Dinubhai Boghabhai Solanki vs State Of Gujarat & Ors on 25 February, 2014

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Bench: A.K.Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.492 OF 2014
(Arising out of SLP (Crl.) No. 8406 of 2012)

Dinubhai Boghabhai Solanki …Appellant
VERSUS
State of Gujarat & Ors. ...Respondents

WITH

CRIMINAL APPEAL NO. 493 OF 2014
(Arising out of SLP (Crl.) No. 8292 of 2012)

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. This special leave petition impugns the judgment and order dated 25th September, 2012 passed by the Gujarat High Court at Ahmedabad in Special Criminal Application No.1925 of 2010. By the aforesaid judgment, the High Court has directed that the investigation into the death of Amit Jethwa (hereinafter referred to as 'Jethwa'), a Right to Information activist be investigated by the CBI authorities and further directing that the proceedings pursuant to the charge sheet submitted by the Gujarat Police shall remain stayed.

2. The facts leading to the filing of the special leave petition out of which the present criminal appeal arises are as under:

> Jethwa had filed a Public Interest Litigation, SCA No.7690 of 2010, against the State of Gujarat and others with the following prayer:
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> "The appellant therefore prays that your Lordship may be pleased to:
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> a. Admit this petition.
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> b. Issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ order or direction directing the respondents to stop illegal mining within 5 kms radius from boundary of Gir Sanctuary."

3. In the aforesaid writ petition, Jethwa had given details of various activities of certain firms and individuals who were indulging in illegal mining and destroying the biodiversity of natural habitat of Gir forest in Gujarat. This, according to Jethwa, was having an adverse effect on the natural habitat of the Asiatic Lions. He was particularly concerned with illegal mining within 5 kms radius from the boundary of Gir Sanctuary Area. More than 50 mines in the names of different persons were mentioned in the writ petition wherein illegal mining was alleged. Enquiry into the allegations made by Jethwa was in progress in the aforesaid writ petition, when he was brutally murdered.

4. Jethwa was the President of the Gir Nature Youth Club at Khamba, Gujarat. He had been active in fighting against encroachment of forests and poaching. He was also instrumental in the successful prosecution of the actor Salman Khan for shooting an endangered Chinkara deer. He had also taken up cudgels against the actor Aamir Khan when a deer was used in a scene in the movie Lagaan. Apart from this, Jethwa rigorously campaigned against corruption among officers of the Indian Forest Service and opposed the mala fide application of Article 356 of the Constitution of India.

In 2007, he had drawn attention to the mysterious death of lions in the Gir Forest, including three that were shot within a few hundred meters of the Babariya forest guard outpost. Jethwa had claimed that "such a thing cannot be possible without support of some forest officials". On that basis, he had sought suspension of a particular IFS Officer. The incident ultimately led to the uncovering of a large lion poaching gang. He later campaigned against shifting of lions to the Kuno Wildlife Sanctuary in Madhya Pradesh. According to him, his efforts were often blocked by forest officials by charging him with offences such as photographing a dead lion and trespassing. In 2007, Jethwa contested the State Assembly elections against the appellant herein, but lost. In 2008, Jethwa was very actively involved in spreading awareness about effectiveness of the Right to Information Act for addressing grievances, and conducted workshops on the procedure to file requests under RTI, to prevent corrupt practices and other mal- administration. In 2010, Jethwa had filed a Public Interest Litigation (writ petition) questioning the inaction of State Government over the appointment of Lokayukta. The High Court directed the Government to appoint Lokayukta. He had also spearheaded the campaign against rising case pendency in the Gujarat Information Commission due to lack of commissioners. It was on his petition that the High Court gave direction

to the State Government to complete the appointments within a stipulated time. He again came to the rescue of RTI applicants by filing a writ petition in the High Court and made the Government accept Indian Postal Order as one of the modes of payment to deposit fees while filing the Right to Information applications.

5. We have narrated these facts just to indicate that Jethwa was a well known social activist interested in the protection of environment, generally and the biodiversity of Gir Forest, in particular. This, according to him, was urgently needed to protect the Asiatic Lions, apart from usual environmental issues.

6. During the pendency of the public interest litigation filed by Jethwa, the name of the appellant and his nephew emerged as the powers behind the illegal mining mafia. Therefore, by order dated 6th July, 2010, the appellant and his nephew Pratap Bhai Solanki were impleaded by the High Court as respondents. The order dated 6th July, 2010 was served on the appellant on 19th July, 2010.

7. It is the allegation of the father of Jethwa (hereinafter referred to as 'Respondent No.6') that the appellant was so incensed on being made a party in the Public Interest Litigation filed by Jethwa and the information that had surfaced during the course of hearing of that writ petition that he contracted/conspired with some unknown persons to eliminate Jethwa. In pursuance of this conspiracy, Jethwa was shot dead on the very next day, i.e. 20th July, 2010.

8. According to the appellant, on the same date, i.e 20th July, 2010, the electronic media began broadcasting allegations of the Respondent No. 6 and some other interested parties that the appellant was behind the killing of Jethwa. Incidentally, it must be noticed at this stage that according to the version of Respondent No.6, the murder took place outside the Gujarat High Court whilst Jethwa was leaving the chambers of his lawyer at 8.30 at night. In fact, the Press Statement was given on 21st July, 2010 by Dhirsinh Barad, a rival Congress MLA that the appellant might be involved in the murder. Subsequently, when the statement of this MLA was recorded in the High Court on 26th February, 2012, wherein he has stated that on 20th July, 2010 he had communicated to Shri B.M.Mangukia, Advocate who incidentally was also a Secretary of Gujarat Congress, that as per his belief the appellant was involved in the murder of Jethwa. The investigation was conducted in accordance with the procedure prescribed in the Criminal Procedure Code.

