Krishna Kumar vs State Of U.P. Thru. Prin. Secy. Home ... on 3 March, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LKO:12587

Court No. - 12

Case :- APPLICATION U/S 482 No. - 1622 of 2025

Applicant :- Krishna Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 2 Others

Counsel for Applicant :- Arvind Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Shri Rehan Ahmad Siddiqui, learned Advocate has put in appearance by way of filing Vakalatnama on behalf of opposite party no. 3, which is taken on record.

2. Heard learned counsel for the applicant, learned AGA for the State as well as learned counsel for the opposite party No.3 and gone through the record.

3. By means of the present application, the applicant has prayed for quashing the impugned order dated 27.01.2025 passed by learned Additional Chief Judicial Magistrate-II, Sitapur (in short "Magistrate") in Case Crime No.458 of 2021, under Sections 409, 420 IPC, Police Station Mohali,

District Sitapur.

4. Vide impugned order dated 27.01.2025, the Magistrate has allowed the application under Section 173 (8) Cr.P.C filed by the accused Ritesh Kumar wherein a prayer has been made to direct the concerned Investigating Officer to further investigate the matter.

5. Learned counsel for the applicant has stated that the order dated 27.01.2025 has been challenged on the ground that the accused has no right at the stage of investigation and being so the application for further investigation preferred by the accused Ritesh Kumar ought to have been rejected and in allowing the same, the Magistrate committed error of law.

6. Supporting the impugned order dated 27.01.2025, it has been stated that the Magistrate can direct for further investigation before commencement of trial as held by Hon'ble Supreme Court in the case of Vinubhai Haribhai Malaviya and others vs. State of Gujrat and another, reported in (2019) 17 SCC 1. The relevant paragraph of the said judgment is quoted below:-

> "38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more

important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

7. Considered the aforesaid and perused the record. In order to come to the conclusion in the matter, this Court finds it appropriate to quote of the contents of the order dated 27.01.2025, which are as under:-

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Vinubhai Haribhai Malaviya and Ors. Vs The State of Gujarat and Another(Criminal Appeal no.478-479 of 2017) ¢ ¡ ‹ □ § ¤

, It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigaton by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police-which such Magistrate is to supervise-Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is recieved by him under Section 173(2); and which power would be continue to ensure In such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the investigation referred to in Section 156(1) of the CrPC would as per the definition of investigation under Section 2(h) include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC." "Section 2(h) is not noticed by the aforesaid judgement at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The Investigation spoken of in Section

156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy(supru) cannot be relied upon.

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8. On the issue involved in the case, it would also be appropriate to refer paras 33 to 36 of the judgment passed in the case of Vishal Tripathi vs. State of U.P. and others, 2024 SCC Online ALL 4837, which are extracted hereinbelow:-

"33. Accordingly, on the right of accused/applicant in regard to the prayer of re-investigation/further investigation, it would be apt refer relevant para(s) of the judgment passed by the Division Bench of this Court in the case of Preeti Singh v. State of U.P., 2023 SCC OnLine All 1410 which are extracted hereinunder:-

"18. In the present case, the question is as to whether the accused person has any right or hearing at the investigation stage or to question the manner in which evidence is being collected by claiming a direction for fair investigation?

19. The Hon'ble Apex Court in the case of Union of India v. W.N. Chadha,1993 Supp (4) SCC 260 has specifically held that under the scheme of Chapter XII of the Code of

> Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer. Chapter XII provides for "Information to the police and powers to investigate".

20. Relevant paragraphs of W.N. Chadha (supra) are quoted as under : -

> "90. Under the scheme of Chapter XII of the Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.
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> 91. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy, JJ.) were parties after making reference to the decision of the Privy Council in Emperor v. Khwaja Nazir Ahmad and the decision of this Court in State of Bihar v. J.A.C. Saldanha has pointed out that "...the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation...."

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

94. Under Section 235(2), in a trial before a Court of Sessions and under Section 248(2) in the trial of warrant cases, the accused as a matter of right, is to be given an opportunity of being heard. Unlike the above provisions which we have referred to above by way of illustration, the provisions relating to the investigation under Chapter XII do" not confer any right of prior notice and hearing to the accused and on the other hand they are silent in this respect.

95. It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make and search or cause search to be made for the reasons to

be recorded without any warrant from the Court or without giving the prior notice to any one or any opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

96. True, there are certain rights conferred on an accused to be enjoyed at certain stages under the CrPC - such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours - which are all in conformity with the 'Right to Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as an the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Cr.P.C.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed."

(emphasis supplied)

21.Perusal of the abovequoted paragraphs would clearly indicate that Chapter XII Cr.P.C. provides for information to the police and powers to investigate and this chapter consists of Section 154 to 176, which covers the area from lodging of first information report in a cognizable case, information as to non-cognizable cases and investigation of such cases, police officer's power to investigate and submission of police report as well.

