

[2020] 9 S.C.R. 517

SATYAMA DUBEY & ORS.

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v.

UNION OF INDIA & ORS.

(Writ Petition (Criminal) No. 296 of 2020)

OCTOBER 27, 2020

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**[S. A. BOBDE, CJI, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]**

Constitution of India:

Art. 32 – Writ Petition – Seeking fair investigation in a case of brutal gangrape and murder in the State of Uttar Pradesh – Petitioners alleged that cremation of the victim was illegal – The State in its affidavit stated that the investigation was entrusted to CBI by the State – Held: Supreme Court is not required to monitor the proceedings/ investigation because the High Court having competent jurisdiction has adequately delved into the aspects of fair investigation – Therefore, all aspects are left open to be considered by the High Court – Though sufficient steps have been taken to protect the family of the victim by State Police, however, in the facts of the case, CRPF is directed to take over the protection of victim's family and witnesses – The aspect of appointment of Special Public Prosecutor would be considered by the High Court – The issue as to whether the trial of the case is to be transferred to Delhi from Uttar Pradesh, is kept open to be considered if need arises in future.

Penal Code, 1860:

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s. 228A – Disclosure of names and relationship of family members of rape victim – In the judicial order – Held: is against law.

Disposing of the Writ Petitions and the intervention applications, the Court

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HELD: 1.1 The undisputed fact is that the investigation has in fact been entrusted by the State Government itself to the CBI on 10.10.2020 and the CBI has started investigation in respect of the crime on 11.10.2020. Therefore, the apprehensions

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- A expressed by the petitioners/applicants that there would be no proper investigation if the Uttar Pradesh Police conducted the same would not remain open for consideration at this stage and the grievance to that extent stands redressed. [Para 10][527-C-E]
- B 1.2 From the order passed by the High Court of Allahabad in the PIL, it is noticed that the High Court has adequately delved into the aspects relating to the case to secure fair investigation and has also secured the presence of the father, mother, brother and sister-in-law of the victim and appropriate orders are being passed, including securing reports from various quarters. In that circumstance, it is not necessary to divest the High Court of the proceedings and take upon this Court to monitor the proceedings/investigation. That apart, the incident having occurred within the jurisdiction of that High Court and all particulars being available, it would be appropriate for the High Court to proceed to monitor the investigation in the manner in which it would desire. In that view, it would be open for the writ petitioners/applicants to seek to intervene in the matter before the High Court subject to consideration of such request by the High Court and if it finds the need to take into consideration the contentions to be urged by the petitioners/applicants in that regard. [Para 10][527-E-H]
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- E 1.3 Therefore, without expressing any opinion on the merits of the rival contentions, all aspects of the matter are left open to be considered by the High Court in PIL(C) No.16150/2020 relating to the incident regarding which the investigation is to be conducted by the CBI and also with regard to the grievance put forth alleging illegal cremation. The CBI shall report to the High Court in the manner as would be directed by the High Court through its orders from time to time. [Paras 13 and 14][528-E-H]
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- G 2.1 Insofar as the protection to the victim's family and the witnesses, the affidavit, as filed, no doubt indicates that sufficient steps have been taken by the State Government to provide protection. However, in a matter of the present nature, without casting any aspersions on the security personnel of the State Police; in order to allay all apprehensions and only as a confidence
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building measure, it would be appropriate to direct that the security to the victim's family and the witnesses shall be provided by the CRPF. [Paras 11 and 12][528-A-D] A

2.2. Respondent No.2 (Chief Secretary, State of U.P) in WP(Crl) No.296/2020 shall bring this order to the notice of the competent officer of the CRPF forthwith with a request to provide adequate security to the victim's family and the witnesses and the CRPF shall take steps to provide the same and shall report the same to the High Court. [Para 14][529-A-B] B

3. There is no need to pass any specific order as regards appointment of a Special Public Prosecutor. This is an aspect which could be considered by the High Court in the light of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the circumstance wherein the family members of the victim have chosen to engage their private Advocates, they would consider these aspects and make request on behalf of the victim in accordance with law if such need arises. [Para 13][528-F-G] C

4. Insofar as the transfer of the case to Delhi is concerned, it would be appropriate for investigating agency to complete the investigation and in any event since the local police have been divested of the investigation and the CBI is carrying out the investigation, there would be no room for apprehensions at this stage. However, the issue as to whether the trial of the case is to be transferred, is a matter which is kept open to be considered if need arises in future. [Para 15][529-B-C] D

5. The name and relationship of the family members with the victim have been depicted in the face of the order dated 12.10.2020 passed by the High Court in PIL(C) No.16150/2020. Since it is a requirement of law to avoid such disclosure, the High Court is requested to delete the same and also morph the same in the digital records and avoid indication of such contents in future. [Para 16][529-D-E] F G

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 296 of 2020.