9. It appears that the Respondent No 6 was not satisfied and he filed Special Criminal Application No.1925 of 2010 before the High Court. In this petition, Respondent No.6 sought transfer of the investigation in connection with FIR No. I-CR No.163/2010 dated 20th July, 2010 registered at Sola Police Station for commission of offences punishable under Sections 302, 114 of IPC read with Section 25(1) of Arms Act, to an independent investigating agency, preferably CBI or Special Investigation Team comprising IPS Officers from other State cadre as well. On 19th October, 2011, the Gujarat High Court passed the interim order directing further investigation to be conducted by the State of Gujarat under the supervision of Special Commissioner of Police Crime Branch (of the rank of Additional Director General of Police) and to submit a final report of investigation by 28th November, 2011. In passing the aforesaid order, it is pointed out by the appellant herein that, no adverse remarks with any pre-drawn conclusions were made against him.

10. In pursuance of the aforesaid order, the investigation was handed over, on 11th November, 2011, to another officer, Shri Vatsa, Superintendent of Police. The final report was submitted on 16th March, 2012 under Section 173(8) Cr.P.C. It was pointed out by the appellant that nothing beyond mere suspicion had come on the record against the appellant so as to make him accused of any conspiracy to assassinate the deceased Jethwa. On 19th March, 2012, the final report of further investigation was filed before the High Court on behalf of the State Government. The appellant claims that in spite of extensive investigation, no circumstantial evidence pointing out any involvement of the appellant was gathered, despite the grave suspicion of the relatives of Jethwa and certain political rivals. However, due to the pressure exerted by the relatives of the deceased and certain political rivals, a third charge-sheet was filed in the FIR.

11. In the order impugned before us, the High Court upon consideration of the entire matter has come to the conclusion that investigation conducted by the Gujarat Police authority is not free from doubt and that to instill confidence in the public, it would be appropriate to transfer the investigation to CBI.

12. The present SLP was filed in this Court on 8th October, 2012. Notice was issued in the SLP on 15th October, 2012. The investigation by the CBI was not stayed. The State of Gujarat had filed SLP (Crl.) NO.8292 of 2012 also challenging the transfer of the investigation to CBI. This SLP was filed on 15th October, 2012. We may also notice here that Narendra Modi, who was then holding the portfolio of Home Ministry in Gujarat as well as being the Chief Minister, was also impleaded as appellant No.2 in SLP (Crl.) 8292 of 2012. However, subsequently, he was deleted from the array of parties, by order of this Court dated 9th November, 2012.

13. Leave granted.

14. Mr. Rohatgi, learned senior counsel appearing for the appellant after making extensive references to the relevant parts of the impugned judgment has submitted that the High Court has made unwarranted remarks against the appellant which are bound to gravely prejudice his case at the trial. These remarks have been made in the absence of the appellant. The High Court did not make him a party; and has given an ex- parte judgment against the appellant. It is per se illegal and, therefore, deserves to be set aside. He submits that the matter has to be remanded back to the High Court with the direction that the appellant be made a party in Writ Petition SCA No.1925 of 2010. Thereafter the writ petition be re-heard and decided on merits in accordance with law.

15. Mr. Rohatgi then submitted that the appellant had been summoned to appear as a witness before the CBI. Apprehending that the appellant will be arrested as soon as he appears before the CBI in response to the summons, Criminal Misc. Petition No.22987 of 2013 was filed by him seeking direction from this Court that the appellant will not be arrested in case he appears before the CBI. The actual prayer made in the Application was that this Court be pleased to “grant stay of any coercive action against the appellant prejudicing his life and personal liberty, pursuant to the impugned ex part judgment dated 25.09.2012 passed by the Gujarat High Court in SCA 1925 of 2010 wherein CBI was inter alia directed to investigate and file report within 6 months.” This Court did not accept the prayer made by the appellant. As apprehended by the appellant, he was

immediately arrested, when he appeared before the CBI, in response to the summons to join the investigation.

16. This action of the CBI, according to Mr. Rohatgi, was wholly illegal. The appellant had been cooperating with the investigation throughout. The arrest of the appellant was politically motivated.

17. On 17th April, 2013, Status Report of the investigation by the CBI was produced before this Court by Mr. Sidharth Luthra, learned Additional Solicitor General. After perusal of the report, the court directed the same to be re-sealed and kept with the record. The matter was adjourned from time to time to enable the CBI to complete the investigation. Since his arrest, the appellant was initially remanded to police custody. Subsequently, however, he was placed in judicial custody. The appellant continues to be in jail till date. On 19th November, 2013 when the matter came up for further consideration, a submission was made on behalf of the CBI that "although the appellant is now not required for custodial interrogation, judicial custody needs to be continued as the investigation is still not complete." A request was made that the matter be adjourned for at least six weeks to enable the CBI to complete the investigation in relation to the appellant. Since the appellant had been in custody for a long time, it was prayed that he should be released from custody. It was pointed out that the appellant was required to perform his official duties as an elected member of the Parliament. However, the request of the appellant was rejected and CBI was granted some more time to complete the investigation. It was made clear by this Court that the aforesaid direction would not preclude the CBI to seek custodial interrogation of the appellant, as and when required. Thereafter, the matter was adjourned from time to time.

18. Mr. Rohatgi then submitted that in breach of the directions issued by this Court on 17th April, 2013, the CBI has filed a supplementary charge sheet in January, 2014, before the ACJM, Ahmedabad, instead of placing the report before this Court in a sealed cover. Relying on these facts, Mr. Rohatgi has submitted that the action of the CBI is in disobedience of this order of this Court, and therefore, the charge sheet itself needs to be set aside, as it has been filed without the permission of this Court.

19. Mr. Rohatgi then submitted that in case the aforesaid submissions are not accepted, the prejudicial remarks made against the appellant need to be expunged as the remarks have been made without making him a party. He submitted that the remarks have damned the appellant as the main conspirator. Such adverse remarks, according to Mr. Rohatgi, can have no legal effect, having been made in breach of the Rules of Natural Justice i.e. the rule of audi alteram Partem. He pointed out that the appellant has also been referred to as accused No.1, without any justification.

