquiry was already received and opinion of the District Prosecution Officer was also received and he has no explanation for sitting over the investigation except pleading for mercy and tendering apology.**

9. The Crux of the matter is that it is a case of custodial death in Police Station Belgada, Distt. Gwalior. The deceased against whom an FIR was lodged, was taken in custody and was restrained in the police station without formally arresting him. As per the police circulars, certain articles including *Safi* are not permitted in the Lockup. Police personals were present in the police station and the Lockup is visible from their tables and rooms. The door of the lock up is made up of iron rods, therefore, everything was visible from outside. In spite of that, the

deceased died in the lockup due to hanging. It is the submissions of the investigating officer, that the deceased was not arrested and inspite of that he succeeded in going inside the lockup and hanged himself.

10. **However, one thing is clear that although the custodial death took place in Police Station Belgada, Distt. Gwalior, on 10-8-2019, but the investigation was being done by S.D.O.(P) posted in Karera, Distt. Shivpuri, i.e., neighboring District and prima facie this must have been done by the police in order to project that free, fair and impartial investigation would be done by the police of different District, but unfortunately, the investigating officers kept the investigation in suspended animation for 2 ½ years. Thus, it is clear that, that right from the very beginning, the Gwalior police was actively involved in camouflaging the investigation.**

11. During the course of arguments, it was submitted by the Counsel for the State that five police personals i.e., A.S.I. Vijay Singh Rajput the then S.H.O., Head Constable Arun Mishra, Constable Dharmendra, Constable Neeraj Prajapati, Constable Vijay Kushwaha were placed under suspension on 10-8-2019 itself, but within six months, their suspension orders were revoked on 22-2-2020. Thus, it is clear that on one hand, the investigation was kept in suspended animation, and on the other hand, the suspension orders of the erring police officers who were on duty at the relevant time, were revoked. Thus, the Gwalior police has given undue advantage to the erring police officers by keeping the investigation in suspended animation.

Whether case can be transferred to CBI

12. By this petition, apart from other reliefs, the Petitioner has sought

for transfer of investigation to C.B.I. Therefore, before adverting to the facts of the case, this Court would like to consider the law laid down by Supreme Court and High Courts in this regard.

13. The Supreme Court in the case of **Nasima Vs. The State of Uttar Pradesh** by order dated **21-4-2022**, passed in **S.L.P. (Cri) No. 551/2022** has held as under :

The term “investigation’ as referred to under Section 2(h) of the Code includes collection of evidence conducted by the police officer or by any person who is authorized by the Magistrate on his behalf and that includes search for material evidence and facts to find out whether or not an offence has been committed by the accused or not?

The fair investigation is the backbone of criminal justice system and the object of the investigation is to search for the truth so that it would help in meeting the ends of justice by way of fair trial in Court. At the same time, the need to ensure fair investigation of crime is undoubtedly imperative because it protects at one level the rights of the victim and the fundamental rights of every citizen in ensuring that crime is investigated and dealt with in accordance with law.

14. The Supreme Court in the case of **Pravat Chandra Mohanty v. State of Odisha**, reported in **(2021) 3 SCC 529** has held as under :

34. The Division Bench of the High Court expressed its disagreement with the view taken by the Magistrate. The Court held that the matter was of a very great public concern. The Division Bench held the following in the above case : [*Provincial Govt. (Central Provinces & Berar) case*, SCC OnLine MP para 7]

“7. The matter is, however, aggravated when we find that the person who is said to have done the cheating is a clerk of the Court. All public servants attached to a court are trustees and guardians of the honour and integrity of the Court. It is a matter of grave import if any of them attempts to extract an illegal gratification or extort money from those who seek access to the courts, or endeavours

to lead them astray and, by abusing his position, tries to enrich himself. Persons in this class of life are looked upon as persons of influence and of some authority by the ordinary ignorant public. If therefore they abuse the position of confidence in which they are placed by reason of their office, it becomes a matter of great public concern. In our opinion, it is perverse to consider otherwise. If ever there was a case in which composition should have been refused, this is such a case.”

35. The ratio of the judgment is that in event people holding public office abuse their position, it becomes a matter of great public concern. We fully endorse the above view of the Nagpur High Court.

36. Present is a case where the offence was committed by the in-charge of Police Station Purighat, as well as the Senior Inspector, posted at the same police station. The police of a State is protector of law and order. The people look forward to the police to protect their life and property. People go to the police station with the hope that their person and property will be protected by the police and injustice and offence committed on them shall be redressed and the guilty be punished. When the protector of people and society himself instead of protecting the people adopts brutality and inhumanly beats the person who comes to the police station, it is a matter of great public concern. The beating of a person in the police station is the concern for all and causes a sense of fear in the entire society.

37. We may refer to the judgment of this Court in *Yashwant v. State of Maharashtra*, wherein this Court laid down that when the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instil confidence in the society. The following was laid down in para 34 : (SCC p. 584)

“34. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instil confidence in the society. It

may not be out of context to remind that the motto of Maharashtra State Police is “*Sadrakshnaya Khalanighrahanaya*” (Sanskrit: “To protect good and to punish evil”), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment on the accused herein.”

15. The Supreme Court in the case of **State of Punjab Vs. CBI** reported in **(2011) 9 SCC 182** has held as under :

30. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to CBI. The narration of the facts and circumstances in paras 2 to 9 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as CBI was absolutely necessary in the interests of justice.

31. Moreover, even though the High Court in the impugned order dated 11-12-2007 did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12-12-2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No. 82 of PS City I, Moga, till further orders. Thus, the High Court was of the view that even though the investigation is complete in one case and charge-sheet has been filed by the police, it was necessary in the ends of justice that CBI should carry out an investigation into the case.

32. In the recent case of *State of W.B. v. Committee for Protection of Democratic Rights* a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or

curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extraordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 CrPC to direct investigation by CBI for securing the ends of justice.

33. In the facts and circumstances of this case, however, the High Court has held that the State local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to CBI. In other words, this was one of those extraordinary cases where the direction of the High Court for investigation by CBI was justified.

16. The Supreme Court in the case of **Vinay Tyagi Vs. Irshad Ali**, reported in **(2013) 5 SCC 762** has held as under :

43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

17. The Supreme Court in the case of **State of W.B. v. Committee for Protection of Democratic Rights** reported in **(2010) 3 SCC 571** has held as under :

Conclusions

68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not

only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the

Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

18. The Supreme Court in the case of **Dharam Pal Vs. State of Haryana** reported in **(2016) 4 SCC 160** has held as under :

2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge

of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.

* * * *

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is

done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

19. The Supreme Court in the case of **Pooja Pal Vs. Union of India** reported in (2016) 3 SCC 135 has held as under :

72. While recalling its observation in *State of Bihar v. J.A.C. Saldanha*, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8) of the Code and that the adjudicatory function of the judiciary commences, thus delineating the well-demarcated functions of crime detection and adjudication, this Court in *Sampat Lal case* did recognise a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude.

73. It was reiterated in *Babubhai* that in exceptional

circumstances, the Court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and therefore, investigation ought to be fair, transparent and judicious, was re-emphasised. The expression “ordinarily” as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances, however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo.

74. The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided.

75. That the extraordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to CBI to conduct investigation must be exercised with great caution, was underlined in *Committee for Protection of Democratic Rights* as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

76. In *Kashmeri Devi*, being satisfied, in the prevailing facts and circumstances that effort had been made to protect and shield the guilty officers of the police who allegedly had perpetrated the offence of murder involved, this Court directed the Magistrate concerned before whom the charge-sheet had been submitted, to exercise its power under Section 173(8) of the Code to direct CBI for proper and thorough investigation of

the case and to submit an additional charge-sheet in accordance with law.

