



[2024:RJ-JP:34170]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Appeal (Sb) No. 943/2024

1. Abhishek S/o Leelaram, Aged About 20 Years, R/o Gursali Ki Dhani Thana Panchayat Dariba Thana Patan District Sikar (Accused/ Petitioner Are In District Jail Tonk)
2. Neeraj S/o Naresh, Aged About 23 Years, R/o Kithana, Thana, Chidawa District Jhunjhunu (Accused/ Petitioner Are In District Jail Tonk)

----Appellants

Versus

1. State Of Rajasthan, Through P.p
2. Pintu S/o Pappulal, R/o Arniya Kankad, Peeplu, Tonk District Tonk (Raj)

----Respondents

For Appellant(s)	: Mr. V. R. Bajwa, Sr. Advocate with Mr. Sandeep Jain Ms. Savita Nathawat
For Respondent(s)	: Mr. G. S. Rathore, GA cum AAG with Mr. S. S. Mehla, PP Ms. Kirti Vardhan Singh Rathore Mr. Bharat Singh, ASP, CID(CB) Ajmer Dr. Rajesh Kumar Dr. Om Narayan Meena Dr. Yogendra Chopra Mr. Mohit Balwada Mr. Umashanker Pandey

HON'BLE MR. JUSTICE SAMEER JAIN

Order

Reportable

Reserved on:- **25/07/2024**

Pronounced on:- **14/08/2024**

1. The instant criminal appeal has been filed under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on behalf of the accused-appellants. The accused-appellants were arrested in connection with FIR No.





168/2023 registered at Police Station Peeplu, District Tonk for the offense under Sections 147, 148, 149, 302 and 201 of IPC and 3(2)(v), 3(2)(va) of the SC/ST Act.

2. Learned Senior Counsel, Mr. V.R. Bajwa, appearing on behalf of the accused-appellants, has submitted as under:-

2.1 That the FIR was registered with a delay i.e. three days after the date of the incident. In this regard, it was averred that the FIR was registered on 29.06.2023 whereas, the alleged incident is stated to have occurred on 27.06.2023 at 10:00PM.

2.2 That despite due knowledge, the said delay of three days was not adequately explained by the complainant-Pintu, who happens to be the brother of the deceased.

2.3 That the accused-appellants are young students aged 20 and 23 years, with no criminal antecedents whatsoever. They are merely employees of the MRS Group/lease holder, tasked with the duty to protect and safeguard the river bed from illegal mining of sand/bajri.

2.4 That the Medical Board has drawn out the postmortem report, which when coupled with the *panchnama*, reflects the existence and/or infliction of simple injuries on the person of the deceased, as opposed to any fatal//grievous injuries. Correspondingly, the cause of death is not attributed to any injury *per se*. Rather, the death is stated to have occurred on account of compression of the deceased's neck associated with the obstruction of the airway due to contents of vomit.

2.5 That a false and fabricated case is drawn against the accused-appellants by the prosecution. In this regard, learned



counsel averred that the FSL Report duly reflects that at the time of death, the deceased had consumed a significant quantity of alcohol, estimated value of which was 92.00 mg. from 100 ml. Therefore, the allegations against the accused-appellants are unsubstantiated and merely an after-thought.

2.6 That material witnesses, including the brother of the deceased/complainant, have not supported the story of the prosecution. No case is made out under Section 302 of IPC. In this regard, learned counsel submitted that even the fact of registration of FIR was on account of political pressure from the jurisdictional MLA/MP, which is also reflected as per the record before this Court. Therefore, the allegations leveled against the accused-appellants lack substance.

2.7 That the accused-appellants have been in judicial custody for a considerable period of time i.e. more than one year, which is an infringement on their liberties enshrined under Article 21 of the Constitution of India.

3. *Per contra*, learned counsel for the complainant, Mr. Mohit Balwada, contended that the present appeal lacks substance and therefore, no interference is warranted qua the order impugned dated 16.04.2024, which is squarely well-reasoned and in conformity with the settled position of law. In order to elaborate upon the said contention, learned counsel submitted that the offense as alleged was targeted, as the deceased belonged to the marginalized SC/ST community. The deceased was merely 22 years of age. During the commission of the said offense, a cruel and brutal attack was carried out on the person of the deceased,



which is reflected by the 14 injuries reflected in the postmortem report, including the cutting of the deceased's genitals and tongue.

