



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION (STAMP) NO.7227 OF 2024

Tejasvee Abhishek Ghosalkar
Aged: - 37 Years, Occ: - Corporator,
Residing at: - 701, Audumbar Building,
Daulat Nagar, Borivali (East), Mumbai ...Petitioner

Versus

1. The State of Maharashtra
Through Senior Inspector
M.H.B. Colony Police Station
Borivali (West), Mumbai
2. The Commissioner of Police
Mumbai
3. The Special Police Commissioner
Mumbai
4. The Joint Commissioner of Police (Crime)
Mumbai
5. The Additional Commissioner of Police (Crime)
Mumbai
6. The Deputy Commissioner of Police (Crime)
Mumbai
7. Crime Branch Unit XI
The Investigating Officer
Mumbai

8. Home Department
Through the Secretary
Mantralaya, Mumbai 400032
9. The Cabinet Minister for Home
Home Department
Mantralaya, Mumbai 400032
10. The Hon'ble Chief Minister
The State of Maharashtra
Mantralaya, Mumbai 400032
11. The Hon'ble Deputy Chief Minister
The State of Maharashtra
Mantralaya, Mumbai 400032
12. The State of Maharashtra
Through A.P.P.
High Court Appellate Side
Bombay High Court, Mumbai
13. The Central Bureau of Investigation
Tanna House, Colaba, Mumbai ...Respondents

Mr. Bhushan Mahadik a/w Ms. Neha Sule, Ms. Pallavi Pakale,
Ms. Nikita Pawar i/b Mahadik and Associates, for the Petitioner.

Mr. H. S. Venegavkar, P.P. a/w Ms. P. P. Shinde, A.P.P for the
Respondent Nos.1 to 12-State.

*CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.
RESERVED ON : 10th JULY 2024
PRONOUNCED ON: 6th SEPTEMBER 2024*

JUDGMENT (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned P.P. waives notice on behalf of respondent Nos.1 to 12-State.
3. By this petition, preferred under Article 226 of the Constitution of India, the petitioner, who is the wife of an Ex-Corporator-Abhishek Ghosalkar (deceased) seeks a direction to the respondent No.7 to forthwith handover the investigation of C.R. No.55 of 2024, registered with the M.H.B. Colony Police Station, Mumbai (subsequently, handed over to Crime Branch, Unit-XI, Mumbai) to a Special Investigation Team (SIT) headed by a Police Officer of the DCP rank or any other independent investigating agency/machinery, preferably the Central Bureau of Investigation

(‘CBI’). Direction is also sought that the said agency/machinery, to whom the case is transferred, to take all necessary steps in accordance with law to conduct speedy, fair and impartial investigation in a time bound manner and to also conduct brain-mapping and/or lie-detector test and/or narco-analysis, on the suspects. Direction is also sought to add Sections 120B r/w 34 of the Indian Penal Code (‘IPC’) to the aforesaid C.R.

4. The facts giving rise to the filing of the aforesaid petition, are as under:-

4.1. On 8th February 2024, at about 19:30 hrs to 19:40 hrs, the petitioner's husband-Abhishek Ghosalkar (*‘the deceased’*, for short) was killed in a gruesome and brutal manner. It was a cold-blooded murder of an Ex-Corporator of the area. The said killing was seen live on Facebook, which was aired from Mauris Noronha’s office. Mauris Noronha (*‘Mauris’*, for short) who shot 7 to 8 bullets on the deceased during the live proceeding, subsequently shot himself with the same

firearm weapon, with which he shot the deceased. Pursuant thereto, C.R. No.55 of 2024 was registered as against Late Mauris, alleging offences punishable under Section 302 of the IPC, Section 3, 25 of the Arms Act and under Sections 37 (1) (a) r/w 135 of the Maharashtra Police Act. The investigation although registered initially with the M.H.B. Colony Police Station, Mumbai, was subsequently transferred to the respondent No.7-Crime Branch, Unit XI, Mumbai. During the course of investigation, the police arrested one Amrendrakumar Ashokkumar Mishra ('Amrendra', for short), the bodyguard of Mauris. After investigation, the police filed charge-sheet in the said case against Amrendra, within sixty days, for the offence punishable under the Arms Act. The said Amrendra has been enlarged on bail by the trial Court.