22. As already noticed, Hon'ble Apex Court in paragraph 90 of W.N. Chadha (supra) clearly held that under the scheme of Chapter XII Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of investigation by a police officer. It has also been observed that the field of investigation of any cognizable offence is exclusively within the domain of investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation.

23. Hon'ble Apex Court in the case of State of Bihar v. J.A.C., (1980) 1 SCC 554 has also held that the accused has no right in regard to the manner and right of the fair investigation. The other exceptions, which are not relevant regarding complaint case etc., have also been noticed. Certain rights of the accused persons have also been noticed, which are all in conformity with the 'Right of Personal Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution of India and valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. It has also been observed that if prior notice of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law relating to the investigation lifeless, absurd and self-defeating.

24. In W.N. Chadha (supra) the letter rogatory was under challenge before the High Court. While setting aside the order of the High Court letter rogatory dated 5/7the February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge it was clearly held that the respondent, who is a named accused in the first information report has no locus standi at this stage to question the manner in which the evidence is to be collected, however, it was observed that it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 Cr.P.C. indicating that an offence appears to have been committed.

25. In the case of C.B.I. v. Rajesh Gandhi, (1996) 11 SCC 253 Hon'ble Apex Court has held as under : -

> "There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. ...."

(Emphasis supplied)

26. Thus, it is very much clear that at the stage of investigation the accused has no right to be heard and she cannot come forward to claim fair investigation only on the ground that according to her the matter has wrongly been handed over to the Crime Branch and simply for the reason that initially the petitioner was informant and subsequently she had been arrayed as accused in the first

information report in question. From perusal of record of petition we do not find any ground worth withdrawing the investigation from the Crime Branch and to transfer the same to some other agency in view of the law as discussed hereinabove."

34. The judgments referred in the above quoted para(s) of the judgment passed in the case of Preeti Singh (Supra), on the issue of right of an accused at the stage of investigation have not been overruled in the judgment passed in the case of Vinubhai Haribhai Malaviya (Supra).

35. On the right of an accused, the Hon'ble Apex Court (Majority Decision) in the case of Romila Thapar vs. Union of India, (2018) 10 SCC 75, observed as under:-

> 19. Mr Mehta submits that even though the Court may have jurisdiction to examine all aspects of the matter, considering the fact that the investigation is at a nascent stage and is being done by senior police officials under the supervision of their superior officers up to the level of Commissioner of Police, it is not a case for grant of reliefs as prayed. The accused persons must take recourse to the remedy prescribed by law instead of directly approaching this Court under Article 32 of the Constitution and can get complete justice from the jurisdictional court. He submits that in criminal matters, interference in the garb of public interest litigation at the instance of strangers has always been discouraged and rejected by this Court. Further, the present petition is nothing but abuse of the process and as the named accused Varavara Rao, Sudha Bharadwaj and Gautam Navalakha have filed their respective petitions before the jurisdictional High Courts, which proceedings are pending for adjudication, the same persons have now filed affidavits before this Court for transposing them as petitioners and allowing them to adopt the prayer of the writ petitioners. They ought to elect their remedy to be pursued and in particular, before the jurisdictional courts. Therefore, this petition must be discouraged.
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> 20. Mr Mehta submits that the modified relief claimed in the writ petition to release the accused persons is in the nature of habeas corpus which is not maintainable in respect of the arrest made during the ongoing investigation. He submits that no right can enure in favour of the accused to seek relief of investigation of the crime through an independent agency and for the same reason, even strangers to the offence under investigation or next friends of the accused, cannot be permitted to pursue such a relief in the guise of PIL. He submits that the foundation of the present writ petition is the perception of the writ petitioners (next friends) that the accused are innocent persons. He submits that that basis is tenuous. For, there are enough examples of persons having split personality. In a criminal case, the action is based on hard facts collected during the course of investigation and not on individual perception. He contends that the argument of the writ petitioners that liberty of the five named accused cannot be compromised on the basis of surmises and conjectures is wholly misplaced and can be repelled on the basis of the material gathered during the ongoing investigation indicating the complicity of each of them. He relies on Section 41 CrPC which enables the police to arrest any person against whom a "reasonable

suspicion" exists that he has committed a cognizable offence. Therefore, the integrity of the investigating agency cannot be doubted as there is enough material against each of the accused. He further submits that the argument of the writ petitioners based on the circumstances pressed into service for a direction to change the investigating agency is completely against the cardinal criminal jurisprudence and such a relief is not available to persons already named as accused in a crime under investigation.

