

Andhra Pradesh High Court - Amravati

Veedhi Nookaratnam vs The Union Of India on 4 January, 2023

Bench: R Raghunandan Rao

IN THE HIGH COURT OF ANDHRA PRADESH

W.P.No.24362 of 2022

BETWEEN:

- # 1. Veedhi Nookaratnam, W/o. Satyanaratna, R/o. Sriram Bageecha
Enclave Apartment, Near Kulayi Cheruvu, Ramaraopeta, Kakinada,
Andhra Pradesh.
2. Veedhi Satyanaratana, S/o. Satyam, R/o. Sriram Bageecha
Enclave Apartment, Near Kulayi Cheruvu, Ramaraopeta, Kakinada,
Andhra Pradesh.

....Petitioners

AND

- \$ 1. Union of India rep. by its Secretary, Ministry of Home Affairs, Nirman
Bhawan, Near Undyog Bhavan, Metro Station, Maulana Azad Road,
New Delhi, Delhi- 110011.
2. The State of Andhra Pradesh, rep. by its Principal Secretary (Home
Dept) Secretariat Buildings, at Amaravathi, Guntur District, A.P.
3. The Director General of Police, Mangalagiri, A.P.-522502.
4. The Director, Central Bureau of Investigation (CBI) Plot No.5-B, 6th
Floor, CGO Complex Lodhi Road, Jawaharlal Nehru Stadium Marg,
New Delhi - 110 003.
5. The Superintendent of Police, Central Bureau of Investigation, 1-83-
21/4, MVP Double Road, Sector 8, MVP Colony, Visakhapatnam,
Andhra Pradesh - 530017.
6. The Superintendent of Police, Kakinada District, A.P.,
7. The Sub-Divisional Police Officer, Kakinada, Kakinada District.
8. The Station House Officer, Sarpavaram Police Station, A.P.

... Respondents

Date of Judgment pronounced on : 04.01.2023

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

2

RRR,J

W.P.No.24362 of 2022

*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

*HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

+ W.P.No.24362 of 2022

% Dated:04.01.2023

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8. The Station House Officer, Sarpavaram Police Station, A.P.

... Respondents

! Counsel for Petitioner : Sri Jada Sravan Kumar

^Counsel for Respondents 2, 3, 6 to 8 : G.P. for Home

3

RRR,J

W.P.No.24362 of 2022

<GIST :

>HEAD NOTE:

? Cases referred:

1. 1988 (12) All Cri 716
2. 2010 (2) SCC 200
3. 1992 (1) SCC 397
4. 2010 (3) ALT 200
5. 1994 SCC SUPL (1) 143
6. (2020) 14 SCC 12
7. (2008) 2 SCC 409
8. (2013) 12 SCC 480
9. 2022 SCC Online SC 884

10. 2012 SCC OnLine All 537
11. 2020 SCC OnLine Del 740
12. (2010) 3 SCC 571
13. (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336 : 2010 SCC OnLine SC 930
14. (2014) 8 SCC 768 : (2014) 6 SCC (Cri) 116 : 2014 SCC OnLine SC 450
15. (2002) 5 SCC 521 : 2002 SCC (L&S) 775 : 2002 SCC OnLine SC 580
16. (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9 : 2008 SCC OnLine SC 484

4

RRR, J

W.P.No.24362 of 2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.24362 of 2022

ORDER:

The son of the petitioners had passed away, in suspicious circumstances, on 20.05.2022. Upon a complaint made in this regard by the 1st petitioner, Crime No.195 of 2022 was registered on 20.05.2022 in Sarpavaram Police Station, East Godavari District, under Section 174 Cr.P.C. Thereafter, the provision of law was altered to offences punishable under Sections 302 and 201 read with Section 34 IPC and Section 3(1)(r)(s) and Section 3 (2)(v) of SC & ST (Prevention of Atrocities) Act, 1989 (for short 'the Act').