Under Article 32 of the Constitution of India

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A With

Writ Petition (Crl) Nos. 304, 308, 314 and 316 of 2020.

- Tushar Mehta, SG, K. M. Natraj, ASG, Harish Salve, Ms. Indira Jaisingh, Sidharth Luthra, Colin Gonsalves, Sr.Advs., Pradeep Kumar Yadav, Abhay Singh Yadav, Sanjeev Malhotra, Smarhar Singh, Rajesh Kumar, Gopi Raman, Md. Shahid Anwar, Firoz A. Shaikh, Hareesh Ahmad Minhaj, Varinder Kumar Sharma, Shantanu Sharma, S. B. Talekar, Karthik Jayashankar, Ms. Pradnya Talekar, Ms. Madhavi Ayyappan, Vipin Nair, Rajat Nair, Arvind Kumar Sharma, Ms. Garima Prashad, Ms. Kirti Singh, Ms. Nandita Rao, Ms. Manali Singhal, Ms. Iti Pandey, Ms. Swaty Singh Malik, Ms. Ekta Kapil, Ms. Pooja Saigal, Ms. Sanjoli Mehrotra, Ms. Kaveeta Wadia, Ms. Anshika Sood, Ms. Jyoti Babbar, Ms. Anjali Sharma, Ms. Shreya Agrawal, Ms. Anasuya Chowdhary, Ms. Kritika Gupta, Ms. Megha Katheria, Ms. Atishree Sood, Ms. Saumya Tandon, Ms. Geetika Panwar, Ms. Anubha Rastogi, Saurabh Kirpal, Akshay Makhija, Gaurav Sarin, Vineet Jhanji, Ms. Sonia Mathur, Ms. Ruksana Chowdhary, Ms. Arundhati Katju, Ms. Purnima Malik, Ms. Daisy Hannah, S.Sagar, Sahil Modi, Vivek Suri, Ms. Sonam Gupta, Ms. Silky Wadhwa, Rahul Chouhan, Ms. Guninder Kaur Gill, Manu Yadav, Ms. Apporva Pandey, Ms. Sonam Anand, Sanjeev Mahajan, Ms. Pooja Dhar, Iram Majid, Ms. Aditi Gupta, Ms. Anuradha Dutt, Ms. Kriti Kakkar, Ms. Malavika Rajkotia, Ms. Zeba Khair, Ms. Sangeeta Bharti, R. R. David, Warisha Farasat, Ms. Shweta Kapoor, Ms. Kajal Chandra, Ms. Shalini Sati Prasad, Ms. Tanvi Asthana, Surya Rajappan, Ms. Nidhi Mohan Parashar, Ms. Manali Singhal, Ms. Prachi Dutta, Tarannum Cheema, Darpan Wadhwa, Ashish Dholakia, Abhimanyu Mahajan, Prosenjeet Bannerjee, Tahira Karanjawala, Ms. Menaka Guruswamy, Miriam Fozia Rahman, Ms. Amita Singh Kalkal, Rohit Kaul, Ms. Nandita Chauhan, Shashank Agarwal, Abhimanshu Dhyani, Ms. Ruby Singh Ahuja, Ms. Niharika Karanjawala, Satyam Chaturvedi, Ms. Ritu Raj Srivastava, Virinder Pal Singh Sandhu, Jatin Mongia, Kashyap Guddi Patti, Ms. Beena Pandey, Ms. Haripriya Padmanabhan, Shadab Husain Khan, Ms. Ritu Bhalla, Firdaus Moosa, Shahrukh Alam, Mrinalini Sen, Jhum Jhum Sarkar, Amita Gupta, Aathira Pillai, Satakshi Sood, Ms. Naomi Chandra, Ms. Deepika Pokharia, Ms. Kiran Kalra, Ms. Prachi V. Sharma, Ms. Neha Dhir, Ms. Neha Pandey, Ms. Suruchi Suri, Anupam Sanghi, Ms. Rea Bhalla, Ms. Mahjabeen, Satvik Varma, Ms. Ila Kapoor, Ms. Charul Sarin, Viraj Datar, Ms. Nandini Gore,

