

Rubabbuddin Sheikh vs State Of Gujarat & Ors on 12 January, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3175, 2010 (2) SCC 200, 2010 AIR SCW 722, (2010) 2 MAD LJ(CRI) 735, (2010) 1 ALLCRILR 616, (2010) 68 ALLCRIC 649, (2010) 2 RAJ LW 1095, 2010 CRILR(SC MAH GUJ) 202, (2010) 1 CRILR(RAJ) 202, (2010) 2 MADLW(CRI) 1057, (2010) 1 ALLCRIR 688, (2010) 1 DLT(CRL) 441, (2010) 1 ORISSA LR 810, (2010) 1 GUJ LR 466, (2010) 1 GUJ LH 601, 2010 CRILR(SC&MP) 202, 2010 ALLMR(CRI) 966, (2010) 1 CURCRIR 276, 2010 (2) SCC(CRI) 1006, 2010 (1) SCALE 306, (2010) 1 RECCRIR 738, (2010) 1 SCALE 306

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Bench: Aftab Alam, Tarun Chatterjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO.6 OF 2007

Rubabbuddin Sheikh

...Petitioner

Versus

State of Gujarat & Ors.

...Respondents

WITH

WRIT PETITION (CRL.) NO.115 OF 2007

WITH

CONTEMPT PETITION (CRL.) NO.8 OF 2007 IN WRIT PETITION (CRL.)
NO.6 of 2007

JUDGMENT

TARUN CHATTERJEE, J.

1. Acting on a letter written by the writ petitioner, Rubabbuddin Sheikh, to the Chief Justice of India about the killing of his brother, Sohrabuddin Sheikh in a fake encounter and disappearance of his

sister-in-law Kausarbi at the hands of the Anti Terrorist Squad (ATS) Gujarat Police and Rajasthan Special Task Force (RSTF), the Registry of this Court forwarded the letter to the Director General of Police, Gujarat to take action. This letter of the Registry of this Court was issued on 21st of January, 2007. After about six months and after several reminders, the Director General, Police, Gujarat, directed Ms. Geetha Johri, Inspector General, Police (Crime), to inquire about the facts stated in the letter. A case was registered as Enquiry No. 66 of 2006. From 11th of September, 2006 to 22nd of January, 2007 four Interim Reports were submitted by one V.L. Solanki, Police Inspector, working under Ms. Johri.

2. In the present writ petition, the writ petitioner seeks a direction for investigation by the Central Bureau of Investigation (in short the 'CBI') into the alleged abduction and fake encounter of the brother of the writ petitioner Sohrabuddin by the Gujarat Police Authorities. The writ petitioner also seeks the registration of an offence and investigation by the CBI into the alleged encounter of one Tulsiram, a close associate of Sohrabuddin, who was allegedly used to locate and abduct Sohrabuddin and his wife Kausarbi, and was thus a material witness against the Police personnel. The writ petitioner further seeks a writ of habeas corpus to produce Kausarbi, the sister-in-law of the writ petitioner.

3. As noted herein above, out of the four interim reports submitted by one V.L.Solanki, Police Inspector, working under Ms. Johri, only one report was submitted initially in this Court. It was only on 16th of May, 2007 that the other three reports were submitted.

4. In the Report submitted on 12th of May, 2007, by Ms.Johri, it has been stated as follows:

"However, based on the statement of various witnesses and subsequent identification of the photographs of Sohrabuddin and Kausarbi taken by Inquiry Team of CID Crime there appears to be some discrepancy regarding the presence of Sohrabuddin and Kausarbi at Hyderabad and Ahmedabad which needs to be further enquired into. Further enquiry also needs to be conducted with regards (1) who were the persons who claimed to be police who picked up the three passengers namely Sohrabuddin, Kausarbi and third unknown person. (2) what happened to Kausarbi after 22.11.2005 when the so-called police personnel took her off the bus."

5. In the same report, Ms. Johri sought permission to interrogate one Tulsiram who was at that time in Rajasthan Jail. From the record, it appears that on 27th/28th of December, 2006, an FIR was lodged in which it was stated that when Tulsiram was sent on transit remand from Rajasthan to Gujarat, two armed persons rescued him at gun point and fled with Tulsiram. In the said FIR, it has been alleged that while search was launched to locate Tulsiram early in the next morning, he, along with two other persons, was spotted on a highway trying to stop a matador van. It has also been alleged, that one of the police officers who was following the matador in which Tulsiram was traveling, accosted him, upon which Tulsiram was said to have fired at the Police officer and the bullet was said to have hit the mudguard of the vehicle. The Police Officers were said to have fired at Tulsiram in self-defence, killing him. However, the other two persons somehow managed to escape in the darkness.

6. One Mr. Raigar, Additional Director General of Police and Head of CID Gujarat Police who was in-charge of the investigation on the incident of death of Sohrabuddin and disappearance of Kausarbi was replaced by one Mr. O.P. Mathur, Additional Director General of Police (prison) who was given an additional charge as Head of CID.

7. Ms. Johri was replaced by Mr. Rajneesh Rai, Deputy Inspector General, as an Investigating Officer in respect of the fake encounter relating to the incident of Sohrabuddin's case and disappearance of Kausarbi.