4. In furtherance of the aforesaid, Mr. Balwada placed reliance upon the postmortem report, more specifically upon Injury A, which is stated to be grievous in nature, being the primary cause of death. In this background, learned counsel argued that despite said postmortem report, which is rather clear in terms of the infliction of injuries, the medical opinion so furnished by the State authorities regarding the cause of death to be on account of vomit, was vague and contradictory, which in essence casts a shadow of doubt on the integrity of such report, which appears to have been formulated on account of the medical expert being hand-in-glove with the lease holder/sand/*bajri* mafia. Moreover, on the aspect of delay in registering the FIR, Mr. Balwada submitted that the FIR was lodged after a lapse of three days, simply on account of the fact that the police authorities/administration were under the undue influence of the sand/*bajri* mafia, thereby giving shelter to the accused-appellants. Only when voice was raised by the jurisdictional public representatives such as the MLA and MP, the FIR came to be registered.

5. Learned counsel for the complainant further argued that despite the offense as alleged being squarely covered under the provisions of Section 34 and 201 of IPC, which are cognizable in nature and in spite of the police authorities having due knowledge of the incident alleged to have occurred on 27.06.2023, no due procedure as envisaged under the provisions of Section 154 and



174 of Cr.P.C. was followed and rather, the same was glaringly bypassed for a period of three days. Moreover, a contradictory stand was taken by the State authorities in the FSL, whereby on one hand the deceased was claimed to be heavily intoxicated whereas, on the other hand, it was noted that the deceased had run away from the site of the incident on 27.06.2023.

6. Furthermore, Mr. Balwada submitted that the cross-FIR numbering 170/2023, which was filed as a counter to the present FIR i.e. No. 168/2023, was not transferred to the CID (CB), for reasons best known to the State authorities, as a result of which, glaring and vital pieces of evidence such as the tractor/JCB/vehicles at the site, which were used in the commission of the murder were tampered with, including burning of the same and thereby blaming the family of the deceased for the same. Learned counsel further submitted that right from the date of the incident in question, the family of the deceased, which belongs to the SC/ST community, is being pressurized to enter into a coerced compromise by the *bajri* mafia, either through threats or offers of monetary gratification. Therefore, as the family of the deceased is from a humble background, they have been unable to contest the proceedings actively. In this regard, learned counsel submitted that even the police authorities as well as the mining/transport departments, being hand-in-glove with the *bajri* mafia, imposed unwarranted hurdles in the swift and efficient culmination of the investigation.

7. In this background, learned counsel for the complainant stressed on the claim that the police authorities in addition to the



medical board and CID (CB) are all influenced by the *bajri* mafia/lease holder alleged in the subject FIR, who is a well-connected political heavy weight, capable of influencing the outcome of the investigation and/or tampering with the same, with his influence, money and power. Learned counsel also submitted that it is an admitted fact in the investigation that the police authorities were aiding in the parallel system of management of the *bajri* mafia, on account of which, all material evidences were erased and the cognizable evidence of murder was not booked in time i.e. after a delay of three days, thereby vitiating the entire investigation.

8. Culminating the aforesaid submissions, learned counsel for the complainant averred that the present case is reflective not only of atrocities against the marginalized SC/ST community, but also abuse of power which seeps through the State machinery and vitiates fair investigation in matters of great public significance and societal safety. Therefore, in light of the tainted investigation and undue influence/power held by the *bajri* mafia/lease holder, as mentioned in the FIR, the complainant/family of the deceased ought to be provided due protection to contest the matter freely, *sans* any threats and/or unwarranted coercion. Lastly, learned counsel apprised the Court of the fact that in identical circumstances, this Court in S.B. CRLAS No. 292/2023, dismissed the appeal/bail of the similarly placed co-accused and the said, in appeal, came to be upheld by the Hon'ble Apex Court vide order dated 14.12.2023. Therefore, following judicial discipline, the instant appeals ought to be dismissed as well.