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Ms. Shreya Singhal, Fozia Ahmed, Ms. Ruchi Singh, Ms. Surabhi Agarwal, Aashneet Singh, Karan Seth, Varun Kumar, Ms. Aprajita Budhwar, Ms. Rakshita Kachroo, Ms. Bonita Singh, Yogendra Misra, Mridul Yadav, Rajat Soni, Ms. Ruchi Agnihotri, Ms. Meghna Mishra, Ms. Gurkirat Kaur, Ms. Seema Kushwaha, Ishit Saharia, Ms. Aparna Bhat, Ms. Karimhma Maria, Sudhir Mendiratta, Nishit Agrawal, Sheezan Hashmi, Anmol Kheta, Harsh Mishra, Gunjan Singh, Ms. Pragya Ganjoo, Satya Mitra, Ms. Shobha Gupta, Ms. Prachi Apte, J. Sai Deepak, Suvidutt M. S., Mrs. Anu B., Vibhor Ahlawat, Abhishek Avadani, Avinash Sharma, Ms. Shaktiki Sharma, Ms. Vanya Agarwal, Yogesh Kumar, Abhijeet Singh, G Ankolekar, Surendra Singh Ran, Mukesh Kumar Singh, Ikshit Singhal, Shantanu Jugtawat, Bhanu Priya Sharma, M/s. Mukesh Kumar Singh and Co., Advs. for the appearing parties.

The following Judgment of the Court was delivered :

JUDGMENT

1. The petitioners and all the intervening applicants in these matters have raised concern with regard to the manner in which a 19 years old girl hailing from Hathras, Uttar Pradesh is alleged to have been raped, brutally assaulted; due to which she lost her life and also the manner in which she was cremated. The Writ Petition (Crl) No.296/2020 was initially taken on board by this Court and notice was ordered to the respondents returnable in a week. In the meanwhile, the remaining petitions and the applications were filed in respect of the same incident to seek for varied reliefs which are all ultimately in pursuit of a fair investigation and bring to justice the culprits.

2. The details of the other applications and writ petitions are as follows:

Petition/Intervening Applications	Applicant/Petitioner	Prayers
Cr. M.P. No. 10597 of 2020	Ramu alias Ram Kumar	Intervention Application seeking indulgence of Court for ordering CBI investigation or formation of SIT to investigate the matter under a sitting or retired Justice of SC or HC. Further, transfer of trial to Delhi is prayed for.