77. In *Gudalure M.J. Cherian*, this Court in a petition under Article 32 of the Constitution of India, lodged in public interest, did after taking note of the fact that charge-sheet had already been submitted, direct CBI to hold further investigation in respect of the offence involved. In recording this conclusion, this Court did take note of the fact that the nuns who had been the victim of the tragedy did not come forward to identify the culprits and that as alleged by the petitioners, the four persons set up by the police as accused were not the real culprits and that the victims were being asked to accept them to be so. The paramount consideration for the direction issued was to secure justice between the parties and to instil confidence in public mind. The same imperative did impel this Court to issue a similar direction for fresh investigation by CBI in *Punjab and Haryana High Court Bar Assn.* Here as well the investigation otherwise had been completed and charge-sheet was submitted.

78. This Court dealing with the proposition that once a charge-sheet is filed, it would then be exclusively in the domain of the competent court to deal with the case on merits in accordance with law and that the monitoring of the investigation would cease in all respects, held, in particular, in *K.V. Rajendran* in reiteration of the enunciations aforesaid, that though it is ordinarily so, the power of transferring investigation in rare and exceptional cases for the purpose of doing justice between the parties and to instil confidence in the public mind, can be made invoking its constitutional power available, to ensure a fair, honest and complete investigation.

79. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like CBI, submission of the charge-sheet 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 victim(s) and the public in general in the justice administering mechanism, is thus 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.

80. In the decisions cited on behalf of CBI as well, this Court in *K. Saravanan Karuppasamy* and *Sudipta Lenka*, 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.

20. The Supreme Court in the case of **Neelam Mishra v. Union of India**, reported in **(2017) 12 SCC 775** has held as under :

2. It is submitted by Mr V. Shekhar, learned Senior Counsel for the petitioner that there has been no proper investigation in respect of the crime in question and effort is being made for some unfathomable reason to treat it as an accident. True it is, some investigation has been carried out by the Crime Branch of Delhi Police after the case being transferred from Noida as there was total inaction by the Noida police. It is urged by Mr Shekhar, learned Senior Counsel that the material evidence, as is demonstrable, has been destroyed by the accused persons who have some influence and, therefore, it is a fit case to assuage the feelings of an anguished mother in search of justice to be transferred the investigation to CBI.

3. Mr Rana Mukherjee, learned Senior Counsel for CBI and Mr Ajit Kumar Sinha, learned Senior Counsel appearing for the Delhi Police though initially made an effort to put forth before the Court that the Delhi Police has taken extreme pains to solve the issue and, therefore, no fault can be found with its status report, later on they left it to the discretion of the Court.

4. At this juncture, we make it clear that we do not think that there has been any kind of laxity in the investigation carried out by the Delhi Police, but there can be no doubt that CBI is more equipped and the citizens of this country have faith in its investigating abilities.

5. In view of the aforesaid, we direct CBI to investigate into

the crime independently and file the status report before this Court within three months' hence. Needless to say, when CBI is conferred the responsibility by this Court to investigate into the crime, it has to investigate independently, impartially and objectively without being influenced by any kind of prior investigation or prior status report.

21. The Supreme Court in the case of **Bharati Tamang Vs. Union of India**, reported in (2013) 15 SCC 578 has held as under :

41. From the various decisions relied upon by the petitioner counsel as well as by respondents' counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

41.2. Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct

investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.

22. The Supreme Court in the case of **State of Punjab v. Davinder Pal Singh Bhullar**, reported in (2011) 14 SCC 770 has held as under :

VI. When CBI enquiry can be directed

71. In *Minor Irrigation and Rural Engg. Services, U.P. v. Sahngoo Ram Arya* this Court placed reliance on its earlier judgment in *Common Cause v. Union of India* and held that before directing CBI to investigate, the court must reach a conclusion on the basis of pleadings and material on record that a prima facie case is made out against the accused. The court cannot direct CBI to investigate as to whether a person committed an offence as alleged or not. The court cannot merely proceed on the basis of “ifs” and “buts” and think it appropriate that inquiry should be made by CBI.

72. In *Divine Retreat Centre* this Court held that the High Court could have passed a judicial order directing investigation against a person and his activities only after giving him an opportunity of being heard. It is not permissible for the court to set the criminal law in motion on the basis of allegations made against a person in violation of the principles of natural justice. A person against whom an inquiry is directed must have a reasonable opportunity of being heard as he is likely to be adversely affected by such order and, particularly, when such an order results in drastic consequence of affecting his reputation.

73. In *D. Venkatasubramaniam v. M.K. Mohan Krishnamachari* this Court held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. Therefore, a person against whom an order is passed on the basis of a criminal petition filed against him, he should be impleaded as a respondent being a necessary party.

74. This Court in *Disha v. State of Gujarat* after considering the various judgments of this Court, particularly, in *Vineet*

Narain v. Union of India, Union of India v. Sushil Kumar Modi, Rajiv Ranjan Singh 'Lalan' (8) v. Union of India, Rubabbuddin Sheikh v. State of Gujarat and Ashok Kumar Todi v. Kishwar Jahan held that the Court can transfer the matter to CBI or any other special agency only when it is satisfied that the accused is a very powerful and influential person or the State authorities like high police officials are involved in the offence and the investigation has not been proceeded with in proper direction or the investigation had been conducted in a biased manner. In such a case, in order to do complete justice and having belief that it would lend credibility to the final outcome of the investigation, such directions may be issued.

75. Thus, in view of the above, it is evident that a constitutional court can direct CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

23. The Supreme Court in the case of **K.V. Rajendran v. CBCID**, reported in **(2013) 12 SCC 480** has held as under :

13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the

public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide *Gudalure M.J. Cherian v. Union of India*, *R.S. Sodhi v. State of U.P.*, *Punjab and Haryana High Court Bar Assn. v. State of Punjab*, *Vineet Narain v. Union of India*, *Union of India v. Sushil Kumar Modi*, *Disha v. State of Gujarat*, *Rajender Singh Pathania v. State (NCT of Delhi and State of Punjab v. Davinder Pal Singh Bhullar).*)

14. In *Rubabbuddin Sheikh v. State of Gujarat* this Court dealt with a case where the accusation had been against high officials of the Police Department of the State of Gujarat in respect of killing of persons in a fake encounter and Gujarat Police after the conclusion of the investigation, submitted a charge-sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge-sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

15. In *State of W.B. v. Committee for Protection of Democratic Rights* a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be

exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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. (See also *Ashok Kumar Todi v. Kishwar Jahan.*)

16. This Court in *Sakiri Vasu v. State of U.P.* held: (SCC p. 416, para 31)

“31. ... this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done *only in some rare and exceptional case*, otherwise, *CBI would be flooded with a large number of cases* and would find it impossible to properly investigate all of them.”

(emphasis supplied)

17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.

24. The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat**, reported in (2014) 4 SCC 626 has held as under :

50. In *W.N. Chadha*, the High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows:

“89. Applying the above principle, it may be held that

when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

* * *

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

* * *

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking

any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

51. In *Rajesh Gandhi case*, this Court again reiterated the law as follows:

“8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. ... There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In

fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) CrPC, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.”

The aforesaid observations would clearly support the course adopted by the High Court in this matter. We have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It was only when the High Court was of the opinion that even further investigation was not impartial, it was transferred to CBI.

52. Again in *Sri Bhagwan Samardha*, this Court observed as follows:

“10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Admn.)*. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on

the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by CBI.

53. We had earlier noticed that the High Court had come to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clean chit to the appellant, in spite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. The legal position has been reiterated by this Court in *Narender G. Goel*:

“11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.* this Court observed:

‘11. ... There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.’

12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.

13. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter.”

54. Again in *Narmada Bai*, this Court after reviewing the entire body of case law concluded as follows:

“64. The above decisions and the principles stated therein have been referred to and followed by this Court in *Rubabbuddin Sheikh* where also it was held that considering the fact that the allegations have been levelled against high-level police officers, despite the investigation made by the police authorities of the State of Gujarat, ordered investigation by CBI. Without entering into the allegations levelled by either of the parties, we are of the view that it would be prudent and advisable to transfer the investigation to an independent agency. It is trite law that the accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them.”