9. At this juncture, it is pertinent to note that considering the foregoing series of events and taking note of the public trust doctrine, this Court vide order dated 31.05.2024, spelled out the following directions, namely:-

9.1 National Commission for Scheduled Tribes created under Article 338 of the Constitution of India and the Rajasthan State Legal Services Authority were directed under the provisions of Section 15A to provide all assistance including legal aid and other help to the complainant/family of the deceased to contest the matter, especially considering their humble background and the power imbalance between the contesting parties.

9.2 The State Authorities/Police were directed to bring on record the *roznamcha* of the date of the incidence as well as the reason as to why till date, Section 173(8) supplementary charge-sheet had not been filed. Clarification/explanation was also sought on why the matter of the connected FIR i.e. No. 170/2023 registered at Police Station Peeplu, was not transferred to the CID(CB).

9.3 The medical authorities/officers were directed to appear before the Court in order to explain the visible inconsistencies between the post-mortem report and the medical opinion so furnished.

9.4 An explanation was sought from ACS (Home) for furnishing due explanation/report regarding the present status of the investigation and also, as to why despite the categoric directions of the Hon'ble Apex Court as enunciated in **Prakash Singh and Ors. vs. Union of India and Ors.** reported in **(2006) 8 SCC 1**, no police complaints authority had been formulated till date.



10. In compliance of the order dated 31.05.2024, the National Commission for Scheduled Tribes created under Article 338 of the Constitution of India, has given directions to the Chief Secretary for the State to provide legal assistance and other help to the deceased and his family. Moreover, the Rajasthan State Legal Services Authority has also appointed a lawyer, namely Shri U.S. Pandey for contesting and/or representing the complainant before the trial court. Additionally, ACS (Home) has also filed an affidavit apprising the Court of the present status of the investigation and the stage of compliance with the directions enunciated in **Prakash Singh (Supra)**.

11. At this juncture, it is pertinent to note that during the course of arguments and after having duly perused through the record before this Court, looking to the case diary, *roznamcha*, log-book and the corresponding investigation details, this Court *prima facie* observed certain shades of unfairness, incompetency, shoddiness in the investigation so conducted by the State authorities in the offense as alleged, which was capable of tainting and/or interfering in the trial of the offense altogether. Therefore, this Court had put forth its *prima facie* view regarding its willingness to transfer the investigation in the matter to the CBI for complete, comprehensive and fair investigation into the allegations leveled.

12. However, on request of learned Senior Counsel, Mr. Bajwa, appearing for the accused-appellants, an opportunity was afforded to furnish an explanation as to why the matter ought not to be transferred to an independent agency, such as the CBI. In this



background, learned counsel whilst praying for the non-transfer of investigation, submitted as under:-

12.1 That the matter is of an individual, which does not fall within the exception carved out for transferring investigation to an independent agency in the rarest of rare cases.

12.2 That previously, investigation into the matter had already been referred to CID(CB), which is an independent agency *per se*.

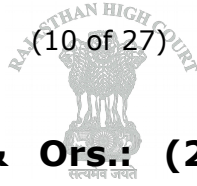
12.3 That the Code of Criminal Procedure (Cr.P.C) is a self-contained code and therefore, every apprehension/objections voiced by the complainant can be duly considered by the learned trial court.

12.4 That the matter is presently at the stage of trial and therefore, reference to CBI at this stage, shall yield arbitrary results, at a belated stage.

12.5 That the story of the prosecution is weak at best, as all material witnesses have already turned hostile.

12.6 That two parallel investigations i.e. one conducted by the CID (CB) and the other, possibly by the CBI, can lead to contrasting/varying findings, which shall inadvertently delay the speedy trial, infringing on the accused's rights protected under Article 21 of the Constitution of India.

