

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3512 OF 2015

Mukta Dabholkar and Anr. } Petitioners  
versus  
The Central Bureau of }  
Investigation and Ors. } Respondents

WITH  
WRIT PETITION NO. 1565 OF 2015

Smita Pansare and Anr. } Petitioners  
versus  
The State of Maharashtra } Respondent

WITH  
PUBLIC INTEREST LITIGATION NO. 15 OF 2015

Ketan K. Tirodkar } Petitioner  
versus  
Central Bureau of }  
Investigations and Anr. } Respondents

Mr. Abhay Nevagi with Mr. Santosh  
Sawant and Mr.Amit Singh I/b. M/s.Abhay  
Nevagi Associates for the petitioners in  
WP/1565/2015 and WP/3512/2015.

Mr. Anil C. Singh-Additional Solicitor  
General with Mr. D. P. Singh for  
respondent no. 1-CBI in PIL/15/2015 and  
WP/3512/2015.

Mr. A. P. Mundargi-Senior Advocate/  
Special Public Prosecutor with Ms.M. M.  
Deshmukh-APP for respondent-State.

**CORAM :- S. C. DHARMADHIKARI &  
SMT. BHARATI H. DANGRE, JJ.**

**DATE :- DECEMBER 14, 2018**

**P.C. :-**

1. On the earlier occasion, a report was filed and we had, with the assistance of the learned Additional Solicitor General Mr.Singh, perused that report of the Central Bureau of Investigation (CBI). We found from a perusal of that report and from the report tendered today that the CBI has stated that investigations are in progress and after collecting sufficient prosecutable evidence, appropriate action will be initiated against those persons whose names are also mentioned in the earlier report.

2. It is common ground that once we make a reference to the earlier report and the report tendered today, at least there should be no confusion in the mind of the CBI and the Investigating Officers as to whom we are referring to. It is apparent that we had, during the course of hearing on 22<sup>nd</sup> November, 2018, referred to the persons whose names are mentioned in the report. In para 3 of our order passed on 22<sup>nd</sup> November, 2018, we had recorded the assurance of the learned Additional Solicitor General that if any files are pending with the Headquarter of the CBI at Delhi, even the senior level officials posted at the Headquarter would take up the issues and matters expeditiously and grant approval or sanction so that positive steps are taken before the next hearing.

3. At today's hearing, however, in clause (vi) of para 2 at page 2, the officer, who is the Joint Director and Head of the CBI Special Task Zone, New Delhi, has stated that the investigations are in progress. After collecting sufficient prosecutable evidence, appropriate action will be initiated against the accused. We expressed our dissatisfaction in the morning session as also post recess when this matter was placed about the use of words and phraseology in this sub-paragraph. We had clearly referred to the aspect of approval or sanction from the Headquarter so that further steps are taken against these persons. Their names are already set out in the earlier report of the CBI which was taken on record on 22<sup>nd</sup> November, 2018. Hence, we fail to understand as to what investigations are required to be carried out by those sitting in the Headquarter so as to approve or sanction the course of action as suggested by the Investigating Officer. All that was required was a go-ahead or a formal approval to the Investigating Officer so that he proceeds on the lines indicated by him to his superiors and thereafter submit to them further reports. Now we have our own doubts which we expressed in open court as to whether there is any dilution or toning down of the matters, in the sense, if there is any doubt about the involvement of these persons.

4. On instructions, Mr. Singh says that the CBI never intended to give such an impression to the court. There is absolutely no doubt because these names are consistently mentioned in the report. However, the CBI wants to be doubly sure so that tomorrow it should not happen that for some formal defects or some technical lacunae, the prosecution suffers or lands in difficulty. Therefore, the approvals or sanctions from the Headquarter would definitely be granted and the investigating team would ensure that the case is foolproof as against these persons, which is why the anxiety of the officer to mention before this court that the collection of sufficient prosecutable evidence is going on. Beyond that, nothing which would create a doubt far from dilution of the case against these person should be read into the reports by this court. Mr. Singh assures that before the next date of hearing, the reports of such investigations as are referred in these sub-paragraphs would be placed before the court.

5. Equally, Mr. Singh submits that he would ensure that before the next date, one of the Investigating Officers, who is presently indisposed, would not result in slowing down the process or the progress of investigation. That officer may either resume duties shortly or the CBI will ensure that he is replaced by equally competent officer so as to lead the team of the Investigating

Officers. He would, on the next date, provide the details of the concerned officials, including their names.