8. The Writ Petitioner had, on an earlier occasion, filed a petition under Article 32 of the Constitution of India, praying for a direction to the Gujarat police to produce Kausarbi and for a fair and impartial investigation in both the episodes by the CBI so that the matter goes beyond the influence of the local police. On the said application, while issuing a notice to the Union of India, this Court on 22nd of January 2007 requested Mr. Gopal Subramaniam, learned Addl. Solicitor General for India, (as he then was) who was present in the Court, to take instructions in the matter, in the meantime.

9. Subsequently, by another order dated 19th of March 2007, this Court issued a notice to the State of Gujarat which was made returnable on 23rd of March 2007. It is evident from the said order that the State of Gujarat was asked to produce the relevant records on 23rd of March 2007. When the matter came up before it on 23rd of March 2007, the learned senior counsel for the respondent State submitted that as regards some of the police officers who were involved in the alleged acts, some of the details were collected by the State and after the full details were available further action would be taken in the matter. It was also submitted that the State would be writing to the Government of Madhya Pradesh for giving protection to the writ petitioner, residing at Village Jharnia Sheikh, Dist Ujjain, M.P. Three weeks time was granted to the State to file a report in a sealed cover. In the meantime, the report submitted by the Additional Solicitor General for India, (as he then was), was perused and placed on record. The matter came up again on 20th of April 2007 for consideration before this Court. A week's time was granted to enable the State of Gujarat to make submissions on the report submitted by Additional Solicitor General for India (as he then was), a copy of which was ordered to be supplied to the learned Counsel for the State of Gujarat and other parties.

10. On 27th of April 2007, the State of Gujarat submitted an interim report on the investigation conducted by them in pursuance of the orders of this Court dated 22nd of January, 2007, 19th of March 2007, 20th of March, 2007 and 23rd of April 2007.

11. At that point of time, it was submitted by the learned counsel for the State of Gujarat before this Court that if some more time was granted, a comprehensive status report or Action Taken Report could be submitted before this Court. The learned Attorney General for India submitted that in view of the serious nature of the offence in which some highly placed police officials of the State of Gujarat were alleged to have been involved, orders may be immediately passed directing the CBI to take charge of the investigation and report to this Court.

12. This Court, by an order dated 3rd of May, 2007 ordered that some more time may be granted to the State of Gujarat before any further action was taken in the matter. However, after going through the Interim Report of the Additional Solicitor General and also the Interim Status Report filed by the State of Gujarat, this Court held the view that a prima facie case was made out for issuance of a Rule Nisi calling upon the Union of India and the State of Gujarat to show cause why the order prayed for should not be granted and also as to why a writ of Habeas Corpus should not be issued to produce Kausarbi in Court. At that stage, learned senior counsel appearing for the State of Gujarat brought to the notice of the court that the body of Kausarbi was disposed of by burning it in village Illol, Sabarkantha District', which fact was brought on record in the Action Taken Report No. 3 submitted on 30th of April, 2007. In that view of the matter at that stage, this Court restrained itself from issuing a formal writ. The State of Gujarat was directed to submit the final status report within two weeks from that date. An allegation was made that Ms.Johri was taken off the investigation for some reasons best known to the State Authorities. The State of Gujarat was directed to submit a report in that regard also.

13. When the matter came up for hearing before this Court on 17th of May, 2007, Learned Attorney General for India again submitted before us that this was a fit case where this Court should pass an order directing handing over the investigation from the State Investigating Agency to CBI as the investigation would not only be made in the State of Gujarat, but also in the States of Andhra Pradesh and Rajasthan and for such investigation, cooperation of the State of Rajasthan and State of Andhra Pradesh and their high police officials may be required. Therefore, according to Attorney General for India, it would be difficult for the Investigating Agency of the State of Gujarat to make proper and thorough enquiry and submit a report to this Court. Mr. Ahmadi, learned counsel appearing on behalf of the writ petitioner also submitted that this Court should direct the CBI to take over the investigation at the same time permitting Ms.Johri and Mr. Rajneesh Rai to make the investigation jointly and submit a report to this Court. Mr. Gopal Subramaniam, learned Addl. Solicitor General for India (as he then was) also agreed with the submissions of Mr.Ahmadi that it was a fit case for handing over the investigation to CBI from the State of Gujarat.

14. From the Action Taken Report No. 4 submitted before this Court on 14th of May, 2007, it was found that the assistance of Directorate of Forensic Science, Gujarat State, and BJ Medical College, Ahmedabad has been sought to obtain advice on the exhibits collected from the scene of offence. Permission of the Court was also sought for microanalysis and other related tests in case of the accused namely, (1) Shri D.B. Vanzara, IPS, Ex-DIG of Police, Border Range, Kutch-Bhuj, (2) Shri Rajkumar Pandyan, Ex-SP, CID, IB and (3) Shri Dinesh MN, IPS, SP, Alwar, Rajasthan. The application was pending then. In Action Taken Report No. 4, it was also stated that efforts were being made to arrest the remaining accused officers and men against whom there was prima facie evidence. Efforts were being made to trace the remains of Kausarbi. A well where reportedly the remains of Kausarbi were disposed of was dug up and samples collected were sent to Forensic Science Laboratory, Gandhinagar for further analysis and for comparison with the soil samples taken from the scene where the body of Kausarbi was alleged to have been disposed of by burning at Illol Village, Sabarkantha District, in the State of Gujarat. From the Action Taken Report No. 4 it appeared that the following investigations were still awaited:

a. Andhra Pradesh Police Personnel who helped the ATS, Gujarat in picking up the accused was yet to be identified. Cooperation of DGP & IGP, Andhra Pradesh was enlisted in this regard.

b. Apprehension of accused of Rajasthan for which help of DGP & IGP Rajasthan was enlisted.

c. Reports from Directorate of Forensic Science, Gujarat State.

d. Identification of the farm house to which Kausarbi was shifted and method by which she might have died and those involved in the crime, if any.