13. In support of the foregoing averments voicing objections against the reference of the present matter to the CBI for fresh investigation, Mr. Bajwa placed reliance upon the dictum enunciated in the following judgments, namely **State of West Bengal & Ors. Vs. Committee for Protection of Democratic**



Rights, West Bengal & Ors.: (2010) 3 SCC 571, K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai & Ors.: (2013) 12 SCC 480, Disha Vs. State of Gujarat & Anr.: (2011) 13 SCC 337, Shree Shree Ram Janki Ji Asthan Tapovan Mandir & Anr. Vs. The State of Jharkhand & Ors.: JT 2019 (5) SC 42, Divine Retreat Centre Vs. State of Kerala & Ors.: (2008) 3 SCC 542, M.C. Abraham & Anr. Vs. State of Maharashtra & Ors.: (2003) 2 SCC 649, Vishwanath Biradar Vs. Deepika & Ors.: SLP (Cri.) No. 4123/2021, State Rep. By The Inspector of Police Vs. M. Murugesan & Anr.: JT 2020 (1) SC 137 and Satyajit Banerjeet & Ors. Vs. State of West Bengal & Ors.: JT 2004 (10) SC 27.

14. Lastly, learned counsel for the accused-applicants argued that the extraordinary powers of this Court enshrined under Section 482 of Cr.P.C. read with Article 226 of the Constitution of India, for transferring the matter to the CBI for investigation, must be exercised sparingly and cautiously, only in exceptional circumstances. It was averred that such directions for referral in exercise of the power of judicial review to protect fundamental rights enshrined under Article 21 of the Constitution of India, does not go with the doctrine of federal structure and the separation of powers. Learned counsel submitted that in the present facts and circumstances, no exceptional and/or supervening circumstance exists, which may warrant the transfer of investigation to the CBI. It was lastly submitted that reference to CBI cannot be made mechanically and/or in a routine manner and therefore, before



doing so, the Court must examine the complexities which may arise out of such reference, nature of the offense. However, no such circumstances arise in the present case, as the primary responsibility of the investigation agency has duly been discharged by the CID(CB) and State authorities, and as a result of which, charge-sheet has been filed against the accused-appellants under Section 302 of IPC.

15. Whereas, on the aspect of referral of investigation to the CBI, learned AAG cum GA, appearing for the respondent-State submitted that CID (CB) is an investigation body of the State, duly equipped to carry out fair investigation. Moreover, as on date, the filing of the supplementary charge-sheet under Section 173(8) is pending and disciplinary proceedings have already been initiated against the concerned/erring police officials for bypassing the provisions of Cr.P.C./IPC in registering the FIR timely and non-maintenance of the log-book and *roznamcha*. Learned AAG cum GA also submitted that the medical officers, present in Court, have voiced that the deceased succumbed to death on account of Injury A as mentioned in the postmortem report and the vomit was only incidental and ancillary in nature. The said explanation was also endorsed by the Medical Board. However, learned AAG cum GA subsequently withdrew the representation qua the deceased, on account of conflict of interest with the State.

16. ACS (Home), who marked his presence virtually, also filed an affidavit before the Court but was unable to furnish any concrete and/or material clarification on the aspect of constitution of the



police complaints authority, delay in registering the FIR, non-transfer of investigation of connected FIR to the CID(CB) etc.

17. Whereas, Mr. U.S. Pandey, counsel appointed by the Rajasthan State Legal Service Authority to assist the complainant and Mr. Mohit Balwada, counsel for the complainant, collectively objected to the apprehensions voiced by the counsel for the accused-appellants in transferring the investigation to the CBI and submitted that reference of the present case ought to be made to an independent agency such as the CBI for weeding out the biased, unfair, shoddy and incomplete investigation conducted by the police/State authorities, as spelled above.

18. Heard and considered the arguments advanced by the learned counsel appearing on behalf of both the sides, scanned through the voluminous record of the appeal and perused through the judgments cited at Bar.

19. At the outset, prior to penning down observations on the contentions raised by the learned counsel for both the sides, this Court believes it to be absolutely necessary to take note of the germane considerations and/or stipulations, which ought to be borne in mind whilst disposing of the appeal/bail and ascertaining whether or not, the investigation ought to be further referred to an independent agency, such as the Central Bureau of Investigation (CBI). The overarching stipulations and/or considerations, germane to the disposal of the present appeal, are noted herein-under:-

19.1 That the present appeal has been filed under Section 14 of the Scheduled Castes and Scheduled Tribes Act 1989



(hereinafter, Act of 1989), both on questions of fact as well as questions of law.

