IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

WRIT PETITION No. 40972 of 2024

DILMEET SINGH BAL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Aman Raghuwanshi – Advocate for petitioner.

Shri Ravindra Dixit – Government Advocate for respondents/State.

Reserved on: 10/01/2025

Pronounced on: 21/01/2025

ORDER

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

> "(a) The petition may kindly be allowed;
> (b) Record of Case No.64/B-121/2023/2024 before learned Collector (Annexure -P/2) may be called.
> (c) Hon'ble Court may issue appropriate writ of certiorari or any other writ by quashing the order dated 05/11/2024 passed in Case No.64/B-121/2023/24 by learned Collector (Annexure – P/2) by the Respondent No.3.
> (d) Hon'ble Court may issue appropriate writ or use its inherent powers

to quash the F.I.R. No.1066/2024 dated 07.11.2024 (Annexure P-1);
(e) Any other relief which the Hon'ble Court deems fit in the facts and circumstances of the case.
(f) Cost of the petition may be awarded to the petitioner.

2. It is submitted by counsel for petitioner that by impugned order, District Collector, Guna, has directed the CMO, Municipal Council, Guna to lodge an FIR against petitioner as sell as other 23 persons for illegal colonization.

3. It is submitted by counsel for petitioner that order under challenge is bad in law on the ground that it is non-speaking and is an unreasonable order based on surmises and conjectures. No independent role has been attributed to the person like petitioner. Petitioner has purchased the agricultural land and he has not developed any colony over the same. Petitioner is carrying out agricultural activities. The registration of FIR will invite serious consequences.

4. Heard learned counsel for parties.

5. Whether accused has a right of pre-audience or not?

It is well established principle of law that an accused has no right of pre-audience before registration of offence.

The Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

> "24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)
>
> > "64. … It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by

them."

(emphasis supplied)

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

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

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

> "10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

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

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

> "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 38 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it

difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39 Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal 40 remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

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

Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.....”

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* [*Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , 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 inbreach of principles of natural justice. In appeal, this Court held as follows: (SCC pp. 290-91 & 293, paras 89, 92 & 98)
>
> > “*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* [*CBI* v. *Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , this Court again reiterated the law as follows: (SCC pp. 256- 57, para 8)

> "*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* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court observed as follows: (SCC pp.742-43, paras 10-11)

> "*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.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] . 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* [*Narender G. Goel* v. *State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] : (SCC pp. 68-69, paras 11-13)

> "*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.* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] this Court observed: (SCC p. 743, para 11)

> '*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."

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

Furthermore, the Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others**, reported in **(2014) 2 SCC 532** has held as under:-

> "38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the

Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such "Court directed" or "Court-monitored" cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression "Court-monitored" has been interchangeably used with "Court-supervised investigation" Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."

This Court in the case of **Sant Kumar Patel and Others Vs. The State of Madhya Pradesh and Others**, decided on **30th July, 2024** in **W.P. No. 5790/2024** has also held as under:-

"12. There is a distinction between monitoring and supervision. The moment this Court interferes with the investigation by issuing certain

directions, then it would come within the purview of supervision, which is not permissible under the law.

13. Investigation is exclusively within the domain of the Investigating Officer. In case, if the closure report is filed, then the Magistrate has a right to direct for further investigation pointing out certain lapses but during the investigation, this Court is not expected to interfere in the investigation.

14. Under these circumstances, this Court is of considered opinion that this Court cannot direct the police authorities to investigate the matter in a particular manner and that too at the instance of the petitioner as this Court cannot supervise the investigation."

Thus, it is clear that not only the accused has no right to seek investigation in a particular manner but even the Court does not have any jurisdiction to supervise the investigation.

6. Furthermore, impugned order was passed on the basis of enquiry report submitted by SDO (Revenue) Guna. It is clear that on a big piece of land, colony is being developed. Since accused has no right of pre-audience before registration of offence, therefore, contention of counsel for petitioner that petitioner should have been given an opportunity is misconceived and is, hereby, rejected.

Whether development of colony is necessary to invite the provisions of the Madhya Pradesh Nagar Palika (Registration of Coloniser, Terms And Conditions) Rules, 1998 (for brevity "Rules 1998") ?

7. Rule 3 of Rules 1998 reads as under:-

3. Registration of the coloniser.

(1) Such coloniser who in any municipal area-

(one) intends to take up the work of establishment of the colony by developing that area for the purpose of dividing any land into plots;

> (two) intends to transfer such plot to the persons desirous of constructing residential or non-residential or joint residence for inhabitation; shall apply to the competent authority for registration in Form-One appended to these rules.

8. From the above Rule, it is clear that if a person intends to develop a colony, then he has to get himself registered under these rules. Actual development of colony would not be *sine qua non* for registration of colonizer. Even if he is intending to develop the colony, then that can be done only after registration under Rule 3 of Rules 1998.

9. It is submitted by counsel for respondents that not only various parts of land have been sub-divided into small plots but roads have also been developed. So far as contention of counsel for petitioner that petitioner is neither carrying out any development work nor has sub-divided the piece of land into small plots and, in fact, he is carrying out agricultural activities is concerned, the same is misconceived. Registration of FIR, by itself, does not mean that guilt of a person has been established. In order to claim that petitioner is carrying out agricultural activities on the land purchased by him, it was necessary for him to file the documents to show that he is a registered farmer and he has sold the agricultural produce in *Krishi Upaj Mandi*. No such document has been filed. It appears that a big piece of land has been purchased by different persons and colony is being developed. If petitioner was carrying out any agricultural activity then it was expected from him to place certain documents on record to dislodge the report submitted by SDO (Revenue) Guna. Mere submission that petitioner is carrying out agricultural activity is not sufficient to give a finding in favour of petitioner.

10. Furthermore, it is clear from report submitted by Patwari that marking is being done on the land thereby dividing the entire piece of land into small plots & gravel road has been constructed. Although petitioner in his reply to the show

cause has stated that 1.845 hectares of land belongs to his family members and he has not changed the use of land and the same is still an agricultural land but in his reply, he has not claimed that any agricultural activities are being done by him. Although petitioner has denied that marking is being done by him but even in this petition, petitioner has not filed copies of photographs of the spot to show that the land is still under cultivation. Under these circumstances, this Court is of considered opinion that since disputed questions of facts are involved in this petition, which cannot be adjudicated by the Court at this stage, Collector, Guna, did not commit any mistake by directing the Competent Authority i.e. CMO, Municipal Council, Guna to lodge an F.I.R. So far as the authority of Collector Guna to direct the Chief Municipal Officer to lodge an F.I.R. is concerned, it is suffice to mention here that any person can bring the criminal agency into motion.

11. Considering the nature of allegations made against petitioner as well as other persons as well as in the light of report submitted by SDO, (Revenue) Guna, this Court is of considered opinion that no case is made out warranting interference.

12. Petition fails and is, hereby, ***dismissed***.

(G.S. Ahluwalia)
Judge

pd