21. Mr Harish Salve, learned Senior Counsel appearing for the complainant at whose instance FIR No. 4 of 2018 came to be registered at Vishram Bagh Police Station (Pune City), submits that there is no absolute right, much less a fundamental right, to market ideas which transcend the line of unlawful activity. The Court must enquire into the fact as to whether the investigation is regarding such unlawful activity or merely to stifle dissenting political voice. If it is the former, the investigation must be allowed to proceed unhindered. In any case, the affected persons, namely, the named accused must take recourse to remedy prescribed by law before the jurisdictional court as it is not a case of unlawful detention or action taken by an unauthorised investigating agency. According to him, the Court must lean in favour of appointing a SIT or an independent investigating agency or court-monitored investigation only when the grievance made is one about the investigation being derailed or being influenced by some authority. In the present case, the grievance is limited to improper arrest of individuals without any legal evidence to indicate their complicity in the commission of any crime or the one registered in the form of FIR No. 4 of 2018. The allegation of motivated investigation is without any basis. No assertion is made by the writ petitioners or the named accused that the investigation by Pune City Police is mala fide in law. If the allegation is about mala fide in fact, then the material facts to substantiate such allegation, including naming of the person at whose instance it is being so done, ought to have been revealed. That is conspicuously absent in this case. According to the learned counsel, the reliefs claimed in the writ petition do not warrant any indulgence of this Court.

22.After the high-pitched and at times emotional arguments concluded, each side presenting his case with equal vehemence, we as Judges have had to sit back and ponder over as to who is right or whether there is a third side to the case. The petitioners have raised the issue of credibility of Pune Police investigating the crime and for attempting to stifle the dissenting voice of the human rights activists. The other side with equal vehemence argued that the action taken by Pune Police was in discharge of their statutory duty and was completely objective and independent. It was based on hard facts unravelled during the investigation of the crime in question, pointing towards the sinister ploy to destabilise the State and was not because of difference in ideologies, as is claimed by the so-called human rights activists.

23. After having given our anxious consideration to the rival submissions and upon perusing the pleadings and documents produced by both the sides, coupled with the

> fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:
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> 23.1. (i) Should the investigating agency be changed at the behest of the named five accused?
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> 23.2. (ii) If the answer to Point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?
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> 23.3. (iii) If the answer to Questions (i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the court-monitored investigation by an independent investigating agency?
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> 23.4. (iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?
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> 24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them.

Para 64 of this decision reads thus : (SCC p. 100) "64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."

(emphasis supplied)

25. Again in Sanjiv Rajendra Bhatt v. Union of India [Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus : (SCC p. 40) "68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] Mayawati v Union of India [Mayawati v. Union of India, (2012) 8 SCC 106 : (2012) 3 SCC (Cri) 801], Dinubhai Boghabhai Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384], CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253 : 1997 SCC (Cri) 88], CCI v. SAIL [CCI v. SAIL, (2010) 10 SCC 744] and Janata Dal v. H.S. Chowdhary [Janata Dal v. H.S. Chowdhary, (1991) 3 SCC 756 : 1991 SCC (Cri) 933] ."

(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in E. Sivakumar v. Union of India [E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , while dealing with the appeal preferred by the "accused" challenging the order [J. Anbazhagan v. Union of India, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] of the High Court directing investigation by CBI, in para 10 observed : (SCC pp. 370-71) "10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment [J. Anbazhagan v. Union of India, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] . In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] , in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. This Court in Divine Retreat Centre v. State of Kerala [Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] , has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] . In para 70 of the said decision, the Constitution Bench observed thus : (SCC p. 602) "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may

be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) -- regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) has been seriously disputed by the investigating agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the court for obtaining remand by the police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the accused concerned (A-16 to A-20). Amongst them, Sudha Bhardwaj (A-19), Varvara Rao (A-16), Arun Ferreira (A-18) and Vernon Gonsalves (A-17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the accused concerned is not in a position or incapacitated to take

recourse to legal remedy and not otherwise."

36. In view of above, this Court has no hesitation to say that an accused has no right at the stage of investigation. Thus, the application under Section 173(8) Cr.P.C. preferred by the accused, applicant herein, for re-investigation itself was not entertainable."

9. From the above quoted paras of the judgment passed in the case of Vishal Tripathi (supra), it is apparent that an accused has no right at the stage of investigation and in the instant case an application of accused for a prayer of further investigation has been allowed vide impugned order dated 27.01.2025.

10. Thus, this Court is of the view that impugned order dated 27.01.2025 is liable to be set aside/quashed.

11. For the reasons aforesaid, the present application is allowed. The impugned order dated 27.01.2025 passed by learned Additional Chief Judicial Magistrate-II, Sitapur, is hereby set-aside/quashed.

Order Date :- 3.3.2025 Renu/-