5. The grievance of the petitioner is that, the Crime Branch has not investigated the cold-blooded murder of her deceased husband properly, nor have they looked into all the angles, much less

investigated any other angle i.e., which will throw light on the complicity or involvement of others, apart from Mauris, who shot himself, post shooting the deceased. According to the petitioner, after about 20 days of the incident, she addressed a letter dated 28th February 2024 and made a detailed complaint and representation to various authorities giving minute details of the persons suspected to be involved in the serious, ruthless, brutal, gruesome, broad daylight murder of the deceased i.e., the involvement of Amrendra, Mehul Parekh, Sanjay Acharya alongwith unknown secret conspirators. Infact, the petitioner had also addressed a letter dated 4th March, 2024 to the respondent Nos.2 to 7 and had requested them to form a SIT, of atleast DCP rank officers, alongwith forensic experts and had requested them to take steps to conduct brain-mapping and lie-detector test on the accused/suspects, as well as for invocation of Sections 120B r/w 34 of the IPC. The petitioner addressed another letter dated 14th March 2024, for her safety and her family's safety, since numerous suspicious, mysterious unknown persons were noticed around the petitioner and petitioner's family as and when they stepped

out of their home and/or work place and/or offices and/or school and/or Shakhas etc. The petitioner also addressed a letter to the Maharashtra State Human Rights Commission on 15th March 2024, for the grave violation of the deceased's human rights. It is the petitioner's case, that since no cognizance was taken of the letters addressed to the police authorities, she was constrained to file the aforesaid petition.

5.1. According to the petitioner, her husband-Abhishek (the deceased), an Ex-Corporator of Ward No.1, was associated with Shiv-Sena, a Political Party now known as '*Uddhav Balasaheb Thackeray (UBT) Gat*'; and, that the deceased was a Corporator from Ward No.1, Borivali (East), during the period from 2012 to 2017. According to the petitioner, the deceased was always accessible to the common man and stood for the grievances faced by the public at large and as such was highly respected amongst all classes of people. It is further the petitioner's case, that due to wide public acceptance of her husband and his dedication towards work, her husband had a public standing

and a good reputation, and that due to his rising popularity and fame, her husband was being looked at, as a staunch political competitor by the aspiring candidates of the rival political parties. It is the petitioner's case that Mauris (who shot her husband-Abhishek), would play Poker games and would gamble at Casinos and was involved in several illicit financial deals and as such had a criminal background, with three or four cases registered against him; and that Mauris had made defamatory statements and accusations against the petitioner on Facebook posts, in 2022. It is further the petitioner's case that Mauris was ambitious and was keen to contest for the post of Municipal Corporator from Ward No.1 or Ward No.8 of Borivali (West) and as such would do all possible acts to attract public attention, as he was aspiring to be a Corporator. According to the petitioner, in December 2023, to her and her husband's shock and surprise, Mauris had put up banners of himself and her husband-Abhishek, to mislead the public and gain confidence of the deceased, that they both had come together; that when Mauris was confronted by the deceased, Mauris expressed his desire to work with him in social causes of M.H.B.

Colony and in particular, Ward Nos.1 and 8. The petitioner has annexed photographs of the banners put up by Mauris. According to the petitioner, the firing done by Mauris on her deceased husband, was an act done in connivance with other accused/persons and that the same would be evident from the circumstances on record. It is the petitioner's case that the police have failed to examine several material/important aspects, surrounding the murder of the deceased, warranting appointment of a SIT or transfer of the case to the CBI.