55. We may also notice here the observations made by this Court in *Mohd. Anis v. Union of India*, wherein this Court held as follows: (*Narmada Bai case*)

“61. ... ‘5. ... Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice.’ (*Mohd. Anis case*)

‘2. ... Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial.’ (*Mohd. Anis case*)”

25. The Supreme Court in the case of **Inder Singh v. State of Punjab**, (1994) 6 SCC 275 has held as under :

16. It will be remembered that the petition sets out the various police stations in which the said 7 persons were from time to time lodged until 28-12-1991, and that there is no denial thereto. We cannot but wonder whether Station House Officers of police stations in Punjab are not alert to the fact that there are strangers in their lock-ups and do not feel it necessary to find out how these strangers came to be there. There is not a word in the affidavits filed on behalf of the State of Punjab and by the 2nd respondent which states that any investigation has been made into the conduct of those in-charge of these named police stations and other police officers and policemen therein. They were obviously also involved in illegally detaining the said 7 persons within the precincts of the police stations. We are, therefore, unimpressed by the assertion of the 2nd respondent in his affidavit that “incidents of the kind mentioned in the petition are deviant behaviour and an aberration on the part of individual member of the force”.

17. For the reasons that we have already set out, we are unwilling to entrust the investigation of the abduction and presumable liquidation of the said 7 persons to the Punjab Police. We are satisfied that an independent investigation at a very high level is called for. The investigation shall cover — (a) the circumstances of the abduction of said 7 persons; (b) their present whereabouts or the date and circumstances of their liquidation; (c) how it was that the inquiry into the complaint was delayed from 25-1-1992, when it was received by the office of the 2nd respondent, till 23-3-1994, when the case was registered; (d) whether it is in conformity with good police administration that a complaint of abduction of 7 citizens by a high-ranking police officer should not be required to be brought to the attention of the officer-in-command of the police force even after the allegations made in the complaint had been found to be correct on inquiry by a specially designated officer; (e) whether there has been an attempt to cover up the misdoings of police officers and policemen involved in the abduction of the said 7 persons and their subsequent incarceration or liquidation; and (f) if so, who was involved therein.

26. This Court in the case of **Ramlakhan Vs. State of M.P.** by order

dated 23-7-2019 passed in W.P. No.7219 of 2017 has held as under:

69. **Investigation** has been defined by the Supreme Court in the case of **Manubhai Ratilal Patel Vs. State of Gujarat** reported in **(2013) 1 SCC 314** which reads as under :

27. Presently, we shall advert to the concept of investigation. The term “investigation” has been defined in Section 2(*h*) of the Code. It reads as follows:

“**2. (h) ‘investigation’** includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

28. A three-Judge Bench in *H.N. Rishbud v. State of Delhi*, while dealing with “investigation”, has stated that under the Code, investigation consists generally of the following steps: (AIR p. 201, para 5)

“(1) proceeding to the spot,

(2) ascertainment of the facts and circumstances of the case,

(3) discovery and arrest of the suspected offender,

(4) collection of evidence relating to the commission of the offence which may consist of:

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,

(b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

(5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.”

29. In *Adri Dharan Das v. State of W.B.* it has been opined that: (SCC p. 313, para 19)

“19. ... arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets

of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime.”

30. In *Niranjan Singh v. State of U.P.* it has been laid down that investigation is not an inquiry or trial before the court and that is why the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial. In *S.N. Sharma v. Bipen Kumar Tiwari* it has been observed that the power of police to investigate is independent of any control by the Magistrate. In *State of Bihar v. J.A.C. Saldanha*, it has been observed that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the Police Department.

70. Thus, if the above mentioned deficiencies are considered in the light of the definition of investigation, then it can be safely said that in fact no investigation was done by the investigating officers.

27. The aforesaid judgment has been affirmed by Supreme Court in the case of **Alok Kumar Singh and Others Vs. Ramlakhan and others** by order dated 7-2-2021 passed in S.L.P. (Cri) No.10283 of 2019.

28. Thus, the only question for consideration is that whether the Police has done free and fair investigation in an impartial manner or not?

29. It is not out of place to mention here that in the present case, the the deceased came to the Police Station in connection with some dispute with one Khemu. Report of Khemu was registered and the deceased was restrained in the police station, Belgada Distt. Gwalior, without there being any proceedings of formal arrest. Ultimately, the deceased was found dead in the Lock up of the Police Station and the police registered the offence under Section 302 /34 of IPC against five police personals who were on duty and one Homeguard Sainik.

30. Accordingly, Shri Sanjay Chaturvedi, S.D.O.(P) Karera, Distt. Shivpuri who is the investigating officer was directed to read out all the diary proceedings, so that it can be find out as to whether free and fair investigation is being done in an impartial manner or the investigating officer(s) have gone out and out to give undue protection to the suspected accused who are the police personals.

31. Case diary is also perused.

32. As per the police case diary, the incident took place at about 18:00 on 10-8-2001 and the FIR was lodged on 11-8-2019 at 02:25 i.e., on the next day. The FIR lodged by complainant Alaf Singh Rawat reads as under :

फरियादी अलफ सिंह रावत पुत्र श्री हरगोविंद सिंह रावत हमराह मंगल सिंह रावत के उपस्थित थाना आकर मौखिक रिपोर्ट किया कि मैं ग्राम बाजना का रहने वाला हूं खेती किसानों का कार्य करता हूं दिनांक 10.8.2019 को मेरे बड़े भाई सुरेश रावत अपने खेत पर खाद छिड़क रहा था पास में खेती शाक्य भी अपने खेत पर था उसी दौरान उनका विवाद आपस में हो गया था जिस पर से मेरा भाई सुरेश और खेती थाना बेलगढा में रिपोर्ट करने गये थे पीछे मेरे समझी मंगल सिंह भी थाने पर पहुंच गये थे तब बेलगढा पुलिस ने खेती शाक्य की रिपोर्ट लिख ली थी और मेरे भाई सुरेश को थाने पर बिठा लिया था और उनकी रिपोर्ट नहीं लिखी थी तब मेरे समझी ने बेलगढा पुलिस से रिपोर्ट लिखने को कहा तो उन्होंने रिपोर्ट लिखने के लिये बीस हजार रुपये की मांग की और कहा पैसे नहीं दोगे तो सुरेश नहीं छूटेगा तब समझी मंगल सिंह थाने के बाहर खड़ा हो गया तो थाने के अंदर से मारपीट की आवाज आई थी तो मंगल सिंह दौड़ कर अंदर गया और उनसे मारपीट करने को मना किया लेकिन वह नहीं रुके और मौके पर ही वह मर गये तब विजय सिंह राजपूत, नीरज प्रजापति, विजय, अरुण मिश्रा दीवान जी, चच्चा सैनिक व धर्मेन्द्र मरी हुई अवस्था में सुरेश को उठाकर बाहर लेकर आये और पुलिस

वाली गाडी मे रख कर भितरवार अस्पताल आये थे अब भितरवार अस्पताल मे डाक्टर ने सुरेश को चेक करके बताया तब सब पुलिस वाले अस्पताल से भाग गये सो रिपोर्ट करता हूं कार्यवाही की जावे हस्ताक्षर हिंदी अलफ सिंह।

33. From the FIR, it is clear that following allegations were made :

- i. Khemu and deceased Suresh Rawat had some dispute, therefore, both of them came to Police Station Belgada for lodging report against each other :
- ii. Police lodged the report of Khemu but did not lodge the report of the deceased and restrained him in the police station;
- iii. An amount of Rs.20,000/- was demanded for lodging the report of the deceased, otherwise, it was made clear that he would not be released;
- iv. Mangal Singh was standing outside the police station and heard the noise of beating;
- v. He requested the police personals not to beat the deceased, however, they did not listen to him and ultimately, Suresh Rawat died in the police station itself;
- vi. Thereafter, all the police personals i.e., Vijay Singh Rajput, Neeraj Prajapati, Vijay, Arun Mishra Diwan, Dharmendra and Sainik Chachha, immediately took the deceased to Bhitwar hospital on police vehicle, where he was declared dead;
- vii. Thereafter, all the police personals ran away from the Bhitwar Hospital.