6. Mr. Mundargi submits that insofar as Comrade Govind Pansare murder case is concerned, the SIT had obtained the custody of the accused in Mr.Gauri Lankesh murder case and have probed and investigated them about their role in the murder of Comrade Govind Pansare. After the investigations were carried out and pursuant to an order of police custody remand of the competent criminal court, now that remand would come to an end. The court would be approached and requested to make appropriate orders in accordance with law so that in the event these persons are handed over to the investigating team in Bengaluru investigating the Gauri Lankesh murder case, on future occasions, their custody can be obtained smoothly and without wasting time. The police custody remand would come to an end and depending upon the investigations carried out so also further formalities being concluded, the prosecution will endeavour to file the additional/supplementary charge-sheet in the competent criminal court in Comrade Govind Pansare murder case. The prosecution will make all endeavours so as to abide by the statutory time limit. That is mandatory and of 90 days. The prosecution has further time at its disposal and it would definitely

not face any embarrassment and of the nature complained by Mr.Nevagi. We hope and trust that the supplementary charge-sheet would be filed so that no technical advantage is derived by the accused.

7. Mr. Nevagi appearing on behalf of the family members of Dr.Narendra Dabholkar and Comrade Govind Pansare has handed over a compilation of orders of this court. This compilation, apart from containing our orders, also contains relevant extracts from the charge-sheet filed in the case of Dr.Narendra Dabholkar. It also contains a copy of the report of the Investigating Officer regarding invocation of legal provision so as to claim more than 90 days' period for filing of the charge-sheet. It also contains a copy of the remand application, which has been made on 7<sup>th</sup> December, 2018 and an order passed thereon in the court of the Judicial Magistrate, First Class, Kolhapur. Then, a copy of the letter about injuries on Dr.Dabholkar is also compiled. After referring to all this, the complaint of Mr.Nevagi is that there is total lack of coordination and cooperation amongst different officials and investigating these murders. He narrated, according to him, an unfortunate incident when in the Pune court the family members of the deceased were present, the CBI prosecutor was absent. He complains that an order was passed enlarging some

accused on bail because the CBI could not adhere to the time limit. The complaint of Mr.Nevagi is that if there are such lapses, as are highlighted by him, in the investigations, then, the accused will get undue advantage and this should be avoided at all costs.

8. When this aspect was highlighted by Mr.Nevagi, we inquired from Mr. Singh as to how such complaint has been made by Mr.Nevagi despite several orders of this court and which impressed upon the investigating officials the need of complete and total cooperation and coordination. Mr. Singh submits that there is a team of officials which is posted at Pune and one of the officials is from the State police. He, together with other CBI officials was indeed present in the court. It is not as if the officials were not present or that they deliberately remained absent. Similarly, there is a team of lawyers/advocates engaged by the CBI. Within a fortnight from today, the CBI will notify the appointment of the prosecutor, who would take charge as prosecutor in Dr.Dabholkar murder case. He states that even the suggestions of the relatives would be taken into consideration. In all probability, advocate Mr.Prakash Suryawanshi, a senior lawyer of some repute and experience as far as criminal matters are concerned would be appointed as the prosecutor. There is another team, which is presently looking after the bail matters

and other miscellaneous applications in this case. That team comprises of senior lawyers and it is not as if the case is neglected or deliberately the hearings are not attended. There is definitely scope for improvement and hereafter, the person present in court, who ordinarily attends the proceedings at Pune and the signatory of the report will ensure that the relatives do not get the impression that the CBI has lost interest in the investigation or is not investigating the matter seriously and expeditiously as is expected by this court.

9. Once the learned Additional Solicitor General gives such assurances, then, presently, the petitioners should not entertain any apprehension and in the event there are grievances or complaints, as per the assurances of the learned Additional Solicitor General, they are free to approach the Investigating Officer and equally the team of advocates of the CBI/SIT.

10. At the request of the learned Additional Solicitor General as also Mr.Mundargi, we place these matters on 17<sup>th</sup> January, 2019. In the meanwhile, let Mr.Singh ensure that the investigating team hands over the copies of the notifications appointing the prosecutor as also other lawyers/advocates and officers of the investigating machinery so that the relatives of the deceased can approach them. However, we expect the relatives to be patient so



also bear with the machinery and not rush and disclose the details. That would jeopardise the safety of not only the relatives themselves, but of the witnesses and the members of the investigating machinery, the team of the advocates engaged and appointed to conduct the trials in both cases.

11. We also expect the CBI to remove the inconsistencies in their reporting to this court and clearly indicate to this court whether there is any material regarding the involvement of the absconding accused. If indeed there is, then, why the attempts to nab them as allegedly made till date, have suddenly slowed down. Is it that their involvement is in doubt or in absence of any clues, the attempts have been given up. Finally, both cases, *prima facie*, expose the investigation team as they are wholly relying on the materials collected against the arrested accused in the murder of Gauri Lankesh. Just because of similarity in the pattern of the act, the impression of the CBI and SIT is that the accused are common and none others are involved in the murders in this State. Let both explain this aspect as well on the next occasion.

(SMT. BHARATI H. DANGRE, J.) (S.C.DHARMADHIKARI, J.)