6. Mr. Mahadik, learned counsel for the petitioner, during the course of hearing showed us the CCTV footages collected by the petitioner and the suspicious movements of Amrendra and Mehul, during the said time span and how the events unfolded on the day of the incident and the previous date. He also showed us the contrary stands taken by Mehul and other witnesses i.e. contrary to the records. He submitted that for reasons best known, the police have failed to look into all angles, despite the petitioner and her family pointing out the same, to the senior officers.

7. Per Contra, Mr. Venegavkar, learned Public Prosecutor submits that investigation has been done properly and that no ground was made out for transfer of the investigation to any agency. He states that the police after investigation have also filed charge-sheet in the said case.

8. Before, we proceed to consider whether the investigation is required to be transferred or not, it would be apposite to consider the law with regard to the same.

9. The parameters for transfer of investigation from one agency to other in particular to the CBI, are well settled. Although, there is no rigid and inflexible rule or test laid down to decide, whether or not the investigation can be transferred from one agency to another, from an analysis of the decisions of the Apex Court, it is evident that transfer of investigation is not to be done in a routine manner, merely because an interested party expresses some

apprehension regarding the investigation. The power is to be exercised cautiously and in exceptional situations, where it becomes necessary to do so, to give credibility to the investigation; or when there is a likelihood of miscarriage of justice, due to the lackadaisical attitude of the prosecution.

10. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, can give a direction to the CBI to investigate a cognizable offence alleged to have been committed within the territory of the State, without the consent of the State. However, the Courts before passing any order must bear in mind certain self imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under Article 226 of the Constitution of India requires great caution in its exercise. Although, no inflexible guidelines have been 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. The said power is an extra-ordinary power and is expected to be used sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill 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.

11. In fact, in *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others v/s Sahngoo Ram Arya and Another*¹, the Apex Court observed that an order directing an enquiry by the 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 the CBI or any other similar agency.

12. Similarly, in *State of West Bengal and Others v/s Committee for Protection of Democratic Rights, West Bengal and*

1 (2002) 5 SCC 521

*Others*², the Apex Court observed that there can be no cast iron parameters and whether an exceptional situation has arisen may be determined by the Court by taking an overview of the fact situation of a particular case.

13. In *Dharam Pal v/s State of Haryana and Others*³, the Apex Court in paras 2 and 3 has observed as under:-

“2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as

2 (2010) 3 SCC 571

3 (2016) 4 SCC 160

perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.

3. Justice, which is “truth in action” and “the firm and continuous desire to render to everyone which is his due” becomes a mirage for the victim and being perturbed he knocks at the doors of the High Court under Article 226 of the Constitution alleging that principle of fair and proper investigation has been comatosed by the investigating agency, for the said agency has crucified the concept of faith in the investigation which is expected to maintain loyalty to law and sustain fidelity to its purpose.”

13.1. The Apex Court in the aforesaid case was dealing with the transfer of investigation from one agency to the CBI. In the said case, charge-sheet and supplementary charge-sheet were also filed and trial had also commenced, however, despite the same, the case was transferred to the CBI. It is in this background that the Apex Court while transferring the investigation to the CBI, observed in paras 24

and 25 as under:-

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

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

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

14. In *Vishal Tiwari v/s Union of India and Others*⁴, the Apex Court in para 32 has observed as under:-

“32. This Court does have the power under Article 32 and Article 142 of the Constitution to transfer an investigation from the authorised agency to CBI or constitute an SIT. However, such powers must be exercised sparingly and in extraordinary circumstances. Unless the authority statutorily entrusted with the power to investigate portrays a glaring, wilful and deliberate inaction in carrying out the investigation the court will ordinarily not supplant the authority which has been vested with the power to investigate. Such powers must not be exercised by the court in the absence of cogent justification indicative of a likely failure of justice in the absence of the exercise of the power to transfer. The petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased.”