15. From the aforesaid report, it also appeared that the charge sheet shall be filed as soon as the evidence came on record. It was observed by this Court at that point of time that on a perusal of the materials already brought on record, it was difficult to conclude at that stage that the investigation was not proceeding towards correct direction. At that stage, we did not find it appropriate to direct the State of Gujarat to include Mr. Raigar with Ms. Johri for completing the investigation.

16. At that stage, it was submitted before this Court by the learned senior counsel appearing for the state of Gujarat that the final report would be submitted within four to six weeks from 15th of May, 2007.

17. Fifth Action Taken Report was dated 2nd of July, 2007. In this report, taking a departure from what was stated in the Fourth Action Taken Report, Ms. Johri stated that the Andhra Pradesh Police authorities had denied any official involvement of Andhra Pradesh Police Personnel. Examining 194 witnesses, they had been able to array another six persons as accused. Against the order of the Metropolitan Court rejecting permission of the Court for conducting the NARCO Analysis test of six accused persons, an appeal had been filed in the Sessions Court.

18. The body of Kausarbi was cremated on 29th of November, 2005 in Illol village. The assistance of Directorate of Forensic Science was sought to establish whether soil samples collected from Illol village contained any remains of a human body. As per FSI dated 28th of May, 2007, nothing incriminating was found.

19. The investigation was pending with respect to i) Arrest of two police personnel ii) To establish the identity of Andhra Pradesh Police personnel who might have unofficially helped ATS officials.

20. Charge sheet was proposed to be filed within prescribed time frame against the accused who was arrested.

21. On 16th of July, 2007, this Court directed that a copy of the charge sheet must be supplied to the Addl. Solicitor General for India (as he then was) after taking note of the fact that the 6th Action Taken Report dated 14th of July, 2007 was filed in court. This Report reiterated the stand that no official assistance was rendered by Andhra Pradesh Police to ATS Gujarat. Charge sheet had been

filed in the Court of Chief Metropolitan Magistrate against 13 accused for Criminal Conspiracy, abduction, wrongful confinement, murder etc. 13 have been arrested. One of the 13 accused whose names had been listed is one Mr. N.V. Chauhan, PSI who, in the previous ATR, had been mentioned as yet to be arrested. However, the name of one Mr. Jadeja, Driver PC who was also supposed to be arrested as per previous ATR, did not appear among the names of the accused who were arrested. Evidently, he had not been charge sheeted.

22. The motives for killings was attributed as "name, fame and promotion", in case of Sohrabuddin's death and "destruction of evidence", in Kausarbi's case.

23. The report expressly states that no link of Tulsiram Prajapati had been established in this case. The third person who was abducted was not to be said Tulsiram Prajapati.

24. Ms. Johri also stated that the investigation had been carried on in a fair and impartial manner under her direct supervision.

25. It was stated that the writ petitioner did not cooperate with the investigation. It is also stated that copies of ATR cannot be supplied as the same would help the accused.

26. On 2nd of August, 2007, the Seventh Action Taken Report was filed, which stated that the third person who was picked up was one Kalimuddin, who was suspected to be an informer of Police. He could be hiding somewhere, unharmed. It again detailed the efforts of the State CID (Crime) to make sure that none of the accused goes scot-free. Accused Police Officers, irrespective of their rank, had been arrested. They were suspended or transferred to avoid their interference with the case. Police personnel themselves had deposed against the accused Police officers. No anticipatory bail was granted to any of the accused.

27. Mr. Jadeja was the one who had first revealed the name of N.K.Amin on 26th of April, 2007.

28. The accused had challenged subjecting them to NARCO analysis and the matter was pending before the Court. The Report submitted that analyzing the voluminous details of the calls made by the accused, collected from various service providers, would take time. It was also urged that the Habeus Corpus filed by Rubabbuddin Sheikh does not survive as Kausarbi's body was found to be cremated.

29. On 15th of September, 2008, Ms. Johri filed the Eighth Action Taken Report. It mentioned that a supplementary charge sheet was filed on 10th of December, 2007. It also detailed the status of bail applications rejected or pending. The Writ Petitioner filed an application in the Sessions Court, which was partly allowed and the Investigating Officer Police Inspector Shri. D.H.Trivedi, was directed to carry out further investigation under Section 173(8) of the Code of Criminal Procedure within 90 days.

30. The details of communication between the witnesses and the owner of the Crane which was sent to pull out the tempo which got bogged while carrying firewood for the cremation of Kausarbi's body

were revealed. The call details revealed the movements of the accused, their connection between each other, and the wrongful confinement of Kausarbi and Sohrabbuddin in Disha farm.