20. Mr. Rohatgi emphasized that the judgment is replete with prejudicial remarks. He has been described as a person with criminal antecedents. He is stated to have been involved and named in several police complaints and FIRs for serious offences, including attempt to murder and murder. The High Court has also observed that many offences have been committed at the behest of the appellant. But almost all such complaints and FIRs have terminated in summary reports. A long list of the cases in which the appellant has been found to be not involved was placed before the High Court. The High Court has further observed that the crusade of the deceased Jethwa against the

illegal empire of the appellant herein was the cause for the murder of Jethwa. The High Court also observed that the appellant herein was managing the entire investigation. The police did not even record the statements of numerous persons as the statements would have pointed an accusing finger at the appellant for being responsible for the death of Jethwa. Relying on the observations recorded in the judgment, Mr. Rohatgi submits that unless the same are expunged the appellant cannot possibly expect a fair trial.

21. Mr. Rohatgi has relied on the following judgments in support of his submission.

Divine Retreat Centre Vs. State of Kerala[1]; D. Venkatasubramaniam Vs. M. K. Mohan Krishnamachari[2]; State of Punjab Vs. Davinder Pal Singh Bhullar & Ors.[3]; Ms. Mayawati Vs. Union of India & Ors.[4]; Union of India Vs. W.N.Chadha[5].

22. Lastly, it is submitted by Mr. Rohatgi that the appellant has been firstly in police custody and subsequently in judicial custody since the arrest on 5th November, 2013 till now. The appellant is a sitting Member of the Parliament and has to perform his duties as an MP in the Parliament, as well as his Constituency. The appellant has been cooperating with the investigation throughout. There is no likelihood of the appellant absconding as he has deep roots in society, particularly in the area that is represented by him as an MP in the Parliament. Learned senior counsel further submitted that although CBI has filed the charge sheet, copies of all the statements of witnesses have not been made available to the appellant, on the ground that it is a very sensitive matter. According to Mr. Rohatgi, the CBI has wrongly relied on Section 173(6) of the Cr.P.C. He reiterated that the arrest of the appellant was totally illegal as it is in disobedience of the orders passed by this Court on 15th March, 2013; 10th April, 2013 and 17th April, 2013. He has also reiterated the submission that the appellant has been arrested maliciously as a result of political vendetta. Mr. Rohatgi also submitted that apprehending the arrest, the appellant had moved Criminal Misc. Petition No. 22987 of 2013, but this Court had declined to give any directions.

23. He also pointed out that the appellant has been elected as Member of Legislative Assembly, Gujarat for three terms. Thereafter, the appellant has successfully contested the Parliamentary election as an official candidate of the BJP. Therefore, as it was found by his political rivals that the appellant cannot be destabilized by a popular vote, he is being dragged into this case to cause maximum damage to his image and political career. Mr. Rohatgi further pointed out that the timing of issuance of summons by the CBI coincided not only with the Diwali festival but, also with the ensuing Parliamentary election, as well as the assembly election which had been declared in five States. He submitted that the appellant, therefore, reasonably apprehends that the opposition is trying to maliciously gain maximum political mileage, by getting him involved in the murder case.

24. Learned senior counsel further pointed out that on the one hand, the family of the appellant was grieving due to the death of his elder brother on 8th October, 2013; on the other hand, the letter of the CBI dated 25th October, 2013 was handed over to his younger brother asking the appellant to remain present on 29th October, 2013 at 11.00 a.m. before the Investigating Officer. The family members of the appellant on the date of the filing of the application, i.e. 28th October, 2013, were occupied with the after-death ceremonies of his deceased brother. At the same time, immediately

with the issuance of the summons by the CBI, adverse media trial and propaganda had started in various news channels and the Newspapers against the appellant. It is also pointed out by Mr. Rohatgi that the CBI has commenced the investigation in October 2012 and since then the appellant has continued to be in active public life. He has also attended Parliament as a Member of the Parliament in the 13th, 14th and 15th Session of the Lok Sabha held on 4th September, 2013, 5th September, 2013 and 6th September, 2013. The appellant has also participated in various public welfare functions during this period. In spite of the aforesaid, the appellant has been illegally deprived of his personal liberty and fundamental rights under Articles 14 and 21 of the Constitution of India. He reiterated that the appellant had made a prayer in Crl. M.P. No. 22987 of 2013 that no coercive steps be taken against the appellant. Since the prayer made by the appellant was not accepted, the CBI used this as an excuse to arrest the appellant. Given the entire fact situation as narrated above and the fact that the appellant has not been given copies of all the statements collected by the CBI, there is little likelihood of the appellant tampering with the evidence. Since the CBI has submitted the charge sheet, the investigation is complete. Therefore, it would be in the interest of justice that the appellant is now released on bail, during the pendency of the trial.

25. Mr. J.S. Attri, learned senior counsel, appearing for the CBI has submitted that the status report has been submitted to this Court. Upon completion of the investigation, the charge sheet has also been submitted in court. It is further submitted that there is no violation of the orders dated 15th March, 2013, 10th April, 2013 and the order dated 17th April, 2013, which directed that the report produced by the Additional Solicitor General be sealed and kept with the record. There is no direction to the CBI not to file the charge sheet without leave of the court.