15. Similarly, in *Himanshu Kumar and Others v/s State of Chhattisgarh and Others*⁵, the Apex Court relying on a judgment of a three Judge Bench of this Court in *K. V. Rajendran v/s Superintendent of Police, CBCID South Zone, Chennai and Others*⁶, reiterated the

4 (2024) 4 SCC 115
5 (2023) 12 SCC 592
6 (2013) 12 SCC 480

principle that the power to transfer an investigation to investigating agencies such as CBI must be invoked only in rare and exceptional cases and that no person can insist that the offence be investigated by a specific agency since the plea can only be that the offence be investigated properly.

16. Thus what can be deduced from the aforesaid judgments is that an investigation may be transferred to the CBI in rare and exceptional cases and that the one factor that Courts may consider is that such transfer is imperative to retain public confidence in the impartial working of the State agencies and that mere allegations against the police will not constitute a sufficient basis to transfer the investigation.

17. Keeping in mind the aforesaid judicial pronouncements, we now proceed to consider whether transfer of investigation to any other agency including that of CBI, is warranted in the peculiar facts or not. The factual scenario in the present case has to be appreciated

on the touchstone of the aforesaid judicial pronouncements. On the substratum of the facts and circumstances of the present case, what surfaces is, that the mystery surrounding the death of deceased-Abhishek continues. The maze of suspicious circumstances has not been pierced and solved and most importantly, some vital aspects which ought to have been investigated have not been investigated. No doubt, the investigating agency has legitimately claimed that it has put all its best efforts and has investigated all angles, the ground reality, appears otherwise.

18. Admittedly, Mehul Parekh (*'Mehul'*, for short) was working in the office of Mauris and Amrendra was Mauris's bodyguard. The controversy principally revolves around these two persons. Since, according to learned Advocate for the Petitioner, the statements of Mehul and Amrendra made before the Police are bereft of truth, we have perused the said statements recorded by the Police during the investigation.

18.1. According to Mehul, Amrendra used to keep the gun in a locker on the mezzanine floor of the office on the instructions of Mauris and the key of the locker with him; that one key of the locker was also with Mauris; and that the password of the locker was known to Mauris and Amrendra. Mehul in his statement has stated that on **7th February 2024**, at about 20:30 hrs., for the first time, the deceased had come to Mauris's office to discuss the Saree distribution programme; that after an hour, the deceased went to his office; that, on **8th February 2024**, at about 10:00 hrs., he went to show his mother's medical report to Dr. Patel; that as Dr. Patel, on perusing the report, suggested that he take his mother to Seatherny Hospital; that he came home at about 12:30 hrs., and that at about 13.30 hrs. Mauris called him and suggested that he take his mother to the Doctor. According to Mehul, at about 14:15 hrs. he came to the office (Mauris's office) as usual; that at that time, Amrendra came there and kept the gun and bullets in the locker and retained the locker key with himself; that, at about 14:30 hrs. he left the office; that at about 15:00 hrs., Mauris called him and inquired about his mother's appointment

with the Doctor; that thereafter, Mauris met him and suggested to take Amrendra with him to the hospital; that, at about 15:30 hrs. he went to Seatherny Hospital, where Dr. Vora suggested that he take his mother to Karuna Hospital, pursuant to which he took his mother to Karuna Hospital accompanied by his uncle and Amrendra; that at about 18:45 hrs. he called his father who told him that he wanted to come to the hospital, pursuant to which, he asked him to come near Union Bank, which is located near Mauris's office; that at about 19:15 hrs, he and Amrendra went to Mauris's office; that at that time, on inquiry with the auto-rickshaw drivers seated there, he learnt that Mauris was to distribute ration to auto-rickshaw drivers; that when he knocked the office door, Mauris opened the door; that at that time, only Mauris and the deceased were seated there; that Mauris told him to wait outside, as Facebook was going on live inside and hence he and Amrendra went out of the gate. Mehul has further stated that thereafter, he and his father left for Karuna Hospital and that he learnt about the incident, when he was at the said hospital.