31. In order to establish motive as mentioned in the charge sheet, details of 15 criminal cases in which Sohrabbuddin was involved were collected. Efforts were still made to trace Kalimuddin and to identify the Police officers and men of Andhra Pradesh who had allegedly helped the accused though no involvement of the Police Personnel of Andhra Pradesh was suspected. On the question of NARCO Analysis, the matter was heard by this Court and the judgment was kept reserved. FSL Gujarat had stated that NARCO Analysis would be conducted only with the consent of the accused. The Investigating Officer was asked to move the High Court in the matter.

32. After eight Action Taken Reports were submitted and objections thereto were also filed by the parties, the writ petition came up for final hearing for the purpose of deciding whether in the facts and circumstances of the present case, it would be just and proper to transfer the case to the CBI Authorities for the purpose of investigation into the allegations made on behalf of the writ petitioner. On this aspect of the matter, we have heard Mr.Dushyant Dave, learned senior counsel for the writ petitioner and Mr.Gopal Subramaniam, learned Solicitor General for India, who appeared as Amicus Curiae and Mr.Mukul Rohtagi, learned senior counsel for the State of Gujarat and other learned counsel appearing for the parties. After hearing the learned senior counsel and after going through the eight Action Taken Reports and other materials on record, two questions were articulated by the learned counsel for the parties - one is whether after the charge sheet was submitted by the police and the trial was going on, under that circumstances whether the investigation can be transferred to the CBI Authorities. Secondly, it was argued that in respect of the fact that eight Action Taken Reports were submitted but from the said reports, it would be clear that the Police Authorities of the State of Gujarat were not taking proper action in the matter although some of their high police officials were taken to custody. Therefore, let us first consider the first question, namely, whether investigation can be transferred to CBI Authorities or any other independent agency when the charge sheet has already been submitted. In support of his contention that the investigation can be transferred to the CBI Authorities when the charge sheet in the criminal proceeding was already filed, reference was made to in *Kashmeri Devi vs. Delhi Administration & Anr.* [AIR 1988 SC 1323] by the learned senior counsel for the writ petitioner. He also relied on a decision of this court in the case of *Inder Singh vs. State of Punjab & Ors.* [1994 (6) SCC 275] in which this Court held that the enquiry should be transferred to the CBI Authorities for investigation in view of the fact that the police authorities had not been able to locate the whereabouts of the abducted persons. Therefore, these decisions were cited by the learned counsel for the writ petitioner to show that even after the charge sheet has been filed in the Court of Competent Jurisdiction, this Court is empowered to direct the CBI Authorities or any other independent agency to take over the investigation from the police authorities. The learned counsel for the writ petitioner also placed strong reliance on a decision of this Court in the case of *Gudalure M.J.Chcrian & Ors. vs. Union of India* [1992 (1) SCC 397] from which it also appears that although the charge sheet was filed in that case, this Court directed the CBI to hold further investigation in respect of the offence so committed. Similar is the question raised in *P & H High Court Bar Association vs. State of Punjab & Ors.* [AIR 1994 SC 1023] in which case also the investigation was handed over to the CBI Authorities after the charge sheet was submitted in the court. While making

such order, this Court observed :

"The High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the Region. For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least the High Court could have done in this case was to have directed an independent investigation/enquiry into the mysterious and most tragic abduction and alleged murder of Kulwant Singh, Advocate and his family.

We are conscious that the investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instill confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI)."

33. Accordingly, the learned senior counsel appearing for the writ petitioner submitted that even if the charge sheet was submitted it was still open to the court to direct investigation to be made by the CBI Authorities and accordingly in view of the above position in law, this Court, considering the facts and circumstances of the present case, should direct the CBI Authorities to investigate the offences alleged to have been committed by some of the police authorities of the State of Gujarat and submit a report if this Court is of the view that the State Police Authorities who had already filed eight Action Taken Reports had not done such investigation in the proper direction nor had they investigated in a fair and proper manner.

34. This submission of the learned senior counsel for the writ petitioner was hotly contested by Mr. Mukul Rohtagi, learned senior counsel who appeared for the State of Gujarat. According to Mr. Rohtagi, after the charge sheet was submitted in court, it was not open to the court to hand over the investigation to the CBI or any other independent agency and in support of that contention a decision of this Court in the case of Vineet Narayan & Ors. vs. Union of India [1996 (2) SCC 199] was relied on. In this decision, this Court observed:

"In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that Court which will then deal with that case on merits, in accordance with law.

However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the authorities concerned have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in this Court, action on such

report by this Court would be considered, if and when that occasion arises."

35. Subsequent to the aforesaid decision of this Court, another decision of this Court, namely, Union of India vs. Sushil Kumar Modi [1998 (8) SCC 661] was relied on by Mr.Rohatgi, learned senior counsel in which this Court observed after considering and following the decision in Vineet Narayan's case that once a charge sheet is filed, the adequacy or otherwise of the charge sheet and the investigation cannot be gone into by this Court under Article 32 of the Constitution of India and the only remedy which can be pursued if any aggrieved party feels that in some areas the investigation is inadequate is an application under Section 173 (8) of the Code of Criminal Procedure. This Court observed as follows:

"This position is so obvious that no discussion of the point is necessary. However, we may add that this position has never been doubted in similar cases dealt with by this Court. It was made clear by this Court in the very first case, namely, Vineet Narain v. Union of India that once a chargesheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end and thereafter it is only the Court in which the charge sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is therefore clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained."