2. The sole accused in the case was arrested on 23.05.2022 and has remained in judicial custody since then. The Investigating Officer has filed a charge sheet before the Special Court for SCs and STs (Prevention of Atrocities) Act cum X Additional District and Sessions Judge, Rajamahendravaram on 22.08.2022, in which the accused has been accused of offences under Sections 302, 201 IPC and Section 3(1)(r)(s) and Section 3 (2)(v) of the Act. About 56 witnesses have been listed along with the charge sheet. It is also stated in the charge sheet that C.C. TV footage of the house of the accused after the commission of offence and the CC footage near the scene of offence prior to the commission of offence is to be examined to ascertain the presence and involvement of the other accused, if any, and that the other accused could be charged by 5 RRR, J W.P.No.24362 of 2022 way of an additional charge sheet if reliable evidence, either technical or material, regarding the involvement of other persons comes out in the case. This charge sheet is said to have been returned with some objections and steps are being taken to resubmit the charge sheet.

3. Even while the investigation was going on in the above case, the petitioners had submitted a representation dated 08.06.2022, to the authorities to transfer the investigation to an independent investigating agency like C.B.I. The petitioners contend that this representation has been ignored by the State machinery and no response has been given in relation to this representation. The petitioners are now before this Court, seeking a direction from this Court to transfer the investigation of the above case to an independent investigating agency like C.B.I.

4. It is the contention of the petitioners that the accused is a member of the Legislative Council and is a highly influential person, who is ensuring that the police do not conduct a proper enquiry and are trying to exonerate other persons who were involved in the homicide of their son. The petitioners would point out to various mistakes, which are occurring in the manner in which the investigation is being carried out, to contend that the said mistakes are deliberate mistakes being done to help the accused.

5. The version of the petitioners, about the manner in which their son (hereinafter referred to as 'the deceased') had passed away, is as follows:

6

RRR, J
W.P.No.24362 of 2022

a) The deceased was earlier working as a driver of the accused, in the course of his employment, had also taken a loan of Rs.50,000/-, for his marriage expenses, from the accused and had repaid an amount of Rs.30,000/-. After some time, he had left the employment of the accused without repaying the remaining amount of Rs.20,000/-

b) On the intervening night of 19.05.2022 and 20.05.2022 one Sri A. Manikanta is said to have come on his motor cycle and picked up the deceased at 7.30 p.m.

c) Later, the accused is said to have contacted the father of the deceased, (the 2nd petitioner herein) at around 8.30 p.m., and enquired about the whereabouts of the deceased and demanded repayment of the unpaid loan amount of Rs.20,000/- and threatened serious consequences, if the money was not paid.

d) At about 0.52 a.m., the accused contacted the father of the deceased saying that the deceased was involved in an accident with a motor cycle and that he was going to the accident site.

e) The younger brother of the deceased is said to have immediately caused enquiries to know if any accident had taken place or not and came to know that no such accident had occurred.

f) However, the accused contacted the younger brother of the deceased and asked him to come to a hospital. The younger brother, when he arrived at the hospital, had found the deceased, in the rear seat of a car, in an unconscious state, opposite to the hospital. The duty 7 RRR,J W.P.No.24362 of 2022 Doctor, upon examination of the deceased, had confirmed the death of the deceased.

g) Thereafter, the accused brought the dead body of the deceased to the apartment complex of the deceased and informed the parents and relatives of the deceased that the deceased had passed away in a road accident and advised them to cremate the body by taking the deceased to their native village for which he offered an amount of Rs.2,00,000/-.

h) When the petitioners and others questioned the accused in this regard, there was a verbal argument and the accused left the place threatening them with severe consequences.

i) On noticing the injuries on the dead body of the deceased, the petitioners and his relatives, suspecting that the injuries were not received through an accident, had filed a complaint before the Sarpavaram Police Station and the same was registered under Section 174 Cr.P.C., despite the petitioners and the relatives stating that the deceased had not passed away in a road accident.

j) It was only after the postmortem report had made it clear that the death was not on account of any road accident that the accused was taken into custody on 23.05.2022.