19.2 That the deceased belonged to a rather marginalized community, whose financial status was weak at best. The deceased, who was hardly 22 years of age, is alleged to have been killed at the behest of the *bajri/sand* mafia, by birthing a criminal conspiracy to set an example in the society, in order to protect its own interests.

19.3 That the postmortem report, as on record, aided by the submissions advanced by the medical experts before the Court, such as the doctor, reflects that the deceased succumbed to the injuries on his body, which were 14 in number, but more specifically Injury-A, which is stated to be grievous in nature, being the primary cause of death. The record suggests that the said injuries on the person of the deceased were not only gruesome, but agonizingly widespread and brutal, including the cutting/severing of the tongue and genitals.

19.4 That during the investigation, the provisions enshrined under Section 15A of the Act of 1989, which provide for the rights of victims and witnesses, read with the corresponding provisions enshrined under the Cr.P.C., more specifically Sections 154 and 174, were not followed by the State/police authorities, both in letter and in spirit, insofar as contrary to the aim and objective of said provisions, which mandate the immediate registration of FIR's in cases of cognizable offense(s) such as murder, upon the receiving of knowledge qua the same, no such timely FIR was registered. Rather, the subject FIR came to be registered only on



account of pressure exerted by the jurisdictional MP/MLA, that too after a significant lapse of three days from the date of the incident i.e. on 29.06.2023, whereas the incident occurred on 27.06.2023.

19.5 That the untimely registration of the FIR and the consequent lapse in procedure had the effect of the corpse of the deceased lying unprotected/neglected for a period of three days, during which, substantial pieces of evidence and witnesses were tampered with, which is also reflected from the registration of the connected/cross-FIR numbering 170/2023, registered by the owner/lease holder which stated that the vehicles which were used in the commission of the alleged incident, came to be destroyed and/or burnt.

19.6 That a shadow of doubt, on the integrity of the investigation, which was shaky to begin with on account of the delayed registration of FIR, is also cast on account of the fact that when reference for investigation by the CID (CB) was made, the investigation in the connected FIR numbering 170/2023 was not transferred, which had the effect of birthing two parallel sets of investigation, despite the nucleus being common and/or overarching and interconnected.

19.7 That in the subject FIR, specific allegations were leveled by the complainant regarding special protection being granted by the police officials to the lease/*naka* holders and/or *bajri* mafia, who had the common intention to commit criminal acts in order to set an example and safeguard their own interests i.e. preventing clandestine removal of *bajri*. Yet, despite such allegations and without due justification, said individuals were protected by the





State/police authorities, as a result of which, they were not charge-sheeted. Moreover, a contradictory approach was adopted by the police personnel, whereby the names of police officers mentioned in the FIR were exonerated from the charge-sheet, but parallelly, disciplinary proceedings were initiated against them for non-maintenance of *roznamcha*, non-registration of timely FIR and upkeep of log-book.

19.8 That qua the lease/*naka* holders, in spite of the accused-appellants specifically admitting in their statements to be the former's employees who were working under their specific directions, the filing of the supplementary charge-sheet under Section 173(8) of Cr.P.C. has been kept in abeyance for a significant period of time, whilst ignoring the provisions of Section 34 of the IPC, which fastens liability on all individuals who act in furtherance of a common intention. The investigation carried out by the CID (CB) has duly acknowledged the fact that a parallel mechanism was adopted by lease holders to take action against the clandestine removal of *bajri*, by engaging youth to act on the whims/directions of the lease holders, which often involved commission of illegal acts. Despite such findings advanced by CID (CB), the police authorities, for reasons best known to them, failed to invoke the provisions Section 34 of IPC against such lease holders.

19.9 That as per the record before the Court, grave contradictions are noted between the Medical Report and the FSL Report, as on one side, the investigation authorities submit that the deceased before succumbing to his injuries, ran away from the



site of the incident, whereas on the other hand, the investigation reveals that the deceased was heavily intoxicated, who died because of congestion on account of his vomit.