A	I.A. No. 101799 of 2020	All India Women Conference (NGO) through its General Secretary Ms. Kuljeet Kaur	Prayer for impleadment as necessary party in the array of petitioners
B	Crl. MP. No. 102148 of 2020	Citizens for Justice and Peace through Secretary	Seeking intervention and directions for: 1.Transfer of the investigation to CBI 2.Protection of witnesses by central para military forces 3.Appointment of a retired Judge of SC to investigate the circumstances which led to the cremation of the victim
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D	Crl. MP. No. 105463 of 2020	Radhika Vemula &Ors.	Praying for following directions: 1.Transfer of all connected cases of gang-rape and death from U.P. to Delhi Special Court 2.Constitution of SIT for investigation into the gang-rape and death tragedy in order to avert political interference 3.Restricting the respondents from conducting polygraph test, narco-analysis or brain mapping on the victim's family 4.Protection to victim's family and other witnesses. 5.Directing respondents to strictly implement SC & ST (Prevention of Atrocities) Act, 1989
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A	I.A. No. 103488 of 2020	By Members of Delhi High Court and Supreme Court Bar Association	Seeking orders for: 1. Constitution of SIT to investigate the gang-rape and murder case under the Court's own monitoring 2. Providing adequate protection to the witnesses 3. Transfer of trial from U.P. to SC/ST Special Court in Delhi subject to consent from the victim's family 4. Appointment of a Senior Advocate as special prosecutor u/s 15 of the SC/ST Act, 1989
B	I.A. No. 106081 of 2020	Satendra Kumar	Application seeking impleadment as respondent in WP (Crl.) No. 296 of 2020 or in the alternative seeking permission to intervene in the said matter.
C	Diary No. 55441/2020, etc.	Letter petitions received through E-Mail by citizens	For Appropriate directions being sought for by SC in the gang-rape and murder case
D	D.No. 54893/2020, etc.	Letter petitions received through e-mail/by post	For Appropriate directions being sought for by SC in the gang-rape and murder case
E	IA No. 105728 of 2020	Applicant/Shobha Gupta	Intervention Application seeking permission to intervene to make appropriate submissions and suggestions as the matter is of extreme importance.
F	Crl MP No. 105362 of 2020	Applicant/Rashtriya Dalit Bachao Andolan Through its President O.P Shukla and Others	<ul style="list-style-type: none"> • Application for Impleadment as he himself belongs to the SC community and direction to R to ensure dignified cremation of all the victims of crime and no discrimination to be made toward SC, ST, OBC • Direction for investigation against the officials who were responsible for cremation and illegal detention of the family members to be monitored by this Hon'ble Court.
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A	Crl MP No. 105452 of 2020	Applicant/Munnoka Samudaya Samrakshana Munnani through its President	Application for intervention seeking an investigation in the case against the accused and into the alleged lapses in the administration into the case.
B	WP(Crl) No. 304 of 2020 Chandra Bhan Singh vs State of UP and Others	Petitioner/Chandra Bhan Singh	Prayer for; 1. Mandamus for investigation of the role of R3-R7 for mishandling of body of the victim 2. Direction to the Investigating agency to get statement of the Mother, father and brother of the victim before the magistrate and if the allegation made by the family are true to register FIR against the guilty. <u>Connected:</u> Direction to take cognizance, constitution of the HC monitored Investigation, inquiry and suspension of the erring police, medical etc trying to manipulate the evidence, charges to be framed against police who were responsible for cremation of the Victim.
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E	<u>Connected:</u> WP(Crl) No. 308 of 2020 Sushma Motilal Maurya vs State of UP and Others	<u>Connected:</u> Petitioner/ Sushma Motilal Maurya	
F	WP (Crl) No. 314 of 2020 Public mail through its publisher vs Union of India and Others	Petitioner/Public mail through its publisher	Praying for following directions: 1. Mandamus to R to fix the responsibilities of the Police officials who burnt the girl in midnight and to punish them 2. Transfer the case to Delhi from Hathras 3. Direction to R to make special forum or frame guidelines for such rape in future.
G	WP (Crl) No.316 of 2020 Chetan Janardhan Kamble Vs Union of India and Others	Petitioner/Chetan Janardhan Kamble	Petition seeking direction to: 1. Register offence u/s 166-A, 193 ,201, 202, 203, 212, 217,153A and 339 of the IPC and 3(2) and 4 of the SC and ST Act 1989 against Govt officials involved in destruction of evidence
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Petition/Intervening Applications	Applicant/Petitioner	Prayers
Cr. M.P. No. 10597 of 2020	Ramu alias Ram Kumar	Intervention Application seeking indulgence of Court for ordering CBI investigation or formation of SIT to investigate the matter under a sitting or retired Justice of SC or HC. Further, transfer of trial to Delhi is prayed for.

3. For a brief narration shorn of unnecessary details and to note the nature of the relief sought, the petition in W.P.(Crl.) No.296/2020 is referred. In the Writ Petition filed under Article 32 of the Constitution of India the petitioners are praying that the Union of India and concerned authorities be ordered to conduct a fair investigation; if need arise by transferring the case to the Central Bureau of Investigation ('CBI' for short) or SIT be formed to investigate the matter. It is also prayed that a sitting or retired Supreme Court Judge or High Court Judge be appointed to look into the matter. The petitioners have further prayed that the case be transferred from Hathras, Uttar Pradesh to Delhi.