6. The petitioners further contend that the investigation in the case was deliberately botched up by the State police to help the accused.

8

RRR, J

W.P.No.24362 of 2022

7. Sri Jada Sravan Kumar, learned counsel appearing for the petitioners would submit the details of the deliberate mistakes, committed in the investigation, in the following manner:

a) The police had initially registered the case under Section 174 Cr.P.C., despite the presence of numerous injuries and wounds on the body of the deceased.

b) The accused had about 12 pending criminal cases against him and recommendations were made by the Assistant Superintendent of Police, Rampachodawaram, for registration of a rowdy sheet against the accused. Despite this, the investigating officer, in the remand report, recorded that there was no past criminal record against the accused. This was done to facilitate the accused to get bail.

c) The accused was remanded to custody on 23.05.2022 for a period of 15 days till 06.06.2022. The time period within which police custody, of the accused, could have been obtained, under Section 167 Cr.P.C., was up to 06.06.2022. The investigating officer, after keeping quiet, had filed Crl.M.P.No.878 of 2022 on 06.06.2022 for police custody of the accused. This petition was dismissed by the Magistrate on the ground that the time period for seeking police custody had expired. The delay in filing the application for police custody was deliberately done to help the accused.

9

RRR, J

W.P.No.24362 of 2022

d) The version put out by the accused was that there was an altercation between him and the deceased in relation to non- payment of the loan amount of Rs.20,000/- due to which he had pushed the deceased resulting in the deceased losing his balance and falling on a hard piece of

concrete due to which the deceased had passed away. The investigating officer did not take any steps to verify the alleged scene of offence or take any samples of the mud or the cement in the place where the deceased is said to have fallen and injured his head. The said gap in the investigation was deliberate and to help the accused.

e) The pleadings in the counter affidavit filed before this Court as well as the statements in the charge sheet show that the police admit and acknowledge the presence of various other persons at the scene of offence as well as at the house of the accused before and after the incident had occurred. However, no investigation has been carried out in relation to the involvement of the other persons and no other person has been named either in the charge sheet or in the course of investigation. The statement of the investigating officer in the charge sheet, that other persons could also be arrayed as accused after further investigation, is only a statement made to mislead the Court and there would be no attempt of any nature to include, as accused, any of the other persons, who were involved in the death of the deceased.

10

RRR, J

W.P.No.24362 of 2022

f) It is the version of the accused that he had dragged the body of the deceased from the place of offence to another place for a distance of about 1 k.m., and the same is highly improbable in view of the physique of the accused. However, this aspect has been deliberately ignored by the investigating officer.

8. Sri Jada Sravan Kumar, learned counsel for the petitioner would also submit that the above defects in the investigation clearly make out a case of willful negligence and willful misdirection of the investigation to help the accused and other persons who were involved in the crime. He submits that the investigation is being carried out in this manner only on account of the fact that the accused is a prominent politician, and a Member of the Legislative Council, who has close proximity to the police authorities. He submits that there is no possibility of an impartial and proper investigation by the State police. He submits that a proper investigation is possible only if the investigation is entrusted to a professionally independent body such as C.B.I. He relies upon the following judgements:

1. Kashmere Devi vs. Delhi Administration¹.

2. Rubabhuddin Sheikh vs. State of Gujarat and Ors.²

3. Gudalure M. J. Cherian vs. Union of India³

4. Koganti Lakshmi vs. State Government of Andhra Pradesh and Ors.,⁴ 1988 (12) All CriR 716 2010 (2) SCC 200 1992 (1) SCC 397 2010 (3) ALT 200 11 RRR,J W.P.No.24362 of 2022

5. Ramesh Kumari vs State (NCT of Delhi) 2006 (2) SCC 677

6. R. S. Sodhi, Advocate vs State of U.P.,⁵ to contend that the Courts, in similar circumstances, had held that the High Court has power of entrusting the investigation to a separate authority, at any stage of investigation, and on similar facts various Courts have transferred the investigation to the C.B.I., from the State police.