36. Another decision of this Court which was strongly relied on by Mr.Mukul Rohatgi, learned senior counsel appearing for the State of Gujarat is the decision in Rajiv Ranjan Singh `Lalan' (VIII) and Anr. Vs. Union of India & Ors. [2006 (6) SCC 613]. In this decision referring to the case of Sushil Kumar Modi (supra) and Vineet Narayan (supra), this court held :

"It is thus clear from the above judgment that once a charge-sheet is filed in the competent Court after completion of the investigation, the process of monitoring by this Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end and thereafter, it is only the Court in which the charge- sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8).

We respectfully agree with the above view expressed by this Court. In our view, monitoring of pending trial is subversion of criminal law as it stands to mean that the Court behind the back of the accused is entering into a dialogue with the investigating agency. Therefore, there can be no monitoring, after the charge sheet is filed."

37. Mr.Rohatgi, learned senior counsel appearing for the State of Gujarat had then drawn our attention to another decision of this Court in the case of Hari Singh vs. State of U.P. [(2006) 5 SCC 733] in which it was held that when there is a remedy provided under the Code of Criminal Procedure, 1973, the CBI Authorities cannot be directed to investigate into the matter.

38. Before we take up the decisions cited at the Bar from the side of the writ petitioner, we may deal with the decisions cited by Mr.Rohatgi, learned senior counsel appearing for the State of Gujarat. The first decision is Vineet Narayan (supra). In that case, it was alleged that the CBI and the Revenue Authorities had failed to perform their duties and legal obligations inasmuch as the investigation into "Jain Diaries"

seized in raids conducted by the CBI is concerned.

39. From a careful examination of this decision of this Court relied on by the learned senior counsel appearing for the respondent, we are not in a position to say that the said decision has clearly held that after the charge sheet is submitted, the question of handing over the investigation of the criminal case to the CBI cannot arise at all. From that decision, it is clear that the CBI and the Revenue Authority had failed to perform their duties and legal obligations inasmuch as the investigation into 'Jain Diaries' seized in raids conducted by the CBI was concerned. Therefore, we are unable to accept the contention of Mr.Rohatgi that this decision can at all help the State of Gujarat to substantiate their argument that after the charge sheet is filed in court, there was no question that the investigation cannot be handed over to the CBI authorities. So far as the decision cited by Mr.Rohatgi in Union of India vs. Sushil Kumar Modi (supra) is concerned, it is clear that the said decision was rendered following the decision in the case of Vineet Narayan (supra). In view of our discussions made in respect of the Vineet Narayan's case, we do not think that any advantage could be taken by the State of Gujarat to hold that after the charge sheet is submitted it was not open for the court to hand over the investigation to an independent agency.

40. In Vineet Narayan's case (supra), the fact was that the investigation was already with the CBI Authorities and in that investigation charge sheet was submitted. In that context, this Court observed that once the charge sheet has been submitted, the CBI Authorities cannot approach the High Court for issuance of directions in such investigation where the charge sheet was already submitted.

41. In Sushil Kumar Modi (supra), we find that the investigation was also with the CBI and charge sheet in that investigation was submitted, therefore, this Court in Sushil Kumar Modi(supra) observed that there was no occasion for any of the officer of the CBI to approach the High Court or for the Division Bench of the High Court to issue any directions, oral or otherwise, for seeking the aid of the army for execution of the warrant against Shri Lalu Prasad Yadav. Again in Para 7 of the decision in Sushil Kumar Modi's case (supra), it would be evident that the CBI Authorities were investigating the offences and that is the reason this Court observed that after the charge sheet was filed, no directions can be taken by the CBI Authorities or its officers from the High Court or this Court as the case may be. This is not the case before us. It is true that in the present case, the charge sheet has already been submitted but that does not debar, in our view, this court from handing over

the investigation to the CBI Authorities.

42. So far as Rajiv Ranjan Singh's case (supra) which was relied on by Mr.Mukul Rohatgi, learned senior counsel for the State of Gujarat, is concerned, we find that this decision was also rendered relying on Sushil Kumar Modi's case (supra) and Vineet Narayan's case (supra) as noted herein earlier. In that case also, the process of monitoring by this Court for the purpose of making the CBI investigating agency perform their functions and investigate into the offence would come to an end but it is repeated that in the present case the question is whether an investigation can be handed over to the CBI authorities even if the charge sheet is submitted. The question of monitoring investigation by the CBI Authorities in all the three cases cited by Mr.Rohatgi in the facts and circumstances of the present case cannot arise at all.

43. It was next contended by Mr.Rohatgi, learned senior counsel for the State of Gujarat that it was not open for this court under Article 32 of the Constitution to direct the CBI Authorities or any other independent agency to investigate into the matter when the police authorities are proceeding with the trial and charge sheet has already been submitted. Therefore, according to Mr.Rohatgi when there is specific remedy provided under the Code of Criminal Procedure, 1973, this Court cannot again direct the CBI to investigate into the offence alleged by allowing a writ petition under Article 32 of the Constitution.

44. In support of this contention, reliance was also placed in the case of Aleque Padamsee & Ors. vs. Union of India & Ors. [2007 (6) SCC 171].