4. The case as put forth is that a 19-year-old girl, resident of Hathras village in Uttar Pradesh was brutally gang-raped. The manner in which she was assaulted is referred to in the petition. Though she was shifted to Safdarjung Hospital in Delhi, she breathed her last and she was cremated in the middle of the night without the presence of her family members. Considering the manner in which the entire incident had taken place, the petitioners contended that a fair investigation would be possible only if the matter is entrusted to an independent agency.

5. The pleadings in the other writ petitions and the intervention applications are relating to the same incident though different reliefs have been sought, which in any event is to secure fair investigation and punish the guilty in accordance with law.

6. At the outset, when the first of the petition was taken up by this Court on 16.10.2020, Mr. Tushar Mehta, learned Solicitor General had fairly submitted that the instant petition would not be considered as an adversarial litigation and the respondents are also interested that a fair investigation be conducted and the offenders be brought to book. At that

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- A stage, it was noticed that the Allahabad High Court, Lucknow Bench having taken note of the incident had passed a detailed order dated 01.10.2020 and ordered registration of the *suo moto* petition being PIL(C)No.16150/2020. In that circumstance this Court was of the *prima facie* view that the petitions filed before this Court need not be entertained at this stage since the jurisdictional High Court was seized of the matter.
- B However, Ms. Indira Jaising, learned Senior Counsel while intervening on behalf of the intervening advocates had raised concern with regard to the adequate protection being provided to the victim's family members and the witnesses. Having found that such concern raised needs to be addressed, the learned Solicitor General was requested to secure
- C instructions on these aspects and file an appropriate affidavit.

7. Pursuant thereto, an affidavit dated 14.10.2020 sworn to by the Special Secretary, Home Department, Uttar Pradesh is filed, wherein the details of the security provided is indicated. In that regard it is stated that the parents, two brothers, one sister-in-law and grandmother of the
- D victim who are residing at village Chandpa, District Hathras, Uttar Pradesh have been provided protection under a three-fold protection mechanism through (a) Armed Constabulary Component, (b) Civil Police Component and (c) Installation of CCTV cameras/lights. The details of each of the component is also stated in the affidavit and it is further stated that the Inspector (In-charge) of Police StationChandpa has been made In-charge of the aforesaid entire arrangement to deploy suitable police force for the same. The Circle Officer, Sadabad is to ensure robust security arrangement by holding regular clear briefings to the police force and to inform the family members about the security arrangements provided to them. The affidavit also states that on enquiry
 - E from the family members of the victim it is learnt that they have engaged Ms. Seema Kushwaha and Mr. Raj Ratan, Advocates on behalf of the family as their private advocates.

8. The affidavit also indicates that the investigation by the CBI would be conducted under the supervision of the Court in a time bound
- G manner. The Director General of Police, State of Uttar Pradesh has also filed an affidavit indicating that the State Government itself has sought investigation by the CBI to be conducted under the supervision of the Court and on 10.10.2020 the CBI accepted the request of the State and has started investigation in respect of the crime, on 11.10.2020. The orders dated 01.10.2020 and 12.10.2020 passed by the High Court
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and the fact that the High Court has been apprised that the investigation by the CBI was in progress is stated therein. A