9. The learned Government Pleader for Home would submit that the State police has no interest in retaining the case or in conducting investigation in the case. However, any transfer of investigation would be a reflection on the State police due to which the State police are opposing the transfer of investigation to the C.B.I. The learned Government Pleader for Home relying upon the judgment of the Hon'ble Supreme Court in Arnab Ranjan Goswami v. Union of India⁶, would contend that transfer of investigation, is a serious matter, which has to be done only in extreme cases and the courts should deal with such issues with great circumspection and caution. He would submit that it is only where the court comes to a conclusion that there can be no independent and impartial enquiry, that the Court would intervene in the matter and transfer the investigation to the C.B.I. He would further submit that the investigation has been going on in a fairly regular manner and small mistakes in the course of such investigation cannot be a ground to doubt 1994 SCC SUPL (1) 143 (2020) 14 SCC 12 12 RRR, J W.P.No.24362 of 2022 the integrity of the investigation process and to transfer the case to C.B.I. He relies upon the following judgements:

1. Sakiri Vasu vs. State of Uttar Pradesh and Ors.,⁷
2. K.V. Rajendran vs. Superintendent of Police, CBCID⁸
3. Rhea Chakraborty vs State of Bihar [Transfer Petition (CRL) No.225 of 2020]
4. Himanshu Kumar and Ors., vs State of Chhattisgarh and Ors.,⁹
5. Mrs. Rita Bahuguna Joshi vs. State of U.P.,¹⁰ [Allahabad High Court]
6. Deepali Aggarwal vs State of GNCT¹¹ [Delhi High Court]
7. State of West Bengal vs. Committee for Protection of Democratic Rights,¹²
8. Arnab Ranjan Goswami v. Union of India,

10. The learned Government Pleader for Home would also point out that in the judgments cited by Sri Jada Sravan Kumar, the Courts were dealing with situations where the police personnel themselves were the accused in the investigation and there was a doubt as to the reliability of the investigation by the State police themselves. He would submit that in the present case no such situation arises. He would further submit that in the present case, the accused, even according to the petitioners, is one of the main reasons for the demise of their son. The learned Government Pleader for Home would submit that once the accused himself has been (2008) 2 SCC 409 (2013) 12 SCC 480 2022 SCC Online SC 884 2012 SCC OnLine All

537 2020 SCC OnLine Del 740 (2010) 3 SCC 571 13 RRR,J W.P.No.24362 of 2022 arrayed as the sole/main accused, the question of shielding the main culprit does not arise. He would further submit that the investigation is being done in a transparent manner with all information sought by the petitioners being given to them. He points to the fact that the entire documentation filed by the petitioners in this writ petition was given by the police themselves.

11. The learned government pleader would further submit that the investigating officer is awaiting the report of the forensic science lab in relation to the CC TV footage to determine the identities of the persons who were there along with the accused. He submits that the CC TV footage requires a thorough vetting by the forensic science lab, as the footage in this case, was not clear, and the assistance of the forensic science lab was sought for the purpose of identifying the persons in the CC TV footage.

Consideration of the Court:

12. Before considering the question as to whether the investigation has to be transferred to the CBI, it is necessary to consider the guidelines set out by the Hon'ble Supreme Court in this regard. The Hon'ble Supreme Court had held that this court has power to transfer investigation of a crime to the CBI, in *Sakiri Vasu v. State of U.P.*, at page 416:

31. No doubt the Magistrate cannot order investigation by CBI vide *CBI v. State of Rajasthan* [(2001) 3 SCC 333 : 2001 SCC (Cri) 524] but this Court or the High Court has 14 RRR,J W.P.No.24362 of 2022 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.

13. The further guidelines for such transfer were indicated in the following judgements:

Babubhai v. State of Gujarat 13 at page 272

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

Subrata Chatteraj v. Union of India 14, at page 781

9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336 : 2010 SCC OnLine SC 930 (2014) 8 SCC 768 : (2014) 6 SCC (Cri) 116 : 2014 SCC OnLine SC 450 15 RRR,J W.P.No.24362 of 2022 political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.