34. On the report of Alaf Singh Rawat, Crime No.295/2019 was registered in Police Station Bhitwar, Distt. Gwalior against Vijay Singh Rajput, Neeraj, Vijay, Arun Mishra, Sainik Chachha and Dharmendra for offence under Section 302/34 of IPC. Merg intimation under Section 174 of Cr.P.C. was recorded on 11-8-2019 at 12:37 i.e, before lodging of FIR.

35. On 10-8-2019 itself, the Superintendent of Police, Gwalior wrote a letter to District Magistrate, Gwalior that on 10-8-2019 at 11:45 A.M. on the report of complainant Khemu, crime no. 81/19 was registered for

offence under Section 323,294,506 of IPC and under Section 3(1)(r) and (s) of Scheduled Caste and Scheduled Tribes Act. At the same time, the deceased Suresh Rawat also came to the Police Station. The complainant Khemu was sent for medical examination. Since there was a possibility of grievous injury in the ear of the complainant, therefore, **the suspect Suresh Rawat was restrained in the police station.** However, some times in between 5-6:00 P.M., Suresh Rawat has committed suicide by hanging himself in the lockup, therefore, a request was made for constituting a board for conducting post-mortem.

36. Accordingly, on 11-8-2019, the District Magistrate, Gwalior, requested the Joint Director/Superintendent J.A. Hospital, Gwalior to get the post-mortem conducted by the medical board.

37. It appears that there was some law and order situation in Bhitwar, therefore, the Superintendent of Police, Gwalior by order dated 11-8-2019 directed S.H.O., Kampu, Distt. Gwalior to get the post-mortem done by a team of doctors.

38. The dead body was sent for post-mortem on 11-8-2019 at 12:05 P.M. which was received by the hospital and post-mortem started at 12:40 P.M. by a team of 3 Doctors who found following injuries on the body of deceased Suresh Rawat :

LIGATURE MARK (Ante-mortem) :- Oblique ligature mark present over anterior aspect of neck visible prominently extending from left of midline towards chin in midline with medial end upwards, width ranging from 3 cm to 1 cm (lateral to medial). Mark is 6.2cm below chin in midline and 6cm below angle of mandible and mark is faintly seen beyond angle of

mandible on left side upto just before mastoid. On right side of neck mark is faintly visible, total length 10c, there is prominently visible for 2.5 cm between chin and right angle of mandible and could be faintly traced upward just anterior to right mastoid. Total neck circumference is 31 cm. Ligature mark is hard, brownish in color with superficial epidermal peeling. The skin underneath the ligature make is pale white, transparent and glistening. Total length of body from crown to heel is 162 cm.

OTHER INJURIES

1. Two abrasions present on right side above right eye brow :lateral one size 2 x 1 cm and medial one 3 x 1 cm.
2. Two linear cut mark present 11 and 12 cm below left elbow joint over dorsal aspect measuring 2 cm and 3cm respectively (above downwards), almost parallel, margins sharp, tailing laterally, clotted blood present around the injury.
3. Pin point circular abrasion present over right leg over shin at junction of upper 2/3rd and lower 1/3rd.

Opinion : Death was due to asphyxia as a result of hanging. Viscera has been preserved for chemical analysis along with cloths, diary (along with I.d. Cards), sealed and handed over to police constable concerned. Duration of death is within 24 hours since post-mortem examination.

39. It appears that although the Post-mortem report was prepared on 11-8-2019 itself, but the report was sent to Police Station Belgada, Distt. Gwalior on 16-8-2019 as is evident from case diary proceeding dated 16-

8-2019. **Why the post-mortem report was retained by Medical Board till 16-8-2019 is also not known.**

40. As per the police case diary, the date wise proceedings done by the investigating officer are as under :

Investigating Officer : Pankaj Tyagi, S.H.O., Police Station Bhitwarwar

(i) 11-8-2019 at 0:25 : FIR was lodged and copy of FIR was sent to concerning Magistrate and information to Superior Police Officers was given. Since, the incident was of Police Station Belgada, therefore, diary was transmitted to Police Station Belgada, Distt. Gwalior.

(ii) 11-8-2019 at 11:10 : The Safina form was issued by Tahsildar Gwalior on 11-8-2010 and Lash Panchnama was prepared by Tahsildar, Gwalior and the dead body was sent for Post-mortem.

(iii) 11-8-2019 : Magisterial/Judicial Enquiry was directed by the then Superintendent of Police Gwalior.

Investigating Officer : Radheshyam Sharma S.I., Police Station Belgada, Distt. Gwalior

(iv) **11-8-2019** : After receiving the police case diary, spot map was prepared and photography was got done. CCTV footage were copied in the Pen drive and certificate under Section 65B of Evidence Act was obtained from Vinod Kumar Upadhyaya, Incharge CCTV Camera control room, Gwalior.

(v) **11-8-2019** : S.H.O., Police Station Belgada wrote to C.M.H.O., J.A.H. Gwalior to immediately provide the post-mortem report.

By order dated 12-8-2019 passed by I.G., Gwalior Zone, Gwalior, the investigation was handed over to S.D.O.(P) Karera, Distt. Shivpuri.

(vi) The SHO, Police Station Belgada requested the Scientific Officer, Scene of Crime Mobile Unit, Gwalior to inspect the spot.

(vii) **13-8-2019** : The S.H.O., Police Station Belgada wrote to Incharge CCTV Camera Control Room, Gwalior to inform that on whose order, the CCTV Cameras were installed, details of CCTV Cameras and name of company and whether CCTV cameras were functioning properly.

(viii) S.H.O., Police Station Belgada forwarded the case diary to S.D.O. (P) Karera, Distt. Gwalior, in compliance of order dated 12-8-2019 passed by IG, Gwalior Zone, Gwalior.

Investigation done by Shri Atmaram, S.D.O. (P), Karera, Distt. Gwalior.

(ix) **13-8-2019** : Although the investigation was handed over to S.D.O. (P) Karera, Distt. Shivpuri by order dated 12-8-2019 and in case diary proceedings dated 13-8-2019 it was mentioned that the case diary shall be sent to S.D.O.(P), Karera, Distt. Shivpuri, but S.D.O. (P), Karera, Distt. Shivpuri received the diary on 31-8-2019 and on the said date, except mentioning the summary of the case, nothing else was done by S.D.O. (P), Karera, Distt. Shivpuri.

(x) **20-8-2019** : From the case diary papers, it appears that the Superintendent of Police Gwalior forwarded the case diary to Superintendent of Police Shivpuri and the Superintendent of Police Shivpuri, for the reasons best known to him, forwarded the case diary to S.D.O.(P) Karera, Distt. Shivpuri on 29-8-2019.

(xi) **5-9-2019** : Case diary was opened by S.D.O. (P) Karera, Shivpuri and directed for issuance of notice to the witnesses for their appearance before him and accordingly, on 8-9-2019, a notice under Section 160 of

Cr.P.C. was issued to complainant Alaf Singh Rawat, Mangal Singh Rawat, Sahab Singh, Ajay Singh, Sanjay and Nand Kishore with a clear direction that they should appear before the investigating officer in his office on 9-9-2019 at 11:00 AM, otherwise, it shall be presumed that they do not have any thing to say and they shall be proceeded ex parte.

(xii) **9-9-2019** : The case diary was opened and the statements of Alaf Singh, Sahab Singh, Ajab Singh, Sanjay, all residents of village Bajna P.S. Belgada and Mangal Singh resident of Sukhna Khiriya Police Station Bhitwar, Distt. Gwalior were recorded. Notice under Section 160 Cr.P.C. was issued to Jitendra Rawat and Ashok Rawat for their appearance on 11-9-2019. Thereafter, the diary proceedings were closed.