45. Reliance was also placed in a decision of this Court in M.C.Mehta vs. Union of India & Ors. [2008 (1) SCC 407] where this Court held that once the court is satisfied itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with its judicial functions. Accordingly, Mr.Mukul Rohatgi submitted that in the absence of any error being committed by the police authorities in conducting the investigation, it would not be proper for this Court to exercise its power under Article 32 of the Constitution and direct that the CBI authorities or any other independent agency should be given the charge of investigating the offence alleged in this writ petition.

46. Accordingly, Mr.Mukul Rohatgi, learned senior counsel submitted that in view of the decisions of this Court, it would not be proper for this Court at this stage, when the investigation has been carried out by the police without any blemish, to hand over the investigation to the CBI authorities or any other independent agency particularly when the charge sheet has already been submitted.

47. Having heard the learned senior counsel appearing for the parties and after going through the eight Action Taken Reports submitted by the Police Authorities before this Court and after considering the decisions of this Court cited at the Bar and the materials on record and considering the nature of offence sought to be investigated by the State Police Authorities who are themselves involved in such crime, we are unable to accept that the investigation at this stage cannot be handed over to the CBI Authorities or any other independent agency. We have already discussed the decisions cited by Mr.Mukul Rohatgi, learned senior counsel appearing for the State of Gujarat and

have already distinguished the said cases and came to a conclusion that those decisions were rendered when CBI enquiries have already been made and at that stage this Court held that after the charge sheet is submitted, the CBI authorities would not be able to approach this Court or the High Court to have issuance of directions from this Court.

48. In *R.S.Sodhi vs. State of U.P.* (AIR 1994 SC 38) on which reliance was placed by the learned senior counsel appearing for the writ petitioner, this Court observed :

"We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice, to entrust the investigation to the Central Bureau of Investigation."

(Emphasis supplied)

49. This decision clearly helps the writ petitioner for handing over the investigation to the CBI Authorities or any other independent agency. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however, faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

50. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case. In *Ramesh Kumari vs. State (NCT Delhi) & Ors.* [2006 (2) SCC 677], this Court at Paragraph 8 observed :

".....We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI."

51. In *Kashmeri Devi vs. Delhi Administration*, (supra), this court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI authorities or an independent agency for proper investigation of the case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case. In *Kashmeri Devi* (supra), this Court also observed as follows : -

"Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law."

52. In *Gudalure M.J.Chcrian* (supra), in that case also the charge sheet was submitted but inspite of that, in view of the peculiar facts of that case, the investigation was transferred from the file of the Sessions Judge, Moradabad to Sessions Judge, Delhi. Inspite of such fact that the charge sheet was filed in that case, this Court directed the CBI to hold further investigation inspite of the offences committed. In this case at Page 400 this court observed :

".....The investigation having been completed by the police and the charge sheet submitted to the court, it is not for this court ordinarily to reopen the investigation specially by entrusting the same to a specialized agency like CBI. We are also conscious that of late the demand for CBI investigation even in police cases is on the increase. Nevertheless - in a given situation, to do justice between the parties and to instill confidence in the public mind - it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency."

53. In this connection, we may reiterate the decision of this Court in the case of *P & H High Court Bar Association* (supra) strongly relied on by the learned senior counsel appearing for the writ petitioner. A reference of the paragraph of the said decision on which reliance could be placed has already been made in Para No.32 from which it would be evident that in order to do complete justice in the matter and to instill confidence in the public mind, this court felt it necessary to have investigations through the specialized agency like the CBI.

54. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr.Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

55. Keeping this discussion in mind, that is to say, in an appropriate case, the court is empowered to hand over the investigation to an independent agency like the CBI even when the charge sheet has been submitted, we now deal with the facts of this case whether such investigation should be transferred to the CBI Authorities or any other independent agency in spite of the fact that the charge sheet has been submitted in court. On this ground, we have carefully examined eight Action Taken Reports submitted by the State Police Authorities before us and also the various materials produced and the submissions of the learned counsel for both the parties. From a careful examination of the materials on record including the eight Action Taken Reports submitted by the State Police Authorities and considering the respective submissions of the learned senior counsel for the parties, we are of the view that there are large and various discrepancies in such reports and the investigation conducted by the police authorities of the State of Gujarat and also the charge sheet filed by the State Investigating Agency cannot be said to have run in a proper direction. It appears from the charge sheet itself that it does not reveal the identity of police personnel of Andhra Pradesh even when it states that Sohrabbuddin and two others were picked up by Gujarat Police Personnel, accompanied by seven personnel of Hyderabad Police. It also appears from the Chargesheet that Kausarbi was taken into one of the two Tata Sumo Jeeps in which these police personnel accompanied the accused. They were not even among the people who were listed as accused. Mr.Gopal Subramaniam, Addl. Solicitor General for India (as he then was) was justified in making the comment that an honest investigating agency cannot plead their inability to identify seven personnel of the Police Force of the State.

56. From the charge sheet, it also appears that the third person was 'sent somewhere'. However, it appears that the literal translation of the Chargesheet in Gujarati would mean that he was 'anyhow made to disappear'. From this, we are also satisfied that an attempt was made by the investigating agency of the State of Gujarat to mislead the Court. Also there had been no mention of Accused No. 12 (Dr.N.K.Amin) as a part of the criminal conspiracy in the charge sheet, who otherwise finds mention in the original charge sheet.