20. Therefore, in light of the foregoing considerations and/or stipulations, this Court deems it fit to note that the arguments advanced by the counsel for the accused-appellants, insofar as they pertained to non-transferring/referring of further investigation to the CBI, cannot be countenanced by this Court. Moreover, the reliance placed by learned Senior Counsel for the petitioners upon the dictum of the judgments noted above, itself dictates that reference for investigation may be made to independent agencies in the rarest of rare cases. In sensitive matters, such as the one before this Court concerning offenses against marginalized communities (SC/ST), heinous offenses are alleged to be committed and correspondingly, the investigation authorities have miserably failed in their task to uphold the tenets of a fair investigation as stipulated by the Cr.P.C. and the Act of 1989, whereby despite due knowledge of a cognizable offense, no timely FIR was registered, log-book was not maintained and the *roznamcha* was not prepared.

21. At this juncture, this Court deems it appropriate to place reliance upon the dictum enunciated by the Hon'ble Apex Court in the judgment of **Vinay Tyagi vs. Irshad Ali @ Deepak** reported in **(2013) 5 SCC 762**. In **Vinay Tyagi (Supra)**, the Hon'ble Apex Court held that while exercising jurisdiction under Section 482 of Cr.P.C. read with Article 226 of the Constitution of India, Constitutional Courts can direct fresh and further investigation,



where it appears that the investigation *per se* was *ex facie* unfair and tainted. The relevant extract of the dictum enunciated in

Vinay Tyagi (Supra) is reproduced herein-under:-

"14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173 of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156 of the Code.

15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173. This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. **The basis is discovery of fresh**



evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. **The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon.** Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. **It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted.** The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. **Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency.** As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle





of rarest of rare cases would squarely apply to such cases....”

22. In furtherance of the aforesaid, reliance can also be placed upon the dictum enunciated in **Pooja Pal vs. Union of India and Ors.** reported in **2016 (3) SCC 135**, wherein the Hon'ble Apex Court whilst pressing on the possibility of referring the investigation to the CBI, outlined that the same may be done in exceptional cases, even when no necessary defect is pointed out in the erstwhile investigation. The Hon'ble Apex Court stressed on the accused-appellant's right to a speedy and fair trial whilst making it clear that the former by itself would not be prejudicial to the accused, when pitted against the imperative of a fair trial. The relevant extract of the dictum enunciated in **Pooja Pal (Supra)** is reproduced herein-under:-

"44. Be that as it may, the issue that demands to be addressed is the necessity or otherwise of further investigation or reinvestigation by the CBI in view of the overall conspectus of facts and the state of law. Admittedly, more than a decade has elapsed in between, and in the interregnum, successive investigations have been conducted by the state police and CBCID, following which four charge-sheets have been submitted arraigning respondent Nos. 4 and 5 and others as accused with the supporting material gathered in course of the probe to prove the charge levelled against them. It is noticeable as well that the appellant as well has not highlighted any defect, omission or deficiency in the investigation conducted by the CBCID, likely to adversely impact upon the outcome of the trial therefor.





45. *These notwithstanding, it would still be, in our opinion, imperative to examine as to whether for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution, the relief of entrustment of the investigation of the case again to the CBI is grantable or not on its own merits. This is chiefly, in view of the intrepid, audacious and fiendish intrusion of human right by the assassins in broad day light at a public place, by defiantly violating all canons of law and making a mockery of the administrative regime entrusted with the responsibility to maintain an orderly society. The terrorising impact of this incident and the barbaric manner of execution of the offence is also a factor which impels this Court to undertake such a scrutiny in the interest of public safety, a paramount duty entrusted to all the institutions of governance of our democratic polity. **This is more so, where a grisly and intimidatory crime impacting upon the public confidence in the justice delivery system as a whole is involved, so as to ensure that such outrageous do not go incautiously, unfathomed and unpunished.***

23. Therefore, the key takeaway from the foregoing dictum of the Hon'ble Apex Court's judgments enunciated in **Vinay Tyagi (Supra)** and **Pooja Pal (Supra)** stipulates that investigation into an offense must be unbiased, honest, just, complete and in accordance with law. The entire emphasis of such investigation must be to accentuate the truth of the matter before the competent court of jurisdiction. The Court whilst referring the matter for investigation to be conducted by a novel agency such as the CBI, must be mindful of the fact that discovery, vindication





and establishment of truth are the avowed purposes underlining the existence of courts of justice. A judicial balance must be struck between the competing forces in a criminal trial i.e. the interests of the accused and the public and to a great extent that too of the victim, at the same time not losing sight of public interest involved in the prosecution of persons who commit offenses.