19. Mr. Mahadik, learned advocate for the Petitioner vehemently submitted that, Mehul had concealed several facts from the police or if disclosed, police ignored the same for reasons best known i.e. that in the month of December 2023, Mehul had printed the Banners of new year's greetings having photographs of Mauris and the deceased together; that on 7th February 2024, the deceased had visited Mauris's office to discuss about the Saree distribution programme; that at about 21:00 hrs. the deceased met Mauris at the latter's office and then went to his own office, which was across the street; that at that time, Mehul and Amrendra were present there; and that thereafter, as instructed by Mauris, at about 21:30 hrs. Mehul went to the deceased's office and showed him about 4 Saree samples, intended to be distributed on the next day. Mr. Mahadik states, that however, the statement of the Saree shop owner reveals that only 2 Sarees were purchased about 10 days prior to the incident i.e., on 28th January, 2024. According to Mr. Mahadik, despite there being evidence of CCTV footage to show that Mehul had gone to Abhishek's office on 7th February 2024, to show sarees to him, yet

Mehul has claimed that he was unaware of the Saree distribution programme. Learned counsel submitted that the police have admittedly not recorded the statements of the persons who were present in deceased-Abhishek's office on 7th February 2024, when Mehul had gone to show Abhishek the sarees, despite the petitioner producing the CCTV footage to the police, nor investigated what conversation took place between Mehul and the deceased.

19.1. Mr. Mahadik submitted that, Mehul, Mauris and witness Edvin and Ehsan Khan @ Mony were together till 4:00 hrs. of 8th February, 2024 as per the evidence gathered and that they had food together in a hotel. Mr. Mahadik submitted that, purposely on 8th February, 2024 at about 13:50 hrs Amrendra kept his gun in the office of Mauris with the assistance of Mehul, to facilitate the murder in the evening. He submitted that, just to claim *alibi*, Mehul concocted the story of ill-health of his mother and on the said pretext, took Amrendra with him. He submitted that Mehul and Amrendra were present in the office of Mauris between 19:15 hrs. and 19:30 hrs. and

that just before the incident of firing, they left. He submitted that Mehul and Amrendra were present at Mauris's office at the time of the incident and that both had also heard gun shots, however, despite the same, both, did not think it fit to rush to Mauris's office to check what had happened. Instead, they both tactfully fled from the spot for baseless reasons. Mr. Mahadik submitted that the police had failed to investigate the involvement of Mehul, Amrendra or any other person and ascertain the angle of hatching of criminal conspiracy by them alongwith Mauris to murder the deceased, using Amrendra's gun. According to Mr. Mahadik, some evidence would have surfaced, if investigation was done, vis-a-vis the purchase of bullets by Amrendra and Mauris together, at the latter's cost. According to Mr. Mahadik, the investigation is lackadaisical, not done in depth, nor all angles investigated and hence, the petition be allowed as prayed for.

20. Mr. Venegavkar, learned Public Prosecutor, emphatically submitted that, from the report/FIR lodged by the informant-Lalchand Pal, statement of witnesses and the material collected during the

course of investigation, it is evident that the police had properly conducted the investigation from all angles and hence no ground was made out for transfer of investigation. He submitted that the first informant-Lalchand Pal, was working with deceased and would look after his pre-decided programmes, meetings and functions. Mr. Venegavkar submitted that Mr. Pal's statement would show, that during the Corona pandemic, Mauris was helping the needy and at the same time, he was spreading information about his charity work through social media and thus gaining popularity in the area; that between January, 2022 to May, 2022, Mauris had defamed the petitioner by circulating a live video clip containing abusive material, pursuant to which crime was registered against Mauris with the M.H.B. Colony Police Station, on a report lodged by the petitioner; that since then, Mauris was causing annoyance to the petitioner. According to Mr. Pal, thereafter, an offence of rape was registered against Mauris on the report of one woman. Mr. Pal has further stated that during Christmas of 2023, Mauris displayed banners with photos of himself and the deceased together, but, without the permission of

the deceased; and that thereafter, the relations between Mauris and deceased resumed with the help of a common friend Mr. Rayan Gore.