(xiii) **11-9-2019** : The statements of Ashok Rawat and Jitendra Rawat were recorded and the diary proceedings were closed.

(xiv) **15-9-2019** : The diary was opened but no substantial investigation was done except visiting and talking to S.H.O., Police Station Belgada.

(xv) **22-9-2019** : The case diary was opened and the fact of receipt of F.S.L. report is mentioned. The CCTV footage which were downloaded by Vinod Upadhyaya were made part of case diary. The CCTV footage were seen and its script was prepared and was made part of case diary. A panchnama was prepared that at the time of incident, there was no other detenu in the lockup and the case diary was closed.

(xvi) **30-9-2019** : The case diary was opened, but no investigation was done.

(xvii) **4-10-2019** : The case diary was opened and it was mentioned that now it is not possible to seize hard disk as it is not possible to retrieve the data as 55-56 days have passed. The Magisterial/Judicial Enquiry is

in progress and therefore, the suspects shall be interrogated only after their statements in the Judicial Enquiry.

(xviii) **6-10-2019** : The case diary was opened and it was mentioned that the suspect police officers be made available for recording of their statements, but it was informed by S.H.O., Police Station Belgada that they would be sent after Dussehara Festival.

(xix) **26-10-2019** : The case diary was opened and nothing was done.

(xx) **30-10-2019** : The case diary was opened and the statements of other police personals were recorded.

(xxi) **31-10-2019** : The case diary was opened and the statements of other police personals were recorded.

(xxii) **24-12-2019** : The case diary was opened and it was mentioned that since Judicial Enquiry is pending therefore, it would not be in the interest of justice to proceed further.

(xxiii) **29-12-2019** : The case diary was opened and tried to record the statements of suspected police personals and none of them were found in the Police Line, Gwalior.

(xxiv) **30-12-2019** : The case diary was opened and A.S.I. Vijay Singh Rajput one of the suspected police personal was informed on mobile who responded that they all would come together and the mobile phones of other suspected police personals were switched off.

(xxv) **7-1-2020** : The case diary was opened and letter was written to Reserve Inspector, Gwalior for sending the suspected Police personals for recording of their statements and spot map prepared by Patwari was kept in diary.

(xxvi) **16-1-2020** : By letter dated 16-1-2020, District Commandant,

Homeguard informed, that Sainik Ehsaan Khan is on unauthorized absence.

(xxvii) **12-1-2020**: The case diary was opened and the statements of all the suspected police personals including homeguard sainik Ehsaan Khan were recorded.

Investigation by Shri G.D. Sharma S.D.O.(P) Karera, Distt. Shivpuri

(xxviii) **29-2-2020** : The investigation was taken over by Shri G.D. Sharma S.D.O. (P) Karera, Distt. Shivpuri and on 29-2-2022, he went through the case diary.

(xxix) **20-3-2020** : The case diary was opened, and the statements of Khemu, on whose complaint crime was registered against the deceased were recorded. **Khemu in his statement has specifically stated that the deceased Suresh Rawat had already reached Police Station much prior to him. The copy of FIR in Crime No. 81/2019, Police Station Belgada was also taken on record, according to which the FIR was lodged at 11:45 A.M., therefore, it is clear that the deceased Suresh Rawat was already in the police station, much prior to 11:45 A.M.**

(xxx) On **21-3-2020**, case diary was opened and it was mentioned that since Judicial Enquiry is going on, therefore, further action would be taken only after the receipt of enquiry report. **Thereafter, the diary proceedings page no.24 is missing and the serial no. of next page is 25.**

(xxxii) On **23-6-2020, 14-8-2020, 7-10-2020, 11-11-2020, 28-2-2021, 22-4-2021, 21-7-2021, 19-9-2021,1-11-2021, 31-12-2021, 6-2-2022, 24-2-2022, 13-3-2022, 10-4-2022**, nothing was done awaiting the report of Magisterial/Judicial Enquiry.

(xxxii) **26-4-2022** : The case diary was opened and it is mentioned that as per unconfirmed news, the report of Magisterial/Judicial Enquiry has been submitted and therefore, S.P., Gwalior was requested to send a certified copy of the report of Judicial Enquiry.

(xxxiii) **6-5-2022** : The receipt of enquiry report is mentioned and it was also mentioned that reply is to be filed in the present writ petition.

(xxxiv) **21-5-2022** : The case diary was opened, and except mentioning the summary of the case, it was mentioned that it appears that no offence was committed under Section 302 of IPC but offence under Sections 342/34 of IPC and 7 of Prevention of Corruption Act has been committed, but still, it would be appropriate to take legal opinion, therefore, the matter was forwarded to Superintendent of Police and it was observed that further action would be taken after receipt of further instructions.

(xxxv) Accordingly, by order dated 23-5-2022, the Superintendent of Police, Gwalior requested District Prosecution Officer, Gwalior to give his legal opinion.

(xxxvi) **4-7-2022** : The District Prosecution Officer, Gwalior gave his legal opinion and pointed out lapses in the investigation.

Investigation was taken over by Shri Sanjay Chaturvedi, S.D.O. (P) Karera, Distt. Shivpuri

(xxxvii) **12-7-2022** : The case diary was opened and it is mentioned that it is perused.

(xxxviii) **16-8-2022** : The case diary was opened and it was mentioned that due to Panchayat elections, he could not go through the case diary thoroughly and accordingly, the diary was closed.

(xxxiv) **2-9-2022** : There is a mention of opinion given by District Prosecution Officer and it was mentioned that investigation shall be conducted as per the opinion of DPO.

(xxxv) **26-9-2022** : The case diary was opened and it was mentioned that statements of the witnesses shall be recorded afresh and nothing else was done.

(xxxvi) A letter dated 9-9-2022 written by M.P. Human Rights Commission is attached in the case diary according to which the documents relating to this case were sought and accordingly, by letter dated 7-10-2022, the Superintendent of Police, Gwalior sought status from the investigating officer.

(xxxvii) **12-10-2022** : The case diary was opened and it was mentioned that information was given to Superintendent of Police, Gwalior on telephone and nothing else was done.

(xxxviii) **5-11-2022** : The case diary was opened and nothing was done except by mentioning that the information sought by Superintendent of Police, Gwalior was sent.

(xxxix) **20-11-2022** : The case diary was opened and it was opined that further legal opinion be taken.

(xxxx) **22-11-2022** : The Superintendent of Police, Gwalior, in response to the letter dated 20-11-2022 written by the investigating officer, wrote for the first time, the investigation be completed as early as possible.

(xxxxi) **23-11-2022** : The diary was opened and offence under Sections 306,342,34 of IPC and under Section 7 of Prevention of Corruption Act were added and sanction for prosecution was sought. **However, during the course of hearing, the investigating officer, has admitted that on**

23-11-2022, he had received an information from the office of Add. Advocate General regarding this writ petition, therefore, he rushed to Gwalior and wrote the diary proceedings dated 23-11-2022.

ANALYSIS

Whether the deceased Suresh Rawat was in Police custody or not?

41. The investigating officer has recorded the statement of Khemu on whose report, FIR in crime no. 81/2019 was registered by Police Station Belgada against the deceased Suresh Rawat for offence under Sections 323,294,506 of IPC and under Section 3(1)(r) and (s) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

42. Khemu has stated that some fight took place between him and the deceased Suresh Rawat, therefore, he went to Police Station Belgada, Distt. Gwalior for lodging FIR and **Suresh Rawat had already reached Police Station, before his arrival.** The copy of FIR in crime no.81/2019 registered at Police Station Belgada, Distt. Gwalior is also in the case diary. According to this, the information was received at Police Station at 11:20 and FIR was lodged at 11:45. Thus, it is clear that Khemu must have reached Police Station, Belgada, Distt. Gwalior, at about 11:00 A.M., and according to Khemu, the deceased Suresh Rawat had already reached there. Therefore, it is clear that Suresh Rawat had already reached Police Station, Belgada some times in between 10:30-11:00 A.M.

