

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 5<sup>th</sup> OF JULY, 2024**

**WRIT PETITION No. 13567 of 2024**

*(AARIF KHAN*

*Vs*

*THE STATE OF MADHYA PRADESH AND OTHERS)*

**Appearance:**

*(SMT. SAMPADA YADAV - ADVOCATE FOR THE PETITIONER)*

*(SHRI ROHIT JAIN - GOVERNMENT ADVOCATE FOR THE  
RESPONDENTS/STATE)*

**ORDER**

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

- I. Issue a writ in the nature of mandamus directing the Respondents to decide/consider the representation of the Petitioner dated 04.05.2024 produced as Annexure P/6.
- II. Issue a writ in the nature of mandamus directing the Respondents to not take any cognizance against the petitioner and his brother without conduct any fair and impartial enquiry and as well given opportunity of hearing.
- III. Issue a writ in the nature of mandamus directing the Respondents to take cognizance against the responsible erring officers who misbehaved with the petitioner (being law student) and conduct the departmental enquiry against him.
- IV. Issue any other writ, order or direction as this Hon'ble Court deems fit.

2. It appears that petitioner is trying to prosecute the case on behalf of his brother Rashid.

3. 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*, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526, 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*, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1, 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*, 1993 Supp*

(4) SCC 260 : 1993 SCC (Cri) 1171, *Mayawati v. Union of India*, (2012) 8 SCC 106 : (2012) 3 SCC (Cri) 801, *Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384, *CBI v. Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88, *CCI v. SAIL*, (2010) 10 SCC 744 and *Janata Dal v. H.S. Chowdhary*, (1991) 3 SCC 756 : 1991 SCC (Cri) 933.”

(emphasis supplied)

**26.** Recently, a three-Judge Bench of this Court in *E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49, while dealing with the appeal preferred by the “accused” challenging the order [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] 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 [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] . In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384, 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*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933, 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*, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9, 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 W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401. In para 70 of the

said decision, the Constitution Bench observed thus : (SCC p. 602)

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 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 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 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. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) — regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) has been seriously disputed by the investigating agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts

at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the court for obtaining remand by the police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

**30.** In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation. ...."

**4.** Thus, it is clear that the direction cannot be given to the Police Authorities to investigate the matter in a particular manner at the behest of a stranger. Furthermore, this Court cannot exercise its power of supervision and any direction to investigate a matter in a particular manner would certainly amount to supervising an investigation.

**5.** Under these circumstances, this Court is of considered opinion that no case is made out warranting interference.

**6.** Petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

S.M.