20.1. Mr. Venegavkar submitted that, it appears from Mr. Pal's statement that on 8th February, 2024 at about 13:00 hrs., deceased called him and informed of the Saree distribution programme and that, before the programme, a meeting was to be held at Mauris's office; that the deceased had instructed him (Lalchand Pal) to plan for the said programme at 17:00 hrs. and to come to his office; that at about 18:00 hrs. when he was in the office of deceased, (which was opposite Mauris's office) deceased came there and then walked towards Mauris's office, which was across the road; that he too followed the deceased there; that the deceased was in Mauris's office for about half an hour; that 2-3 times Mauris came out and again entered his office; that he told Mauris that the programme is getting late, but Mauris replied that, someone is coming and it will take some time; and hence, he phoned the deceased and said that the programme is getting late, however, the deceased told him to wait for 5 minutes.

According to Mr. Pal, when he tried to enter Mauris's office, he saw Mauris and the deceased sitting on a Sofa. He has stated that the deceased signaled him to wait, as live recording was going on and hence he came out of the office and waited on the footpath, across the road. According to Mr. Pal, just then, he heard 4-5 shots of firing and hence, he rushed to the spot and found the deceased in a pool of blood with injuries and saw Mauris pointing the gun towards the deceased.

20.2. Mr. Venegavkar, learned Public Prosecutor submitted that Mauris had a grudge against the deceased, as Mauris was booked in a case registered on the report lodged by the Petitioner. He submitted that Mauris was also booked for an offence of rape, which Mauris believed that, the said case was lodged by the victim, at the instance of the deceased and hence, Mauris decided to murder Abhishek. Mr. Venegavkar submitted that hence Mauris removed the gun from his locker and shot the deceased dead. He submitted that, there is absolutely no material directly or indirectly showing the complicity of

Amrendra, Mehul or others in the murder, as alleged by the petitioner. He submitted that there is no substance in the petition seeking transfer of investigation and as such the petition be dismissed.

21. In view of the rival submissions we have carefully examined the record before us. We have also viewed the CCTV footages produced by both sides. On such an exercise we noted that, according to Amrendra, as instructed by Mauris, every day, at about 14:00 hrs, he used to keep the gun in the locker, in Mauris's office and then sit in the office, however, on the day of incident, Amrendra went to Seatherny Hospital at about 18:00 hrs, merely on a call by Mehul, but without Mauris's permission. Except Mehul's words, there is nothing to show that, Mauris had told Mehul to take Amrendra with him to Seatherny Hospital for help.

22. According to Mehul, on 8th February 2024, at about 18:45 hrs, when Mehul called his father, his father told him that he wanted to come to the hospital, pursuant to which Mehul asked his

father, to come near Union Bank (near Mauris's office); that when Mehul's father came in an auto-rickshaw, Mehul went to the Paan shop by crossing the road and then went and sat in the auto-rickshaw; that within a few seconds thereafter, Mauris fired at the deceased. The CCTV recording shows that, when Mehul left for the hospital in an auto rikshaw alongwith his father, the auto rickshaw slowed down a little and Mehul looked out of the auto rickshaw. Firing could be heard and people are seen running helter skelter however, Mehul did not think it proper to stop and enquire. This conduct is similar to that of Amrendra's conduct.

23. According to Amrendra, he used to collect the gun daily while returning home from the office, however, even though Amrendra was near the office of Mauris at the time of incident and could hear the sound of breaking glass of the office, commotion and see the disturbance, due to the incident of firing, he did not go to the spot nor did he take stock of the situation. Instead, he hurriedly went away. The same is clearly visible in the CCTV camera i.e. shots were

heard and people were running and Amrendra was leaving the spot hurriedly.

24. Mr. Venegavkar informs that the gun licence of Amrendra carries the record of the bullets he had purchased in the past, however, we have noticed that there is no investigation as to the use of said bullets. There is also no investigation as to what made Amrendra buy extra bullets at Mauris's cost, by going to the shop in Mumbai along with Mauris.