43. As per FIR lodged in the present case, the deceased Suresh Rawat was made to sit in the Police Station and police personals were demanding Rs. 20,000/- for lodging FIR of Suresh Rawat. Similarly, the Superintendent of Police, Gwalior in his letter dated 10-8-2019, which is

addressed to the District Magistrate, Gwalior, has mentioned that apprehending that the injured Khemu may have suffered grievous injury, the police had restrained the deceased Suresh Rawat in the police station itself.

44. Thus, it is clear from the letter dated 10-8-2019 written by Superintendent of Police, Gwalior, the deceased Suresh Rawat was in the custody of the police.

45. It is clear that the deceased Suresh Rawat had reached Police Station atleast by 11:00 A.M., but he was detained in police station without any formal arrest.

46. The word “custody” and “arrest” are two different connotations.

47. The Supreme Court in the case of **Vikram Singh Vs. State of Punjab** reported in (2010) 3 SCC 56 has held as under :

41. Mr Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with “arrest how made”. We are of the opinion that the word “arrest” used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on 15-2-2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused of an offence at the time of their apprehension on 14-2-2005.

42. Moreover, in the light of the judgment of the Constitution Bench in *Deoman Upadhyaya case* and the observation that the words in Section 27 “accused of any offence” are descriptive of the person making the statement, the submission that this section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.

48. The Supreme Court in the case of **Dharam Deo Yadav v. State of U.P.**, reported in (2014) 5 SCC 509 has held as under :

22. The expression “custody” which appears in Section 27 does not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police. This Court in *State of A.P. v. Gangula Satya Murthy* held that if the accused is within the ken of surveillance of the police during which his movements are restricted, then it can be regarded as custodial surveillance. Consequently, so much of information given by the accused in “custody”, in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not. Reference may also be made to the judgment of this Court in *A.N. Venkatesh v. State of Karnataka*. In *Sandeep v. State of U.P.*, this Court held that: (SCC pp. 128-29, para 52)

“52. ... It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered.”

Reference can also be made to the judgment of this Court in *State of Maharashtra v. Suresh*, in support of the principle.

49. Thus, it is clear that even if a person is not formally arrested, but if his movements are restrained or he is kept under surveillance of police, a person would be in custody of the police.

50. In the present case, the Superintendent of Police, Gwalior in his letter dated 10-8-2019 has specifically mentioned that the deceased Suresh Rawat was restrained in the Police Station, therefore, undoubtedly, he was in custody of the Police Station Belgada, Distt.

Gwalior.

CCTV Footage

51. During the course of arguments, the State Counsel was directed to provide the CCTV footage as well as CD of post-mortem videography. However, the CCTV footage and CD of Post-mortem were provided only after the investigating officer had left the Court. One Pen drive was provided in a sealed envelop made up of cloth. When the seal of the cloth was opened by this Court, it was found that the said cloth envelop was containing another sealed paper envelop. It appears that said originally sealed envelop is containing Pen Drive of CCTV footage of Police Station, Belgada, which was seized by the Police. Since, the investigating officer had already left, therefore, the paper envelop was not opened and was once again kept back in the paper envelop and the reader of the Court was directed to reseal it and accordingly the cloth envelop is resealed without opening the sealed paper envelop. Similarly, the CD of post-mortem was also containing the original seal, therefore, the said sealed packet was not opened and are being returned to the Superintendent of Police, Gwalior as investigation is still going on and the sealed condition of the above mentioned articles may be essential.

52. Therefore, this Court is left with no other option but to go through the script prepared by the Police after looking at the CCTV footage of camera installed in lockup.

53. The script of CCTV camera installed in lockup is as under :

1. समय 10.30 AM सै 15.22 PM तक बंदीगृह के अंदर किसी भी व्यक्ति का आना जाना परिलक्षित नही है।
2. 15.22 सै 31 पर सुरेश रावत पेशाब (बाथरूम) करने बंदीगृह के

अंदर गेट खोलकर गया बाथरूम के बाद 15.23 सै 48 पर वापिस बाहर आया इसी क्रम से 15.23 सै 58 पर पानी डालने बंदीगृह के अंदर गया 15.24 सै 09 पर बाहर आया, 15.24 सै 28 पर पुनः पानी डालने अंदर गया 15.24 सै 38 पर वापस पुनः 15.24 सै 48 पर पानी डालने बंदीगृह के अंदर गया 15.24 सै 55 पर वापस बाहर आया था।

3. 15.24 सै 55 के बाद 18.22 तक बंदीगृह के अंदर किसी का आना जाना परिलक्षित नहीं है।

4. 18.23 सै 35 पर बंदीगृह के अंदर सुरेश रावत गया अंदर जाकर साफ़ी कपडा गेटपर बांधकर लटका और नीचे गिरा 18.24 सै 38 पर – 18.24 सै 39 बाहर बंदीगृह से गया।

5. समय 18.27 सै 10 पर सुरेश बंदीगृह के अंदर गया साफ़ी गले मे बांधी गेट पर चढकर गेट के उपर वाली लोहे की रॉड (धुआ) जो उपर दीवार के अंदर गया है मे बांधकर 18.27 से 58 पर नीचे गिरा फांसी लगाई लटका गया।

6. समय 18.56 से 11 पर आर विजय बंदीगृह मे आया फांसी पर लटके सुरेश रावत को खोलने का प्रयास किया नही खुलने पर समय 18.56 सै 34 पर बाहर आया।

7. समय 18.56 सै 56 पर आर विजय बंदीगृह मे पुनः आया 18.57 सै 09 पर प्र आर अरुण मिश्रा बंदीगृह के अंदर आया समय 18.57 सै 22 पर सउनि विजय सिंह राजपूत बंदीगृह के अंदर आया फिर 18.58 सै 01 पर आर विजय बाहर गया।

8. समय 18.58 से. 35 सै 19.08 तक बिजली चले जाने से सुरेश शिवत के उपचार हेतु ले जाने के फोटो सीसीटीवी फुटेज परिलक्षित नहीं है।

9. समय 19.08 सै 33 से 19.12 सै 50 तक बंदीगृह मे किसी का आना जाना नही दिखाई दे रहा है।

10. समय 19.13 सै 05 के बाद 19.30 तक बंदीगृह मे किसी का आना जाना परिलक्षित नहीं है।

54. At serial no. 8 of the script, it is mentioned that because of load shedding, the CCTV footage of taking down the deceased and taking him to the hospital could not be recorded. In the Magisterial/Judicial Enquiry, the enquiry officer has held that whether the electricity was deliberately switched off or there was load shedding could not be ascertained. But one thing is clear that the police has not collected any evidence from the Electricity Department to find out as to whether there was any load shedding or not? Thus, it is clear that in fact there was no load shedding and the electricity was deliberately Kept switched off, till the deceased was taken out from the Police Station. **Thus, it is clear that the Police Personals had also manipulated the cameras installed inside the police station by switching off the electricity.**

55. Since, this Court has not seen the CCTV footage of the cameras, therefore, if the script is considered (without treating it to be authentic) then it is clear that the deceased was in the lockup, where he died because of hanging. Since, this Court has not seen the CCTV footage, therefore, it is left for the investigating officer to consider that whether the deceased could have hanged himself without any assistance or not, but one thing is clear that the police headquarters, State of Madhya Pradesh, has issued circulars by which certain articles including *Safi* have been banned inside the Lockup. Since, the police has manipulated the CCTV cameras by switching off the electricity, therefore, this Court is unable to place any reliance on the script of CCTV footage.

Whether lockup was opened or it was closed

56. It is the case of the prosecution, that the lockup was open and the deceased had an easy access to the same. However, the said fact doesnot

find corroboration from their own documents.