24. Therefore, in the facts and circumstances of the present case, and pursuant to having taken note of the foregoing stipulations and/considerations noted above, this Court cannot help but take note of the fact that the investigation so conducted in the offense as alleged has been unfair, tainted and incomplete, which has pricked the judicial conscience of this Court.

25. Hence, whilst referring the present case to the CBI for investigation, this Court deems it appropriate to reiterate that the investigation conducted by the police authorities and CID (CB) up until now, cannot be acted upon, as the same is opposed to the tenets of fair play and justice, for the following reasons, in addition to those noted above:-

25.1 That the offense as alleged invokes the provisions of the Act of 1989 as the victim/deceased belonged to the SC/ST community.

25.2 That as per the postmortem report, 14 injuries *in-toto* were reflected on the person of the deceased, out of which Injury-A on the neck, as explained by the medical expert/doctor, who has marked appearance before the Court, was fatal and life threatening. Despite such explanation, the erstwhile medical opinion placed on record, as furnished by the medical expert, was



wholly contradictory, as the same in its entirety ruled out the cause of death to be the injuries, but rather, ascertained the same to be congestion in the wind pipe on account of vomiting. The contradiction in the medical report and the corresponding medical opinion also becomes glaring on account of the fact that the latter, for reasons best known to the expert, classified the injuries to be simple in nature, which is agonizing, especially when Injury A on the neck of the deceased is stated to be life threatening in the statements made before the Court.

25.3 That during the investigation, the provisions enshrined under Section 15A of the Act of 1989, which provide for the rights of victims and witnesses, read with the corresponding provisions enshrined under the Cr.P.C., more specifically Sections 154 and 174, were not followed by the State/police authorities, both in letter and in spirit, insofar as contrary to the aim and objective of said provisions, which mandates the immediate registration of FIR's in cases of cognizable offense(s) such as murder, upon the receiving of knowledge qua the same, no such timely FIR was registered. Rather, the subject FIR came to be registered only on account of pressure exerted by the jurisdictional MP/MLA, that too after a significant lapse of three days from the date of the incident i.e. on 29.06.2023 whereas the incident occurred on 27.06.2023.

25.4 That the investigation, as conducted by authorities until now, itself admits that the police authorities and State administration had handed over the charge to private players, such as the lease holders herein, to protect their own interests such as the clandestine removal of *bajri*. In order to do so, such



lease holders *prima facie* recruited private players to safeguard their interests, whilst taking the law into their own hands, as is suggested to have been done in the facts and circumstances of the present case, with the aid of the accused-appellants before this Court.

25.5 That in the subject FIR, specific allegations were leveled by the complainant regarding special protection being granted by the police officials to the lease/*naka* holders and/or *bajri* mafia, who had the common intention to commit criminal acts in order to set an example and safeguard their own interests. Yet, despite such allegations and without due justification, said individuals were protected by the State/police authorities, as a result of which, they were not charge-sheeted. Moreover, a contradictory approach was adopted by the police personnel, whereby the names of police officers mentioned in the FIR were exonerated from the charge-sheet, but parallelly, disciplinary proceedings were initiated against them for non-maintenance of *roznamcha*, non-registration of timely FIR and upkeep of log-book.

25.6 That qua the lease/*naka* holders, in spite of the accused-appellants specifically admitting to be their employees who were working under their specific directions, the filing of the supplementary charge-sheet under Section 173(8) of Cr.P.C. has been kept in abeyance for a significant period of time, whilst ignoring the provisions of Section 34 of the IPC, which fastens liability on all individuals who act in furtherance of a common intention. The investigation carried out by the CID (CB) has duly acknowledged the fact that a parallel mechanism was adopted by



lease holders to take action against the clandestine removal of *bajri*, by engaging youth to act on the whims/directions of the lease holders. Despite such findings advanced by CID (CB), the police authorities, for reasons best known to them, failed to invoke the provisions Section 34 of IPC against such lease holders.