26. Ms. Kamini Jaiswal appearing for respondent No.6 has submitted that the question as to whether the appellant was required to be heard before the investigation is transferred to the CBI is no longer res integra. She submitted that the State hierarchy was actively involved in influencing the investigation by the State Police, which is evident from the fact that Mr. Narendera Modi was Appellant No.2 in Criminal Appeal No. _____@ SLP (Crl.) No.8292 of 2012. He was subsequently deleted from the array of parties by an order of this Court. His removal from the array of parties makes no difference. Ms. Jaiswal has submitted that in fact the appellant has no locus standi to file the present appeal. At the most, according to her, he is a proposed accused or a suspect. She submits that it is a settled proposition of law and criminal jurisprudence that an accused has no right to be heard at the stage of investigation. The appellant in the present case is a potential suspect. Therefore, he has no locus standi to challenge the judgment of the High Court, transferring the investigation to the CBI in exercise of its powers under Section 173(8) of the Cr.P.C. She submits that the High Court has come to a prima facie conclusion that the original investigation and the further investigation are far from satisfactory. Both investigations lacked transparency and, therefore, the Court has rightly concluded that the investigation conducted by the State Police did not inspire confidence. She submits that the High Court has committed no error in not making the appellant a party in the writ petition filed by respondent No.6 seeking transfer of the investigation from the State Police and the Special Commissioner, Crime Detection Branch, Ahmedabad to the CBI. The rule of audi alteram partem would not be applicable at that stage. She submits that the investigation has to be conducted in accordance with Sections 154 to 176 of the Cr.P.C., wherein no provision is made for the applicability of the concept of audi alteram partem. In other words, at no

stage till the charge sheet is submitted the suspect or proposed accused can claim any constitutional or legal right to be heard. In support of her submissions, she relied on the judgment of this Court in W. N. Chadha (supra), Central Bureau of Investigation & Anr. Vs. Rajesh Gandhi & Anr.[6], Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj Vs. State of A.P. & Ors.[7], Narender G. Goel Vs. State of Maharashtra & Anr.[8] She also relies on the judgment in the case of Divine Retreat (supra).

27. She further submitted that even though the High Court has given elaborate details in support of the conclusions to transfer the investigation to CBI, it does not mean that the remarks were not necessary for coming to such a conclusion. She submits that the facts in this case were glaring. Jethwa has relentlessly campaigned against illegal mining within the prohibited 5 km zone of the Gir Forest Sanctuary. This sanctuary is the only habitat of the Asiatic Lions. Jethwa had managed to uncover a deep rooted conspiracy to continue illegal mining in the prohibited zones. He was in possession of evidence which would have directly linked the appellant to the illegal mining. The appellant and his nephew were impleaded as parties in the public interest litigation, SCA No.7690 of 2010 by order dated 6th July, 2010. The aforesaid order was served on the appellant on 19th July, 2010. Within 24 hours Jethwa was killed whilst he was coming out of the chamber of his lawyer.

28. She further pointed out that a perusal of the judgment of the High Court would show that the investigation conducted by the State Police and subsequent further investigation was wholly tainted and one sided. Therefore, the High Court had rightly transferred the case to the CBI. She further submitted that the remarks made by the High Court were wholly justified for coming to the conclusion that the investigation must be transferred to the CBI to inspire confidence.

29. She next submitted that the investigation has been completed and the charge sheet has been filed. The appellant will have full opportunity to defend himself at the trial. She submitted that the present appeal deserves to be dismissed as having become infructuous.

30. Lastly, she submitted that although the appellant is an MP he is involved in several criminal cases. His influence is so pervasive that he has been declared to be innocent in all the other criminal cases, excepting one. It is only in the present case that he is sought to be put on trial. She has submitted that even the nephew of the appellant Shiva Solanki was only arrested on 7th September, 2010; he had been absconding for 45 days whilst the investigation was in progress. The further investigation conducted by Sh. Vatsa, IPS, Superintendent of Police has been found to be tainted by the Court. The High Court found that the facts stated by Sh. Vatsa in the final report did not inspire confidence as it did not even point out the close proximity of Shiva Solanki and the appellant. These reports also point out the interaction between the uncle and nephew before and after the crime. In fact, Vatsa never applied for custodial interrogation of the appellant. She further submitted that the High Court noticed that the police man who is the first informant can not be an eye witness to the incident. Surprisingly, the FIR was not recorded at the instance of any member of his family. She submits that the High Court has correctly come to the conclusion that the initial and further investigations suffered from so many lapses and lacunae that it could not possibly inspire confidence.

31. Opposing the prayer for bail, Ms. Jaiswal submitted that the appellant is a very powerful person, not only because he is an MP, but because he is a kingpin in the criminal mafia operating within the Gir Sanctuary which is meant for protection of the Asiatic Lions, apart from many other rare species of animal life as well as flora and fauna. In case, he is allowed out on bail the appellant is most likely to put pressure on the prosecution witnesses and weaken the case of the prosecution. She submits that the family of the deceased is entitled to the satisfaction that the brazen murder of the deceased was not only fairly investigated, but also a fair trial was conducted. She further submitted that earlier application of the bail of the appellant having been dismissed by the trial court no special treatment could be given to the appellant. His application for bail in this Court is not maintainable.

32. Mr. Rohatgi in reply has submitted that Narendra Modi had been made appellant No.2 by mistake. The mistake was corrected and his name was deleted from the array of parties on 9.11.2012 by the order of this Court. His name is unnecessarily being mentioned in these proceedings.

33. We have considered the submissions made by the learned counsel for the parties.

34. Before we examine the submissions made by the learned counsel for the parties, it would be appropriate to notice the various authorities cited by them. In Divine Retreat Centre (supra), this Court held that considering the question as to whether even the High Court can set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence. This Court observed that "the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigating team on the strength of anonymous petitions. The High Court cannot be converted into station houses." The observations made in para 51, on which heavy reliance has been placed by Mr. Rohatgi, show that the High Court had sought to turn the Divine Retreat Centre into an accused on the basis of an anonymous complaint in exercise of its power under Section 482. Keeping in view the peculiar facts of that case, it is observed as follows :

> "54. Here is a case where no information has been given to the police by any informant alleging commission of any cognizable offence by the appellant and the persons associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a learned Judge of the Kerala High Court, which was suo motu taken up as a proceeding under Section 482 of the Code. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 of the Code."

35. It was for the aforesaid reason that this Court observed as follows:

> "51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that the accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 and 228 and 239 and 240 CrPC. The appellant is not an accused and, therefore, it

> was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice."