57. Rojnamcha Sanha No. 18 dated 10-8-2019 was written at 17:45 which reads as under :

रोजनामचा प्रविष्टि प्रधान सिपाही / Arun Kumar Mishra के लिये प्रधान सिपाही / Arun Kumar Mishra द्वारा की गयी : इस समय सूचना है कि थाना हाजा का संतरी पहरा आर. 1636 धर्मेन्द्र कुशवाह ने आर. 790 नीरज प्रजापति को बंद हवालात, बंद मालखाना के निगरानी पहरा विधिवत रूप से संभलाया गया।

58. Thus, in the presence of the Head Constable Arun Kumar Mishra Dharmendra had handed over charge of closed Lock up and Closed Malkhana to Constable Neeraj Prajapati. Thus, it is clear that the stand of the prosecution that Lockup was opened and the deceased on his own went inside the lockup is false and baseless. Therefore, it is difficult to accept that the deceased had moved inside the Lockup room on his own, for the simple reason that it is clear from the spot map, and it was also accepted by Shri Sanjay Chaturvedi, S.D.O.(P) during the course of arguments that Lockup is clearly visible from the table of Head Constable. Further according to script, the deceased failed in his first attempt and had fallen down, but surprisingly, no one present inside the Police Station could notice the same.

Role of Atmaram Sharma, S.D.O.(P), G.D. Sharma S.D.O. (P) and Sanjay Chaturvedi, S.D.O. (P), Karera, Distt. Shivpuri.

59. This Court has already reproduced the various steps taken by the investigating officers.

Steps taken by Atmaram Sharma, S.D.O. (P)

60. It is clear from the police case diary, that except recording the

statements of the witnesses, statements of police personals, statements of suspected police personals, nothing substantial was done by Atmaram Sharma S.D.O.(P). Although the offence under Section 302 of IPC was registered as the death of Suresh Rawat was custodial death, but no attempt was made to arrest the suspected accused persons.

Steps taken by G.D. Sharma S.D.O.(P)

61. Shri G.D. Sharma, S.D.O. (P) took over the investigation on 29-2-2020 and he did not do anything except waiting for the outcome of the report of Magisterial/Judicial Enquiry. Further more, the report of Magisterial/Judicial Enquiry was received which is mentioned in diary proceedings dated 21-5-2022, but even thereafter, he did not do anything except writing summary and calling for legal opinion from D.P.O.

62. It is not out of place to mention here that G.D. Sharma, S.D.O.(P) filed his status report in this case on 13-6-2022, but he merely mentioned that the case diary has been sent to the Senior Police Officers for further directions. But did not do anything.

Steps taken by Sanjay Chaturvedi, S.D.O. (P)

63. The DPO had given his opinion on 7-7-2022, which was received on 9-7-2022, and Shri Sanjay Chaturvedi, S.D.O. (P) took over the investigation and wrote his first case diary proceedings on 12-7-2022, but still he did not do anything.

64. The case diary was opened on various dates, but nothing was done inspite of the fact that the matter was pending before this Court and again he sought for further legal opinion, which was denied by the Superintendent of Police, Gwalior.

65. Shri Sanjay Chaturvedi, S.D.O. (P) admitted during the course of

arguments, that in the morning of 23-11-2022, he received an information that this Court has directed for production of case diary along with the investigating officer, therefore, he rushed to Gwalior and added Sections 306,342, of IPC and Section 7 of Prevention of Corruption Act and sought permission for prosecution.

66. During the course of arguments, Shri Sanjay Chaturvedi, S.D.O. (P) was directed to clarify his position, then he submitted that except pleading for mercy and tendering his apology, he has no explanation for his negligence.

67. Thus, it is clear that all the three investigating officers namely Atmaram Sharma, G.D. Sharma, and Sanjay Chaturvedi, did every thing to screen/protect the offenders.

Role of Superintendent of Police, Gwalior

68. From the above discussion it is clear that although the Gwalior Police, had camouflaged the situation and in order to give false impression in the mind of the general public, projected that the matter is being investigated by a senior police officer of a different District, but unfortunately, the Superintendent of Police Gwalior did not take any pains to restore the belief and faith of the general public in the police, but on the contrary, deliberately closed their eyes in order to ignore the manner in which investigation was being done. That was not the end of the matter. The suspected police personals were placed under suspension on 10-8-2019 and their suspension orders were revoked by order dated 22-2-2020. From the case diary proceedings, it is also clear that A.S.I. Vijay Singh Rajput has retired, thus, every facility was given by Superintendent of Police, Gwalior to give respectful departure to A.S.I.

Vijay Singh Rajput. There is nothing on record to show as to whether any Departmental Enquiry was ever instituted against the erring police officers. Thus, it appears that no Departmental Enquiry was instituted against the erring police officers.

69. Under these circumstances, giving the facility of retirement from service without there being any Departmental Enquiry was nothing but an out and out privilege to A.S.I. Vijay Singh Rajput to retire with all retiral benefits. In case of pendency of Departmental Enquiry, A.S.I. Vijay Singh Rajput, would not have received his entire retiral dues.

70. Further, the Superintendent of Police of a District takes a crime control meeting in a month and in that meeting they are supposed to supervise the pendency of investigations, pendency of summons/bailable warrants/warrants etc also.

71. The case diary doesnot contain anything to show that any direction was ever given by the Superintendent of Police, Gwalior for early disposal of investigation.

72. In reply to the question that whether any other pending parallel enquiry including the Magisterial Enquiry shall have any effect on the outcome of the investigation which is being done under the provisions of Cr.P.C. or not, it was submitted by the Counsel for the State that pendency of Magisterial/Judicial Enquiry will not have any effect on the investigation and the investigation has to be done in accordance with the provisions of Cr.P.C. Shri Nirankari, Govt. Advocate also admitted that the police should not have kept the investigation under suspended animation on the ground of pendency of Magisterial/Judicial Enquiry.

73. Section 173 (1) of Cr.P.C. reads as under :

Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

74. The manner in which the investigation was kept under suspended animation and the manner in which the Superintendent of Police, Gwalior maintained their silence, speaks in volume with regard to their working and hostile attitude towards the law of the land.

Conclusion

75. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion, that the District Police Gwalior and the investigating officers have lost the confidence of this Court as right from day one, they were working with a solitary intention to protect the guilty police personals, therefore, in the light of the judgments passed by the Supreme Court, it is clear that the Gwalior police has miserably failed to conduct a free and fair investigation in the case of a custodial death.

76. Accordingly, the investigation of Crime No. 82/2019, registered at Police Station Belgada, Distt. Gwalior for offence under Section 302,306,342,34 of IPC and under Section 7 of Prevention of Corruption Act is hereby transferred to C.B.I.

77. The Director, CBI, is directed to immediately take over the investigation and hand it over to a competent investigating officer.

Whether this Court can direct the Director General of Police, to take Departmental Action against the suspected accused as well as against Superintendent of Police, Gwalior and Investigating officers namely Atmaram Sharma, G.D. Sharma and Sanjay Chaturvedi, S.D.O. (P)s, Karera, Distt. Shivpuri?

78. The Supreme Court in the case of **Alok Kumar Singh and others Vs. Ramlakhan and others** by order dated 7-2-2021 passed in S.L.P (Cri) No. 10283/2019 has held as under :

Learned counsel for the petitioners submit that they have no objection to the investigation having been handed over to the CBI. Mr. R.S. Suri, learned senior counsel appearing on behalf of the CBI submits that investigation is concluded in two cases and it is about to conclude in the third case. The submission on behalf of the petitioners is that even if the High Court was of the opinion that there were any lapses in investigation, the observation and directions with regard to the present petitioners was unwarranted as it indicts them without their having been impleaded as parties before the High Court, denying them an opportunity of defence by placing their side of the explanation for consideration. This violation of natural justice has caused very serious prejudice to them. On that ground alone, the directions with regard to the petitioner officials are unsustainable. The High Court in a very detailed order has minutely taken note of the flaws or lapses in the 2 investigation and on basis of which it has recorded its satisfaction to refer the matter for investigation by the CBI. We are purposefully refraining from further discussion with regard to the details of the flaws or lapses highlighted by the High Court so as not to prejudice any party. We, therefore, are satisfied that there is a need for an administrative, inquiry on these lapses or flaws noticed by the High Court and for which responsibility must be fixed. This we consider essential to keep the faith in the criminal justice system. But because the directions with regard to the petitioners have been made in their absence, returning a finding of indictment without an opportunity of defence to them, we find them unsustainable in their present form. We, therefore, set aside the directions of the High Court indicting the petitioners. The order is interfered only to that extent. We further direct that the senior most Additional Director General of Police, State of Madhya Pradesh shall conduct a preliminary Inquiry to fix responsibility for the lapses or flaws in the investigation noticed by the High court. The Additional Director General

must complete this inquiry within a maximum period of four months and submit its preliminary report to the State Government. The State Government shall then act on the preliminary report in accordance with law. 3 The Additional Director General of Police shall also submit a copy of the preliminary report to this Court simultaneously with the submission to the State Government. Needless to state that this preliminary inquiry shall be conducted without being influenced or taking into consideration any indictment of the petitioners by the High Court. The special leave petitions shall then be listed for that purpose. With the aforesaid modification of the judgment under appeal in so far as the petitioners are concerned, the special leave petitions are disposed of.