Rubabbuddin Sheikh v. State of Gujarat, at page 216

60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not 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 independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge- sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

14. Another line of judgements of the Hon'ble Supreme court sounded a note of caution, in the exercise of discretion, by this court, in the following manner:

Minor Irrigation & Rural Engg. Services¹⁵, U.P. v. Sahngoo Ram Arya, at page 524 (2002) 5 SCC 521 : 2002 SCC (L&S) 775 : 2002 SCC OnLine SC 580 16 RRR,J W.P.No.24362 of 2022

5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause [(1999) 6 SCC 667 : 1999 SCC (Cri) 1196] . This Court in the said judgment at paragraph 174 of the Report has held thus : (SCC p. 750, para 174) "174. The other direction, namely, the direction to CBI to investigate 'any other offence' is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate

whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of 'LIFE' and 'LIBERTY' guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of 'LIFE' has been explained in a manner which has infused 'LIFE' into the letters of Article 21."

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by CBI against a person can only be done if the High Court after considering the material on 17 RRR,J W.P.No.24362 of 2022 record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of "ifs" and "buts" and thought it appropriate that the inquiry should be made by CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause [(1999) 6 SCC 667 : 1999 SCC (Cri) 1196] .

15. This principle has been affirmed by a constitution bench of the Hon'ble Supreme court, in the following manner:

State of W.B. v. Committee for Protection of Democratic Rights, at page 602:

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* [(2002) 5 SCC 521 : 2002 SCC (L&S) 775] this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.

*Divine Retreat Centre v. State of Kerala*¹⁶, at page 560

40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9 : 2008 SCC OnLine SC 484 18 RRR,J W.P.No.24362 of 2022 investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

16. The Hon'ble Supreme Court, after a review of the law had summed up the guidelines in, *Arnab Ranjan Goswami v. Union of India*, at page 41, in the following manner:

42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". Speaking for a Constitution Bench in *State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571* :

19

RRR, J

W.P.No.24362 of 2022

(2010) 2 SCC (Cri) 401] ("*CPDR, West Bengal*"), D.K. Jain, J.

observed : (SCC p. 602, para 70) "70. ... 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."

(emphasis supplied)

43. This principle has been reiterated in *K.V. Rajendran v. CBCID [K.V. Rajendran v. CBCID, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578]* . Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held : (SCC p. 485, para 13) "13. ... 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 20 RRR,J W.P.No.24362 of 2022 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."

44. Elaborating on this principle, this Court observed : (K.V. Rajendran case [K.V. Rajendran v. CBCID, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17) "17. ... 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."

The Court reiterated that an investigation may be transferred to CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". This observation must be read with the observations by the Constitution Bench in CPDR [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

46. The principle of law that emerges from the precedents of this Court is that the power to transfer an 21 RRR,J W.P.No.24362 of 2022 investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the petitioner seeks a transfer of the investigation. The grounds urged for transfer are:

17. The principles that can be extracted from the aforesaid guidelines laid down by the Hon'ble Supreme Court are -

a) This Court, exercising its jurisdiction under Article 226 of the Constitution of India, has the power to transfer investigation of any Crime from a State agency to another independent agency like the C.B.I.

b) This power is to be exercised sparingly and in exceptional circumstances.

c) The question of whether such exceptional circumstances exist or not, is a question of fact which has to be determined on the facts of each case.

18. Some of the exceptional circumstances, enumerated in the aforesaid judgments are -

- a) Involvement of higher officials of the State in the crime under investigation;
- b) Accusation against top officials of the investigation agency itself;

22

RRR, J
W.P.No.24362 of 2022

c) The facts show that transfer of a case is necessary to ensure credibility and instill confidence in the investigation;

d) Whether the incident may have national and international ramifications.