57. With respect to the killing of Kausarbi, it was only stated that she was seen in the company of the ATS personnel, on 26th of November, 2005 and her dead body was taken for cremation on 29th of November, 2005. It is not clear from the eight Action Taken Reports filed by the police authorities of the State of Gujarat as to what happened to Kausarbi in the meanwhile, nor is the mode of killing stated. The investigating agency of the State of Gujarat has made a false excuse for not conducting

the NARCO Analysis of the accused because a judgment of this Court is pending on the matter, though the Sessions Judge had permitted such NARCO Analysis. In our view, it is merely an excuse for not being able to conduct the investigation relating to mode and manner of killing of Kausarbi.

58. It also appears from the charge sheet that it identifies the third person who was taken to Disha farm as Kalimuddin. But it does not contain the details of what happened to him once he was abducted. The possibility of the third person being Tulsiram Prajapati cannot be ruled out, although the police authorities or the State had made all possible efforts to show that it was not Tulsiram. In our view, the facts surrounding his death evokes strong suspicion that a deliberate attempt was made to destroy a human witness.

59. So far as the call records are concerned, it would be evident from the same that they had not been analyzed properly, particularly the call data relating to three senior police officers either in relation to Sohrabbuddin's case or in Prajapati's case. It also appears from the charge sheet as well as from the eight Action Taken Reports that the motive, which is very important in the investigation reports was not properly investigated into as to the reasons of their killing. The motive of conspiracy cannot be merely fame and name. No justification can be found for the investigating officer Ms. Johri walking out the investigation with respect to Tulsiram Prajapati's death without even informing this Court. That apart, the charge sheet was filed in the court of Chief Metropolitan Magistrate, Ahmedabad against 13 persons who were charge sheeted for criminal conspiracy, abduction, wrongful confinement and murder etc. 13 were arrested. One of the 13 accused whose names had been listed is one Mr.N.V.Chauhan, PSI who in the previous Action Taken Report, was mentioned as yet to be arrested. However, in the 5th Action Taken Report, the name of Mr.Jadeja, driver (Police Constable) who was also supposed to be arrested as per previous Action Taken Report was not appearing among the names of the accused who were arrested. Evidently, he had not been charge sheeted. From the above factual discrepancies appearing in eight Action Taken Reports and from the charge sheet, we, therefore, feel that the police authorities of the State of Gujarat had failed to carry out a fair and impartial investigation as we initially wanted them to do. It cannot be questioned that the offences the high police officials have committed was of grave nature which needs to be strictly dealt with. We have observed that from the record, it was found that Mr.V.L.Solanki, an investigating officer, was proceeding in the right direction, but Ms.Johri had not been carrying out the investigation in the right manner, in view of our discussions made herein above. It appears that Ms.Johri had not made any reference to the second report of Solanki, and that though his first report was attached with one of her reports, the same was not forwarded to this Court. Therefore, we are of the view that her mentioning the criminal background of Sohrabbuddin and the discussion among the accused officers concerning Sohrabbuddin was meant to obfuscate the enquiry.

60. In our view , the investigation of crime was carried out de hors the mandate contained in the Cr.P.C. and particularly Chapter XII containing Section 154-176 of the Code. There had been no fresh FIR filed despite primary investigation No. 66 to make the same the basis for investigation and trial. In the case of Sheikh Hasib alias Tabarak v. The State of Bihar [(1972) 4 SCC 773], it was held that the object of FIR, from the point of view of the investigating authorities, is to obtain information of the alleged criminal activity so as to take suitable steps for tracing and bringing to

book the guilty party. Admittedly, the FIR dated 16th of November, 2005 which was filed following the alleged encounter was a fabricated one and, therefore, it could not have formed the basis of the real investigation to find the truth. Ms. Geeta Johri herself in her report dated 7th of December, 2006 had conceded that ATS was not a regular police station in which FIR should have been filed. It was further submitted that the investigation and charge sheet were silent on the motive behind the 'killings'. The only motive stated is fame. In the cases of Babu Lodhi v. State of UP (1987) 2 SCC 352 and Prem Kumar and Anr. v. State of Bihar, (1995) 3 SCC 228, it was held that motive assumes greater significance in case where the case rests on circumstantial evidence, as in the present case. That apart, from the Action Taken Reports submitted by the State Police Authorities, we also find that the State Police Authorities of the Gujarat had to take help from the other police officials of other States, namely, Andhra Pradesh and Rajasthan. If the investigation is transferred to the CBI Authorities it would be fair and proper that the other State police officials should also help the CBI Authorities in coming to a final conclusion on the allegations made by the writ petitioner and also on the offences alleged to have committed by some of them.