79. Therefore, Director General of Police, State of Madhya Pradesh is directed as under :

(i) Since, Atmaram Sharma, G.D. Sharma and Sanjay Chaturvedi, did not investigate the matter with a sole intention to give undue advantage to the erring police officers namely A.S.I. Vijay Singh Bahadur, Head Constable Male Arun Kumar Mishra, Constable Dharmendra, Constable Neeraj Prajapati, Constable Vijay Kushwaha and Homeguard Sainik Ehsaan Khan, therefore, the Director General of Police, State of Madhya Pradesh shall look into the matter and shall give a specific finding that whether the act of Atmaram Sharma, G.D. Sharma and Sanjay Chaturvedi is punishable under Prevention of Corruption Act or under India Penal Code for screening/protecting the erring police personals or not? If the Director General of Police, State of Madhya Pradesh comes to a conclusion that they are guilty of giving undue advantage to the erring police personals by misusing their public office, then it shall also request the CBI to make them an accused in the present case, otherwise, shall give specific reasons regarding their act. For making a request to make

the aforesaid officers an accused in the present case, no separate sanction would be required, and such request shall be considered as a direction by this Court.

(ii) The Director General of Police, Madhya Pradesh shall also consider the act of Superintendent of Police, Gwalior. He shall collect the minutes of crime control meetings starting from September 2019 till today, to find out as to whether any direction was given by the Superintendent of Police, Gwalior for early disposal of the investigation or not?

(iii) If the Director General of Police, State of Madhya Pradesh comes to a conclusion that the Superintendent of Police, Gwalior or Atmaram Sharma, G.D. Sharma and Sanjay Chaturvedi were also negligent in discharge of their duties, then a Departmental Enquiry be initiated against them.

80. The above mentioned directions are necessary so that the faith of the general public in criminal justice system is maintained.

81. Let the entire exercise be completed within a period of one month from today. The Director General of Police, State of Madhya Pradesh is directed to submit his final report before the Principal Registrar of this Court latest by 5-1-2023.

82. It is submitted by the Counsel for the Petitioner, that the police personals are pressurizing them to enter into a compromise.

83. Since, the revocation of suspension orders of the erring police personals is shocking to the conscience of this Court, therefore, the Director General of Police, State of Madhya Pradesh is directed to immediately place the erring police personals i.e., Head Constable Arun

Mishra Constable Dharmendra, Constable Neeraj Prajapati, Constable Vijay Kushwaha, under suspension and their headquarters should not be less than 700 km.s away from Gwalior, so that they may not further manipulate the investigation and evidence. A similar direction is also issued to the competent authority to place Home guard Sainik Ehsaan Khan under suspension. **The suspension order shall not be revoked till the trial is completed.**

84. If the Departmental Enquiry has not been initiated, then the Director General of Police, State of Madhya Pradesh is directed to immediately initiate the Departmental Enquiry against the erring police personals and conclude the same within a period of 6 months from today. A similar direction is given to the competent authority to take action against Homeguard Sainik Ehsaan Khan.

85. If the Departmental Enquiry has not been initiated, then the Director General of Police, State of Madhya Pradesh shall also fix the responsibility of not initiating the Departmental Enquiry and shall proceed further. The Direction General of Police, State of Madhya Pradesh is also directed to clarify the circumstances, which prompted the Superintendent of Police, Gwalior to revoke the suspension orders and shall give its report as to whether the revocation of suspension of suspected accused/police personals was proper or not?

86. If the Director General of Police comes to a conclusion that non-initiation of Departmental Enquiry has resulted in undue enrichment to the erring police personals who have retired, as the police department must have made full payment of their retiral dues, then the Director General of Police, State of Madhya Pradesh is directed to obtain the bank

guarantee from such employees equivalent to the post retiral dues received by them so that they can be withdrawn/recovered at an appropriate stage, if required.

87. If Departmental Enquiry is initiated in compliance of this order, then the said Departmental Enquiry shall be treated as Departmental Enquiry initiated during the service tenure of the erring police personal (if retired). Even otherwise, as per Rule 9 of M.P. Civil Services (Pension) Rules, 4 years have not expired.

Whether the Petitioner is entitled for compensation

88. The Supreme Court in the case of **Nilabeti Behera @ Lalita Behera Vs. State of Orissa** reported in **AIR 1993 SC 1960** has held as under :

16. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to the remedy private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR

1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights.

* * * *

30. It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is "not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

31. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs

and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence. This is not the task for Parliament the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country."

32. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of

the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

34. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and

circumstances of the case is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar, (1983) 3 SCR 508 : (AIR 1983 SC 1086), granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

89. Since, the deceased Suresh Rawat has expired in the lockup while he was in custody, therefore, it is directed that the respondent/State shall pay Rs. 20,00,000 (Rs. Twenty Lacs) by way of compensation. The compensation shall be disbursed in equal share to the legal representatives of the deceased.

90. The Compensation amount so payable to the legal representatives of the deceased shall be recovered from the erring police personals in the following manner :

(I) Rs. 10,00,000/- shall be recovered from A.S.I. Vijay Bahadur

Singh;

(ii) Rs. 5,00,000/- shall be recovered from Head Constable Male Arun Mishra ;

(iii) Rs. 2,00,000/- shall be recovered from Constable Neeraj Prajapati;

(iv) Rs. 1,00,000/- each shall be recovered from Constables Dharmendra, Vijay Kushwaha and Homeguard Sainik Ehsaan Khan.

91. The Compensation amount shall be paid within a period of one month from today, and the Superintendent of Police, Gwalior is directed to submit the receipt of the same before the Principal Registrar of this Court latest by 5-1-2023.

92. The recovery from erring officer shall be effected within a period of 3 months from today and the report shall be submitted before the Principal Registrar of this Court latest by 1-4-2023.

93. With aforesaid observations, the petition is **Allowed with cost of Rs. 50,000/- to be borne by the Investigating Officer**, which shall not be reimbursed by the State. The cost be deposited within a period of one month from today and the Petitioner shall be entitled to withdraw the same.

94. Let a copy of this order be forwarded immediately to Director CBI and Director General of Police, State of Madhya Pradesh as well as to the Superintendent of Police, Gwalior, for necessary information and compliance. The Superintendent of Police, Gwalior is also directed to communicate this order to Director General of Police, State of Madhya Pradesh immediately for necessary information and compliance.

95. The reader of this Court is directed to seal the case diary which was provided by the investigating officer. The Superintendent of Police,

Gwalior is directed to collect the Sealed case diary and sealed pen drive of CCTV footage of Police Station and sealed videography of Post-mortem from the reader of the Court. The Superintendent of Police, Gwalior shall hand over the sealed case diary as well as sealed CCTV footage and sealed Videography of Post-mortem to competent authority /investigating officer of CBI.

(G.S. AHLUWALIA)
JUDGE