25. Admittedly, Mauris, Mehul and 2 others had been to hotel for food late in the night intervening 7th and 8th February, 2024 and they returned from there early in the morning, however, there is no proper investigation as to what happened there.

26. Record indicates that, Mehul had bought Saree samples for the Saree distribution programme. On the previous evening, Mehul himself had gone to the office of the deceased to show him the sample

Sarees for the programme. However, according to the prosecution, Mehul was unaware as to when the said programme was scheduled. How Mehul showed more sarees to the deceased in his office, than that purchased from the saree shop is not clear/investigated. Therefore, investigation was necessary to ascertain whether Mehul had gone to show the Saree samples just to convince the deceased to attend the programme. In this regard, the persons sitting in front of the deceased and others present in his office at the time of showing the Saree samples could have been examined by the investigating officer. However, admittedly they were not examined, despite there being CCTV footage of the same.

27. *Prima facie*, there appears to be discrepancies in what is stated by Amrendra and Mehul. It may be noted that Mehul does not talk about having heard any noise or of people running helter-skelter, which is contrary to what is seen in the CCTV footage. We have also perused the calls made by Mehul to Mauris, (2 calls on 8th February 2024) and vice versa (9 calls) and Mehul to Amrendra (4 calls) and

vice versa, (11 calls, out of which post the incident 8 calls) and Mehul's statement and find some discrepancies in what Mehul has stated ie. the number of calls received by him from Amrendra, post the incident. We also find the conduct of Mehul and Amrendra rather strange on learning the news what had happened i.e. the death of Mauris for whom they were working.

28. It is trite that, where it becomes necessary to provide credibility and instil confidence in investigation, that the investigation can be transferred to another agency. Unarguably, quality of investigation is an important aspect to detect the crime and book the perpetrator of the crime. If all angles of a case are not examined as in the present case, it would lead to travesty of justice. Therefore, even if there are innocent lapses in the investigation, it cannot be allowed to continue, as it would ultimately result in denial of a fair and impartial investigation, leading to miscarriage of justice, which cannot be permitted. In the case in hand, after considering the material collected during the investigation, we feel that some angles have not

been investigated or looked into and hence deeper investigation needs to be done. The petitioner's husband (deceased), an Ex-Corporator was shot at by Mauris. The same was captured live on facebook and viewed by several persons. It was a cold-blooded murder captured live, an incident which shook the conscience of one and all. We may note that although the deceased belonged to a particular political party, the petitioner has not particularly alleged that some other political party was involved in the gruesome act. All that the petitioner seeks is an in-depth investigation to be carried out from all angles to rule out the involvement of another person, including the involvement of Mehul, Amrendra and others. We have gone through the investigation carried out and find that there are some loose ends/areas which have not been examined by the police. We, in the peculiar facts and circumstances of this case, deem it appropriate to transfer the investigation to an independent agency like the CBI, so as to retain public confidence and to ensure, that justice is done, considering what is observed by us herein-above. In the backdrop of the discussion above, we deem it appropriate to pass the following order:-

ORDER

- (i) Petition is allowed;
- (ii) The investigation of C.R. No.55 of 2024, registered with the M.H.B. Colony Police Station, Mumbai (subsequently, handed over to Crime Branch, Unit-XI, Mumbai), is transferred to the CBI;
- (iii) The Zonal Director, CBI to appoint an officer not below the rank of Superintendent of Police from the IPS Cadre, to investigate the said case. The Superintendent of Police, CBI, is at liberty to appoint his team of officers;
- (iv) The papers of investigation to be handed over to the CBI at the earliest and in any event within two weeks from today.

29. Rule is made absolute on the aforesaid terms. Petition is allowed and is accordingly disposed of.

30. We make it clear, that these are our *prima facie* observations and that the CBI to conduct the investigation impartially and probe all possible angles, on its own merits. We clarify that the transfer of investigation of the crime in question to CBI is not a reflection on the efficiency or efficacy of the investigation done by the Crime Branch, Mumbai.

All concerned to act on the authenticated copy of this judgment.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.