61. Mr.Rohatgi, learned senior counsel appearing for the State of Gujarat sought to argue that when the State of Gujarat had completed free and professional investigation, and also had filed periodical Action Taken Reports and since the elaborate charge sheet had also been filed by the State including all documentary, oral and scientific evidence, along with the papers pertaining to the preliminary inquiry including the periodical interim reports submitted by the Inquiry officer to the Supervisory officer during such inquiry, it would not be proper for this Court to transfer the investigation to any other agency. According to Mr.Rohatgi, if this Court finds that the investigation is incomplete in respect of lacunae in respect of which other remedies are available, in that case it would be open to this court to direct further investigation in respect of lacunae to be filled up by further investigation. This was not the position in the present case. According to Mr.Rohatgi, a detailed charge sheet has been filed and subsequent to the filing of the said detailed charge sheet, a supplementary charge sheet has also been filed on 10th of December, 2007 with complete evidence including oral, documentary and scientific evidence to bring home the guilt of the accused before the Competent Court. Mr.Rohatgi further submitted that the findings in the Charge-sheet have already been summarized in the affidavit and the Investigating Agency has collected voluminous oral & documentary evidence to ensure that the charges leveled against them are adequately proven. Further, the investigating agency has also taken steps including Crime Scene Reconstruction, taking Expert Advice and Video Recording.

62. Mr.Rohatgi, further submitted that in order to enable this Court to decide what could be in the interests of justice, the criminal antecedents of the Sohrabuddin, his father, and his brother have also been enumerated. It was further submitted that assistance from the Dept. of Police, Andhra Pradesh was also received as ordered by this Court. However, the Andhra Pradesh Police Officers had not been identified. It was urged that this would not affect the conviction of the accused in any manner. Similarly, it was submitted that non-identification of the third person who was abducted along with Sohrabuddin and Kausarbi would also not affect the prosecution case.

63. Mr.Rohatgi further submitted that since the charge-sheet has already been filed, it would not be necessary to go into the preliminary inquiry conducted prior to the registration of the offence.

Giving the aforesaid particulars on the question of investigation by the State Police Authorities, Mr.Rohatgi submitted that the enquiry was conducted in an independent and impartial manner and the investigating team has been given complete independence with respect to such an enquiry.

64. It was further contended by Mr.Rohatgi that the writ petitioner approached the competent court under Section 173(8) of the Cr.P.C. in accordance with whose directions, further investigation was also conducted. The report on such investigation could not be submitted before this Court because this Court had stayed the proceedings before the Competent Court and the report is kept sealed with the Registrar General of the High Court of Gujarat. The lacunae that the writ petitioner raised during the oral submissions do not find place in the application that he filed before the Competent Authority. Under these circumstances and in view of the submissions made by Mr.Rohatgi, as noted herein earlier, the jurisdiction of this Court under Article 32 of the Constitution would come to an end as soon as a charge sheet is filed after conducting an investigation under the supervision and monitoring of this Court.

65. In view of our discussions made herein earlier and the submissions of the learned senior counsel for the parties and the Amicus Curiae and keeping in mind the earlier various directions given by this Court to the Police Authorities of the State of Gujarat and the materials on record, we are of the view that although the charge sheet was submitted but considering the nature of crime that has been allegedly committed not by any third party but by the police personnel of the State of Gujarat, the investigation concluded in the present case cannot be said to be satisfactorily held. We have already discussed the decisions cited from the Bar on the question that after the charge sheet being filed whether the investigation could be handed over to the CBI Authorities or to any other independent agency from the State police authorities. We have already distinguished the decisions cited by the State that they related to the power of the court to monitor the investigation after the charge sheet was filed. The scope of this order, however, cannot deal with the power of this Court to monitor the investigation, but on the other hand in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to investigate into the matter. Since the high police officials of the State of Gujarat are involved and some of them had already been in custody, we are also of the view that it would not be sufficient to instill confidence in the minds of the victims as well as of the public that still the State Police Authorities would be allowed to continue with the investigation when allegations and offences were mostly against them. In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State Police authorities to continue with the investigation and the charge sheet and for a proper and fair investigation, we also feel that the CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them.

66. Accordingly, in the facts and circumstances even at this stage the police authorities of the State are directed to hand over the records of the present case to the CBI Authorities within a fortnight from this date and thereafter the CBI Authorities shall take up the investigation and complete the same within six months from the date of taking over the investigation from the State police

authorities. The CBI Authorities shall investigate all aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the alleged possibility of a larger conspiracy. The report of the CBI Authorities shall be filed in this Court when this court will pass further necessary orders in accordance with the said report, if necessary.

67. We expect that the police authorities of Gujarat, Andhra Pradesh and Rajasthan shall co-operate with the CBI authorities in conducting the investigation properly and in an appropriate manner.

68. The Registry shall send copies of this judgment forthwith to the Director, CBI, the Secretary, Ministry of Home Affairs, Government of India, and the Secretary, Home Ministry, State of Gujarat.

Writ Petition (Crl.) No.115 of 2007 :-

So far as W.P.(Crl.) No.115 of 2007 is concerned, let this matter be listed after eight weeks before an appropriate Bench.

Contempt Petition (Crl.) No. 8 of 2007 in Writ Petition (Crl.) No.6/2007 :-

So far as contempt petition being Contempt Petition (Crl.) No.8 of 2007 is concerned, we are of the view that in view of our final order passed in the main writ petition being W.P.(Crl.)No.6 of 2007, we do not find any reason to proceed with this contempt application any further. Accordingly, the contempt petition is disposed of. Notice, if there be any, stands discharged.

.....J. [Tarun Chatterjee] New Delhi;J. January 12, 2010. [Aftab Alam]