9. In addition to hearing Mr. Tushar Mehta, learned Solicitor General who appeared for the State, Mr. Harish Salve, learned Senior Counsel for DGP and Smt. Seema Kushwaha on behalf of the family members of the victim as also the other learned counsel lead by Ms. Indira Jaising, Mr. Colin Gonsalves, learned Senior Counsel who raised concern on behalf of the victim's family in the various writ petitions and applications, we have taken note of the submission made by Mr. Sidharth Luthra, learned senior counsel who sought to appear on behalf of the accused to contend that the legal right available to the accused ought not to be ignored in the process. B
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10. Though various contentions were urged, the undisputed fact is that the investigation has in fact been entrusted by the State Government itself to the CBI on 10.10.2020 and the CBI has started investigation in respect of the crime on 11.10.2020. Therefore, the apprehensions expressed by the petitioners/applicants that there would be no proper investigation if the Uttar Pradesh Police conducted the same would not remain open for consideration at this stage and the grievance to that extent stands redressed. Though the petitioners had sought and the respondent-State also through their affidavit had indicated that this Court can monitor the same, as already referred to above, a PIL(C)No.16150/2020 has been registered in the Allahabad High Court, Lucknow Bench, *suo motu*pursuant to its order dated 01.10.2020. From the order passed by the High Court it is noticed that the High Court has adequately delved into the aspects relating to the case to secure fair investigation and has also secured the presence of the father, mother, brother and sister-in-law of the victim and appropriate orders are being passed, including securing reports from various quarters. In that circumstance, we do not find it necessary to divest the High Court of the proceedings and take upon this Court to monitor the proceedings/investigation. That apart, the incident having occurred within the jurisdiction of that High Court and all particulars being available, it would be appropriate for the High Court to proceed to monitor the investigation in the manner in which it would desire. In that view, it would be open for the writ petitioners/applicants herein to seek to intervene in the matter before the High Court subject to consideration of such request by the High Court and if it finds the need to take into consideration the contentions to be urged by the petitioners/applicants in that regard. D
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- A 11. Insofar as the protection to the victim's family and the witnesses, the limited purpose for which this Court had directed notice and sought for an affidavit; the affidavit as filed no doubt indicates that sufficient steps have been taken by the State Government to provide protection. Ms. Indira Jaising, learned Senior Counsel would however, contend that the protection as provided through the State Police would not be appropriate and as such the protection be directed to be provided by the Central Reserve Police Force (CRPF). It is further contended by her that a Special Public Prosecutor be appointed and the monitoring be made.
- C 12. Having taken note of the contentions and having perused the affidavit filed on behalf of the State Government we are convinced that steps have been taken by the State Government to make adequate arrangement for security to the victim's family and witnesses. However, in a matter of the present nature it is necessary to address the normal perception and pessimism which cannot be said as being without justification. In that view, without casting any aspersions on the security personnel of the State Police; in order to allay all apprehensions and only as a confidence building measure, we find it appropriate to direct that the security to the victim's family and the witnesses shall be provided by the CRPF within a week from today.
- E 13. On the aspect relating to the investigation, since we have indicated that the High Court would look into that aspect of the matter, the CBI shall report to the High Court in the manner as would be directed by the High Court through its orders from time to time. On the request of Ms. Indira Jaising, learned senior counsel for appointment of a Special Public Prosecutor we see no need to pass any specific order. This is an aspect which could be considered by the High Court in the light of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the circumstance wherein the family members of the victim have chosen to engage Ms. Seema Kushwaha and Mr. Raj Ratan, Advocates, they would consider these aspects and make request on behalf of the victim in accordance with law if such need arises.
- H 14. Therefore, without expressing any opinion on the merits of the rival contentions, all aspects of the matter are left open to be considered by the High Court in PIL(C) No.16150/2020 relating to the incident regarding which the investigation is to be conducted by the CBI and also with regard to the grievance put forth alleging illegal cremation.

With regard to the protection to the victim's family and witnesses, the respondent No.2 (Chief Secretary, State of U.P) in WP(Crl) No.296/2020 shall bring this order to the notice of the competent officer of the CRPF forthwith with a request to provide adequate security to the victim's family and the witnesses and the CRPF shall take steps to provide the same and shall report the same to the High Court.

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15. Insofar as the transfer of the case to Delhi as sought by the petitioners/applicants, Ms. Seema Kushwaha, learned counsel for the victim's family indicated that the need for transfer would arise after the investigation is complete. On this aspect we are also of the view that it would be appropriate for investigating agency to complete the investigation and in any event since the local police have been divested of the investigation and the CBI is carrying out the investigation there would be no room for apprehensions at this stage. However, the issue as to whether the trial of the case is to be transferred is a matter which is kept open to be considered if need arises in future.

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16. Before parting, we take note of the submission of the learned Solicitor General about the name and relationship of the family members with the victim being depicted in the face of the order dated 12.10.2020 passed by the High Court in PIL(C) No.16150/2020. Since it is a requirement of law to avoid such disclosure, the High Court is requested to delete the same and also morph the same in the digital records and avoid indication of such contents in future.

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17. In terms of the above observations and directions, the writ petitions and applications stand disposed of. No costs.

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Kalpana K. Tripathy

Petitions and applications disposed of.