25.7 That as per the record before the Court, grave contradictions are noted between the Medical Report and the FSL Report, as on one side, the investigation authorities submit that the deceased before succumbing to his injuries, ran away from the site of the incident, whereas on the other hand, the investigation reveals that the deceased was heavily intoxicated, who died because of congestion on account of his vomit.

25.8 That during investigation, the provisions of the Act of 1989 were violated insofar as no due assistance and aid was accorded to the deceased's family, as is provided by the mandate of Section 15A.

25.9 That in a similar factual matrix i.e. in S.B. Criminal Misc. Bail Application No. 2910/2024, which pertained to an offense registered at Police Station Sadar District Bundi, wherein the subject matter was of clandestine removal of *bajri* and sand/*bajri* mafia as well, taking note of the public trust doctrine and also, the dictum enunciated in **T.N. Godavaran Thirumulkpad vs. Union of India** reported in **AIR 1997 SC 1228** along with the environmental and economical ramifications of clandestine removal of *bajri* and the fact that the sand mafia was parallely functioning by taking the police/State authorities under its political influence, this Court had transferred the



investigation to the CBI, which also came to be accepted by the State. Further, as this Court has been made aware, the State even initiated a drive to curb the clandestine removal of sand/*bajri* mafia.

26. Furthermore, during the course of arguments, learned counsel for the complainant apprised the Court of the fact that there is threat to the life and liberty of the deceased's family, as they come from a humble background, and have named individuals in the FIR who yield significant power and influence in the society. Therefore, in this background, whilst placing reliance upon the dictum enunciated in **National Human Rights Commission vs. State of Gujarat and Ors.** reported in (2009) **6 SCC 767** and **Mahendar Chawla and Ors. vs. Union of India and Ors.** reported in (2019) **14 SCC 615** and taking note of the Witness Protection Scheme 2018 read with Section 15A and 21 of the Act of 1989, which provides for the rights of the victims and witnesses, and taking cumulative note of the dictum enunciated in **Vinay Tyagi (Supra)**, this Court is of the view that the investigation in the matter should be referred to the CBI, as the investigation carried out until now, for the reasons mentioned above, cannot be acted upon, as the same is tainted, shoddy and incomplete, thereby casting a shadow of doubt on its integrity and legitimacy. Accordingly, relying upon the aforesaid, it is also expected that whilst further investigation is carried out, the CBI/State shall duly safeguard the interests of the complainant/deceased's family, in order to prevent witness tampering and undue/illegal practices.



27. Therefore, placing cumulative reliance upon the foregoing observations, this Court deems it appropriate to dismiss the present appeal, at this stage, whilst directing the CBI to conduct investigation into the offense as alleged, as the investigation before this Court, up until now, is incomplete and incapable of being acted upon in seclusion, for the reasons noted above. Accordingly, the matter is transferred to the CBI, Regional Unit Jaipur with immediate effect, in exercise of the powers conferred under Section 482 Cr.P.C. read with Article 226 of the Constitution of India.

28. However, looking to the fact that the accused-appellants have been in judicial custody since a considerable period of time and the trial is presently ongoing, this Court expects the CBI to culminate its investigation into the matter within an upper period of 60 days. The report of the said investigation be submitted before the concerned Special SC/ST Court having exclusive jurisdiction as envisaged by Section 14 of the Act of 1989, where the trial is presently on-going. Meanwhile, no final adjudication be done until such investigation has culminated. It is made clear that any observations of this Court shall not prejudice the rights and merits of either of the sides.

29. Case diaries are returned to the officer present in Court on behalf of the CID (CB). Any clarifications to be sought, on part of the CBI, may be presented before this Court, by way of an appropriate application to that effect.



[2024:RJ-JP:34170]



[CRLAS-943/2024]

30. Therefore, in terms of the aforesaid, the instant appeal is dismissed. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J

Pooja /1