19. The present case would have to be considered on the basis of the above guidelines which are not exhaustive and keeping in mind the caution placed by the Hon'ble Supreme Court in the Constitution Bench Judgment (State of West Bengal v. Committee for Protection of Democratic Rights) that this extraordinary power must be exercised sparingly, cautiously and in exceptional situations.

20. In the present case, the sole accused is a member of the Legislative Council. The apprehension of the petitioners is that the State police would not take any steps against such a person on account of his being a public representative. The petitioners, in support of this apprehension, have also sought to make out a case of deliberate mishandling of investigation, by citing various incidents which raise such doubts.

21. The learned Government Pleader, on the other hand, submits that the investigation has been done in a transparent manner and the Member of the Legislative Council himself has been arrayed as the sole accused in the case. He submits that in such circumstances, the question of shielding the said public representative does not arise. He would further submit that the entire thrust of the argument of the 23 RRR,J W.P.No.24362 of 2022 petitioners is that other persons, who were also involved in the crime, are not being arrayed as accused. He submits that the case of the petitioners is that the persons, who were found to be present at the scene of offence and at the house of the sole accused, at the relevant point of time in the C.C TV footage, are not being included as accused even though they are involved in the crime. The learned Government Pleader contends that the charge sheet filed by the investigating officer specifically states that there is every possibility of other persons being involved in the crime and the report of the forensic science lab on the CC TV footage is awaited, any further investigation and steps can be taken against the other persons. In such situation, the apprehension and allegation of the petitioners that certain persons are being shielded, is misplaced.

22. The petitioners have set out their version of the events of 19/20.05.2022 in the writ affidavit. A perusal of the charge sheet shows that the facts alleged in the charge sheet essentially mirror the version of the petitioners in the writ petition. The charge sheet also states that the role of other persons is still being probed and further investigation would be taken up after the presence of other

persons is certified by the forensic science lab. In such a situation, the conditions necessary for ordering transfer of investigation to an independent agency like C.B.I., do not appear to be made out.

23. The only fact, which does raise a certain amount of doubt, is the negligence/delay in filing a complaint for police custody of the sole 24 RRR, J W.P.No.24362 of 2022 accused. A proper explanation for the said delay has not been made out before this Court. However, a revision appears to have been filed before this Court against the order of dismissal of the application for police remand of the accused, passed by the Magistrate. This delay, by itself, would not be sufficient for this Court to hold that the exceptional circumstances set out above have been made out, unless there is something more, justifying the order of transfer of investigation to the C.B.I. The other contentions raised by the petitioners do not appear to make out such exceptional circumstances.

24. One of the prime requirements of any criminal investigation is the credibility of such investigation and the confidence it evokes in the stake holders of the said investigation. To ensure that, such confidence is further retained, this writ petition is being disposed of with the following directions:

1. The investigating officer shall take immediate steps to obtain the forensic science lab reports in relation to C.C TV footage, at the earliest, and preferably within 15 days from the date of this order.

2. The investigating officer, upon identification of the persons/person in the CC TV footage, shall conduct a thorough investigation into the reasons for the presence of such persons and their role, if any, in the commission of offence or in the cover up of the said offence.

25

RRR, J

W.P.No.24362 of 2022

3. The investigating officer, upon finding any incriminating material or record in this regard shall include all such persons against whom such incriminating material is obtained as accused in the case and file a supplementary charge sheet under Section 173(8) Cr.P.C., before the Magistrate.

4. This direction is being given, as the matter is still pending before the Magistrate for committal to a Court of Sessions. In the event of the investigation being completed after the committal of the case to the Court of Sessions, the investigating officer shall file the supplementary charge sheet before the Court of Sessions itself.

5. This process of further investigation, in relation to any further material against the sole accused and in relation to the involvement of other persons in this crime, shall be completed expeditiously and preferably within a period of three months from the

date of this order.

There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

_____ R. RAGHUNANDAN RAO, J.

4th January, 2023 Js.

26

RRR, J

W.P.No.24362 of 2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.24362 of 2022

4th January, 2023

Js.