36. These observations would not be applicable in the facts of this case. The criminal law has not been set in motion on the basis of an anonymous complaint. The investigation has been transferred to the CBI, in a petition under Article 226 of the Constitution filed by none other than the father of the victim who suspects that his son was murdered at the instance of the appellant herein. The facts have been elaborately narrated by the High Court as well as by us. It is apparent that the fact situation in Divine Retreat Centre is wholly distinguishable from the present case.

37. In D.Venkatasubramaniam (supra), again this Court was concerned with the erroneous exercise of its inherent powers under Section 482, Cr. P.C. by the High Court. This Court reiterated the observations made in Divine Retreat Centre (supra). It was inter alia observed as follows :

> "34. The High Court in the present case, without realising the consequences, issued directions in a casual and mechanical manner without hearing the appellants. The impugned order is a nullity and liable to be set aside only on that score.
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> 35. We are not impressed by the submission made by the learned counsel for the respondent that the High Court did not issue any directions but merely disposed of the petition with the observations reminding the police of its duty. The question that arises for consideration is whether there was any occasion or necessity to make those "observations" even if they are to be considered to be observations and not any directions. It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police.

There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor is there any finding as such recorded by the High Court in its order."

38. From the above, it becomes apparent that the High Court had passed the order in a mechanical manner. Further more, it was not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. In the present case, the appellant before the High Court was none other than the father of the deceased. It was a cry for justice made by a person whose son has been brazenly murdered. Failure of the High Court to take notice on such a plea, in

our opinion, would have resulted in injustice to the father of the victim who was only seeking a fair and impartial investigation into the circumstances leading to the murder of his son. The petition has been filed by the father seeking redressal of the grievance under Articles 14, 21 and 226 of the Constitution of India. The father of the deceased had filed the petition on the grounds that the State is under the obligation to ensure the rule of law. It was stated that the rule of law can be maintained only by fair, impartial and independent investigation by the law and order enforcement agency, in every reported incidents of commission of offence. It was emphatically stated that the investigation into the murder of Jethwa was not taking place independently and impartially due to extra-legal and extraneous considerations. The Respondent No.6, father of the murdered victim, had prayed before the High Court that his right to equality before the law guaranteed by Article 14 of the Constitution of India was being violated as the appellant herein was being protected by the investigating agency because he is a member of Parliament, and he belongs to the political party that was in power in the State. In the light of the aforesaid, the ratio of judgment in D. Venkatasubramanium (supra), in our opinion, is also not applicable in the facts of this case.

39. Davinder Pal Singh Bhullar (supra) is a very peculiar case. This Court examined a situation where the High Court suo motu re- opened the proceedings which had been closed, and the High Court had become functus-officio. This Court after noticing the peculiar fact situation, observed as follows:

> "The impugned order dated 5.10.2007 though gives an impression that the High Court was trying to procure the presence of the proclaimed offenders but, in fact, it was to target the police officers, who had conducted the inquiry against Mr. Justice X. The order reads that particular persons were eliminated in a false encounter by the police and it was to be ascertained as to who were the police officers responsible for it, so that they could be brought to justice."

40. Clearly, therefore, in such circumstances this Court struck down the directions. This Court also notices that although the proceedings before the High Court were ostensibly to procure the presence of the proclaimed offenders but in essence it was an enquiry to ascertain as to who were the police officers responsible for certain false encounters. It is well settled that the Court cannot order a roving enquiry and direct the investigation to be carried out by the CBI without any basis. This court was dealing with the cases where the investigators of the crime were sought to be converted into accused. Such are not the circumstances in the present case. Thus, the reliance placed upon Davinder Pal Singh Bhullar's case (supra) is misplaced.

41. In the case of Ms. Mayawati (supra), the question raised in the writ petition filed under Article 32 of the Constitution of India was as to whether the FIR registered against the appellant therein to investigate into the matter of alleged disproportionate assets of the appellant and other officers was beyond the scope of the directions passed by this Court in the order dated 18th September, 2003 in M.C.Mehta Vs. Union of India. Upon the examination of the entire situation, it was held by this Court that the FIR registered against the appellant therein was beyond the directions issued by this court in M.C.Mehta and, therefore, was without authority of law.

42. Undoubtedly, the essence of criminal justice system is to reach the truth. The underlying principle is that whilst the guilty must not escape punishment; no innocent person shall be punished unless the guilt of the suspect/accused is established in accordance with law. All suspects/accused are presumed to be innocent till their guilt is proved beyond reasonable doubt in a trial conducted according to the procedure prescribed under law. Fair, unbiased and transparent investigation is a sine quo non for protecting the accused. Being dissatisfied with the manner in which the investigation was being conducted, the father of the victim filed the petition seeking an impartial investigation.

43. Now we shall consider the judgments cited by Ms. Kamini Jaiswal.

44. In W.N.Chadha (supra), the High Court had quashed and set aside the order passed by the Special Judge, in-charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr. W.N.Chadha.

The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows :-

> "89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all." "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." "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." These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

45. In Rajesh Gandhi's case (supra), this Court again reiterated the law as follows :

"8. 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. We also fail to see any provision of law for recording reasons for such a decision.....There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not [pic]satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) of the CrPC 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate." The aforesaid observations would clearly support the course adopted by the High Court in this matter. We have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It was only when the High Court was of the opinion that even further investigation was not impartial, it was transferred to the CBI.

46. Again in Sri Bhagwan Samardha (supra), this Court observed as follows :

> "10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.)1. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
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> 11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation." These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by the CBI.

47. We had earlier noticed that the High Court had come to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clear chit to the appellant, inspite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. The legal position has been reiterated by this Court in the case of Narender G. Goel (supra):

> "11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. this Court observed: (SCC p. 743, para 11) "11. ... There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard."
>
> 12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the`` aid of CFS under Section 173(8) of the Code.
>
> 13. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter."

48. Again in the case of Narmada Bai (supra), this Court after reviewing the entire body of case law concluded as follows :

> "64. The above decisions and the principles stated therein have been referred to and followed by this Court in Rubabbuddin Sheikh1 where also it was held that considering the fact that the allegations have been levelled against high-level police officers, despite the investigation made by the police authorities of the State of Gujarat, ordered investigation by CBI. Without entering into the allegations levelled by either of the parties, we are of the view that it would be prudent and advisable to transfer the investigation to an independent agency. It is trite law that the accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them."

49. We may also notice here the observations made by this Court in Mohd. Anis Vs. Union of India[9], wherein this Court held as follows :

> "5. ... Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice." (SCC p. 148, para 5) "2. ... Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial." (SCC p. 147, para 2)"

50. At this stage, we would like to reiterate the well known principles on the basis of a previous judgment can be treated as a precedent. The most important principles have been culled out by this Court in Bank of India & Anr. Vs. K.Mohandas & Ors.[10] as follows:

> "54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in Quinn v. Leathem, is worth recapitulating first: (AC p. 506) "... before discussing ... Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." (emphasis supplied) This Court has in long line of cases followed the aforesaid statement of law.

> 55. In State of Orissa v. Sudhansu Sekhar Misra9 it was observed: (AIR p. 651, para 13) "13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."
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> 56. In the words of Lord Denning:
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> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."
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> 57. It was highlighted by this Court in Ambica Quarry Works v.

State of Gujarat: (SCC p. 221, para 18) "18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

59. This Court in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases."

51. Keeping in view the aforesaid principles, we are constrained to hold that the ratio of the judgment cited by the appellant would not be applicable in the facts and circumstances of this case.

52. We can now proceed to examine the factual situation in the present case.

53. We are not much impressed by the submissions made by Mr. Rohtagi that the High Court has unnecessarily cast aspersions of criminality on the appellant. In Paragraph 10 of the judgment, the High Court has observed as follows:-

> "All the above circumstances put together indicated that the investigation was controlled from the stage of registering the FIR and only the clues provided by the accused persons themselves were investigated to close the investigation by filing Charge-sheet No.158 of 2010 dated 10.11.2010 and further investigation had not

> served any purpose. Therefore, the investigation with the lapses and lacunae as also the unusual acts of omission and commission did not and could not inspire confidence. It may not be proper and advisable to further critically examine the charge-sheet already submitted by the police, as some of the accused persons are already arrested and shown as accused persons and even charge is yet to be framed against them. The facts and averments discussed in paragraphs 6 and 7 hereinabove also amply support the conclusion that the investigation all throughout was far from fair, impartial, independent or prompt."

54. In coming to the aforesaid conclusion, the High Court has relied on the following factors:-

> a) Prima facie, the deceased son of respondent No.6 was an RTI activist and sole appellant in the PIL, being SCA No. 7690 of 2010, wherein two persons were, recently before the murder, joined as respondents and one of them is already accused of the offence under Sections 302 and 120-

B of IPC. The High Court also recorded that it is nobody's case that the deceased victim of the offence was a blackmailer or a busybody. He was interested in spreading public awareness about environmental issues and taking legal remedies for preventing environmental degradation, particularly in and around the reserved forest and Gir Sanctuary.

b) The High Court then notices that according to the FIR, the deceased was killed at 20.40 hours on 20.7.2010 and the FIR was registered at 22.06 hours. Although the FIR itself mentioned address of the deceased and his mobile phone was also found on the spot, no effort was made to either inform any member of his family available nearby or call them to the police station before registration of the FIR through police personnel. The High Court notices that these facts would clearly strengthen the suspicion of respondent No.6 that the relatives and acquaintances of the deceased were deliberately prevented from naming anyone even as a suspected perpetrator of the crime in the FIR.

c) Again the High Court, by making a reference to the FIR, has prima facie concluded that it seems to have been registered under the advice and guidance of the higher officers, who were present at the police station. The High Court also notices from the affidavit of Superintendent of Police, Mr. Vatsa that even during the further investigation, he was required to continuously inform and brief Mr. Mohan Jha as his supervisory officer and Special Police Commissioner, Crime Branch, Ahmedabad. The High Court, therefore, formed an opinion that Mr. Mohan Jha continued to guide and control even the further investigation, which had been conducted on the directions of the High Court. The High Court also notices that Mr. Kundaliya who was in charge of the investigation, had recorded statements of father, wife, brothers, mother and friends of the deceased. These persons had given specific names of the suspects, but no arrests were made. In fact the investigation did not appear to have made any progress. It was only after the order was passed by the High Court in a Public Interest Litigation on 02.08.2010, transferring the investigation that arrests began to be made. The High Court then recorded "However, although, name of Mr.DB was mentioned as the main suspect in at least 8 statements recorded till then and threats received by the deceased were also mentioned, he was neither approached for interrogation nor any notice was issued under

Section 160 of Cr.P.C.". The High Court then notices that efforts were made by the persons, who were arrested, to make statements to absolve the appellant of being involved in the conspiracy to kill Jethwa. From this, the High Court concluded "thus the progress of investigation clearly indicated that the investigators were relying more on the statements of the arrested person than the statements recorded earlier of the relatives and acquaintances of the deceased. Even while filing the charge-sheet, statements dated 22.7.2010 and 28.7.2010 of independent and important witnesses, such as, learned advocate Mr. Anand Yagnik and Mr. Kanaksinh Parmar respectively were not annexed with the charge-sheet". The High Court then notices the contents of case diary in which it is recorded that on 20.08.2010, the news about the police being in search of Shiva Solanki were leaked in advance and spread through media and telecast, even then he could not be located in spite of enquiring into various secret sources and informants.

d) The High Court also notices that on 16.8.2010, when the High Court ordered the transfer of the investigation, one of the main accused persons namely Bahadursinh D. Vadher, was arrested and had practically dictated in great detail his motive, plan, execution and sufficiency of resources for arranging the elimination of Jethwa, without ever mentioning the name of Shiva Solanki. His statements were recorded everyday from 18th to 30th August, 2010. During the course of custodial interrogation, on 19th August, 2010, he added that he had decided with Shiva Solanki to kill Amit Jethwa for which Shiva was to provide the money. Thereafter, the High Court makes a very important observation which is as follows:-

> "Although nothing can be treated or held to be proved at this stage, the sequence of events and the statements clearly indicated that even the name of Shiva Solanki was being introduced in a careful and planned manner with leakage of sensitive information for the public including others involved in the offence".
>
> This observation clearly shows that all the observations were tentative, prima facie, to adjudge only the issues, as to whether the State Police had conducted a fair and unbiased investigation. No opinion is recorded, even prima facie of the guilt or otherwise of the appellant in the offence of conspiracy to murder Jethwa. It appears to us that the apprehension of the appellant that any of the observations made by the High Court would influence the trial are without any basis.
>
> e) The High Court further notices that when Shiva Solanki was arrested on 07.09.2010, his statements with a matching version were recorded everyday from 07.09.2010 to 20.09.2010 with details of his decision and understanding with Bahadursinh to kill Amit Jethwa of his own motive and resources. But not once these accused persons appeared to have been asked even one question about the involvement of the appellant. In fact Shiva is stated to have clarified that, no one else was informed about his understanding with Bahadursinh.
>
> f) The High Court further notices that statement of appellant was recorded on 16.9.2010 when he claimed not only complete innocence but ignorance about even the activities of the deceased and the difficulties caused by him. In fact he urged for

independent and deeper probe of the offence.

g) The High Court then records the conclusion that this line of interrogation substantiates the submission that the investigating agency was following the clues offered by the arrested persons rather than the other independent information given by the father and witnesses. Taking into consideration all the aforesaid facts, the High Court concluded that "the statements of Mr.DB recorded after apparently solving the mystery of the murder clearly appeared to be an empty formality at the convenience and invitation of Mr.DB. A fair, proper and prompt investigation in case of such a crime, by an ordinary police officer, would have inspired immediate custodial interrogation of the prime suspects; but in the facts of the present case, the investigating officer practically remained clueless for first 25 days after the murder and then suddenly, with first arrest and first statement of the arrestee on the first day of investigation, the case was practically solved". Here again, the conclusion of the High Court is in the context of the impartiality of the investigation. The same cannot be construed as any definite or even a prima facie conclusion as to the guilt of the appellant.

h) The High Court thereafter notices that the first person arrested was not named by any witnesses in any statement recorded till his arrest. The High Court, therefore, states that it is not clear "How that first arrestee, not named till then by any witness or in any statement recorded till his arrest, was identified as a suspect and arrested on 16.8.2010 itself after the order to transfer the investigation, is not clear. By a curious coincidence, the complainant who dictated the FIR under supervision of so-many higher officers and the first arrestee who offered complete solution to the investigating agency in his first statement before a special branch of the police, both happened to be serving police personnel serving under the higher officers under whom the investigation could otherwise hardly make any headway for 25 days." The High Court then notices the following facts "At both important points of registering and cracking the case, the common factor also was the same higher officer Mr. Mohan Jha, then in-charge of the City Crime Branch. He also supervised the further investigation as Special Commissioner of Police, Crime Branch, by virtue of a special order issued in this regard by the Director General of Police".

i) On the basis of the numerous facts narrated in the judgment, the High Court concluded that "there was sufficient material to substantiate the submission that the State police was controlling the investigation rather than carrying it out in a fair, impartial and prompt manner." The High Court also concluded that the aforesaid facts would "lend credence to the allegation that the accused persons and the prime suspect had such influence in the higher echelons of police-power, that the officers of the lower ranks would not dare to displease them." These observations again are general and were clearly necessary to state and to support the conclusion reached by the High Court that the investigation conducted by the State police was unsatisfactory and biased. Again no further conclusion has been recorded about the

guilt of any of the suspects, let alone the appellant, in particular.

j) The High Court thereafter notices the relationship of the appellant with Shiva Solanki and observed "The averments made by Mr.R.Vatsa, who conducted the further investigation, as related in Para 6 herein, did not inspire confidence insofar as close proximity of Shiva Solanki and Mr.DB and their interaction inter se before and after the crime, even to the extent discovered during the investigation, would have led an honest investigation to conclusions and inferences quite contrary to those drawn by the officer. He only made a weak attempt in proving his sincerity by applying for custodial interrogation of some of the accused and that attempt was simply smothered by the opinion of the District Government Pleader, as aforesaid."

k) The High Court further concludes that where no one appears to be an eye witness to firing on the deceased, not only the persons alleged to have assaulted the deceased, but identity of the persons who would have strong motive for eliminating the deceased ought to have been fully or properly investigated. Instead, the prosecution relied mainly on the persons, who were already arrested and practically stopped at them in spite of the order for carrying out further investigation in light of the averments and allegations made in the petition.

l) In our opinion, the High Court has only noticed the facts which tend to show that the investigation had not been conducted impartially and fairly. Although, the appellant is mentioned on a number of occasions, no specific conclusion is reached that the appellant was responsible for influencing or controlling the investigation. In fact, the finger is pointed only towards the higher echelons of the police, who seem to have been under the influence of the accused persons.

Mention of the appellant as the prime suspect is not a conclusion reached by the High Court. Appellant has been referred to as the prime suspect in all the allegations made in the writ petitions and the statements of the relatives including the statement of the father of the deceased. Therefore, in our opinion, by recording the gist of the allegations made, the High Court has not committed any error of jurisdiction.

m) Mr. Rohtagi has pointed out that the High Court has also recorded that since the appellant and his nephew were living together in a joint family and, therefore, must have conspired to kill Jethwa. The statement recorded by the High Court is as under:

"It has come on record that Mr.Shiva Solanki and Mr.DB were living together in a joint family and no investigator could have been easily satisfied with the statements that they did not interact in respect of the conspiracy to commit a capital crime, particularly when both of them were simultaneously joined as respondents in the PIL." This, in our opinion, is not a conclusion that the appellant and his nephew Shiva Solanki must have conspired. The submission made by Mr. Rohtagi is not borne out from the observations quoted above. Similarly, the conclusion recorded by

> the High Court that "The incorrect statements made by Superintendent of Police Mr. Vatsa regarding past record of Mr.DB as seen and discussed earlier in Para 3 herein, clearly indicated an attempt at somehow shielding the person who was the prime suspect, according to the statements of the relatives and associates of the deceased" again only alludes to the statements of the relatives and witnesses. It cannot be said to be a conclusion reached by the High Court, about the guilt of the appellant. Therefore, the conclusion cannot be said to be unwarranted.

55. Ultimately, the High Court records the following conclusion:

> "All the above circumstances put together indicated that the investigation was controlled from the stage of registering the FIR and only the clues provided by the accused persons themselves were investigated to close the investigation by filing charge-sheet No.158 of 2010 dated 10.11.2010 and further investigation had not served any purpose. Therefore, the investigation with the lapses and lacunae as also the unusual acts of omission and commission did not and could not inspire confidence. It may not be proper and advisable to further critically examine the charge sheet already submitted by the police, as some of the accused persons are already arrested and shown as accused persons and even chare is yet to be framed against them. The facts and averments discussed in paragraph 6 and 7 hereinabove also amply support the conclusion that the investigation all throughout was far from fair, impartial independent or prompt."

56. This conclusion also only records the reasons which persuaded the High Court to transfer the investigation to CBI. No categorical findings are recorded about the involvement of the appellant in the crime of conspiracy. In fact, the High Court is well aware that the observations have been made only for the limited purpose of reaching an appropriate conclusion as to whether the investigation had been conducted impartially. The High Court has itself clarified as follows :

> "In the facts and for the reasons discussed hereinabove, while concluding that the investigation into murder of the son of the petitioner was far from fair, independent, bona fide or prompt, this court refrains from even remotely suggesting that the investigating agency should or should not have taken a particular line of investigation or apprehended any person, except in accordance with law. It is clarified that the observations made herein are only for the limited purpose of deciding whether further investigation was required to be handed over to CBI, and they shall not be construed as expression of an opinion on any particular aspect of the investigation carried out so far."

57. After recording the aforesaid clarification, it was noticed that the investigation is being transferred to CBI to instill confidence of the general public in the investigation, keeping in mind the seriousness of the case having far reaching implications.

58. Although we have not expunged any of the adverse remarks recorded by the High Court, we emphasize that the trial court should keep in mind that any observations made by the High Court, which may appear to be adverse to the Appellant, were confined only to the determination of the issue as to whether the investigation is to be transferred to CBI. Undoubtedly, the trial of the accused will be conducted unaffected and uninfluenced by any of the so called adverse remarks of the High Court.

59. For the reasons stated above, we see no merit in both the appeals and the same are hereby dismissed.

Crl. M.P. No. 23723 of 2013 :-

60. We have already noticed the submissions of the learned counsel for the parties on this application, seeking bail in the main judgment. The petitioner-appellant was arrested on 5th November, 2013, when he appeared before the CBI in response to the summons. Since then the petitioner-appellant has been in custody. The supplementary charge-sheet has been filed by the CBI in the Court of ACJM, Ahmedabad in January, 2014. After the charge-sheet being filed, obviously, the petitioner-appellant is no longer required for further investigation. Mr. Rohatgi has rightly pointed out that there is no likelihood of the petitioner-appellant tampering with the evidence as the copies of all the sensitive statements have not been supplied to the petitioner-appellant.

61. We are not much impressed by the submission of Mr. Rohatgi that the petitioner-appellant ought to be released on bail simply because he happens to be a sitting M.P., nor are we much impressed by the fact that further incarceration of the petitioner-appellant would prevent him from performing his duties either in the Parliament or in his constituency. So far as the court is concerned, the petitioner-appellant is a suspect/accused in the offence of murder. No special treatment can be given to the petitioner- appellant simply on the ground that he is a sitting Member of Parliament. However, keeping in view the fact that the CBI has submitted the supplementary charge-sheet and that the trial is likely to take a long time, we deem it appropriate to enlarge the petitioner-appellant on bail, subject to the following conditions:

(i) On his furnishing personal security in the sum of Rs.5 lacs with two solvent sureties, each of the like amount, to the satisfaction of the trial court.

(ii) The petitioner-appellant shall appear in Court as and when directed by the court.

(iii) The petitioner-appellant shall make himself available for any further investigation/interrogation by the CBI as and when required.

(iv) The petitioner-appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade that person from disclosing such facts to the court or to the investigating agency or to any police officer.

(v) The petitioner-appellant shall not leave India without the previous permission of the trial court.

(vi) In case the petitioner-appellant is in possession of a passport, the same shall be deposited with the trial court before being released on bail.

62. The trial court shall be at liberty to add/impose any further condition(s) as it deems necessary, in addition to the aforesaid.

63. The Criminal Misc. Petition is allowed in the aforesaid terms.

Crl.M.P.No.22987 of 2013 :

64. This Crl. Misc. Petition was filed by the petitioner on 28th October, 2013, seeking stay of any coercive action against him prejudicing his life and personal liberty, pursuant to the judgment dated 25th September, 2012 of the Gujarat High Court impugned in the present criminal appeals. In view of the order passed by us in Crl. Misc. Petition No.23723 of 2013, this Petition is dismissed as having become infructuous.

.....J. [Surinder Singh Nijjar] .....J. [A.K.Sikri] New Delhi;

February 25, 2014.

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[1] (2008) 3 SCC 542
[2] (2009) 10 SCC 488
[3] 2012 Criminal Law Journal 1001
[4] (2012) 8 SCC 106
[5] (1993) Supp.4 SCC 260
[6] (1996) 11 SCC 253
[7] (1999) 5 SCC 740
[8] (2009) 6 SCC 65
[9] 1994 Supp (1) SCC 145
[10] (2009) 5 SCC 313
