2025:DHC:752

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th FEBRUARY, 2025

IN THE MATTER OF:

\+ **W.P.(CRL) 3715/2018**

RENUKA KULKARNI & ORS. .....Petitioners

Through: Mr. N. Hariharan, Senior Advocate with Mr. Siddharth Yadav, Mr. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Mr. Dishant Tiwari, Mr. Syed Murtuza Ahmed, Mr. Fuzail Mansuri and Mr. Faizan Ansari, Advocates.

STATE .....Respondent

Through: Ms. Nandita Rao, ASC for the State with Mr. Amit Peswani, Advocate.
Mr. Satya Prakash Yadav, Advocate for the Complainant with Mr. Sunil Kumar Thakur.
Insp. Kamal Kishor, PS EOW

\+ **W.P.(CRL) 3716/2018 & CRL.M.A. 10573/2020**

UPENDRA SINGH & ORS. .....Petitioners

Through: Mr. N. Hariharan, Senior Advocate with Mr. Siddharth Yadav, Mr. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Mr. Dishant Tiwari, Mr. Syed Murtuza Ahmed, Mr. Fuzail Mansuri and Mr. Faizan Ansari, Advocates.

versus

STATE .....Respondent

Through: Ms. Nandita Rao, ASC for the State with Mr. Amit Peswani, Advocate.
Insp. Kamal Kishor, PS EOW

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. These writ petitions under Article 226 of the Constitution of India have been filed seeking transfer of investigation carried out by the Economic Offences Wing in FIR No. 64/2016 dated 23.05.2016 registered at Police Station Economic Offences Wing for offences under Sections 406, 409, 420 & 120B IPC; FIR No.114/2016 dated 04.03.2016 registered at Police Station Sarita Vihar for offences under Sections 420 & 34 IPC and FIR No.116/2016 dated 05.03.2016 registered at Police Station Sarita Vihar for offences under Sections 406, 420 & 34 IPC to a Special Investigative Team (SIT) headed by a retired Judge or to a superior investigating agency being CBI or Special Cell.

2. The facts in brief leading to the filing of the present writ petition are as under:-

a) On 16.12.2005 a company called - A.N. Buildwell (*hereinafter referred to as "ANB"*) was incorporated with three shareholders, namely, Schleicher Intec Pvt. Ltd., having 40% shareholding; M/s B.S. Buildwell Pvt. Ltd., having 40% shareholding and Sunil Gandhi, having 20% shareholding.

b) Material on record indicates that ANB purchased a Plot measuring about 10 Acres in Sector 8, Manesar. It is stated that since ANB did not have enough experience in construction, it entered into a Joint Venture with M/s Millennium Spire Ltd. Singapore (*hereinafter referred to as "the MSL"*) which is a Singapore based Company. It is pertinent to mention that 50% of the shares of MSL

was with Millennium (which is a growth fund in the UK) and 45% shares were owned by Ashish Bhalla and his brother and the rest 5% shares were owned by others. Ashish Bhalla was the Managing Director of MSL.

c) Material on record further indicates that a Term Sheet dated 16.08.2007 was entered into between ANB and MSL and the Term Sheet was signed by Ashish Bhalla and Sunil Gandhi. In the Term Sheet it was stated that MSL will infuse Rs. 76.53 Crores against 50% shares and 43% voting rights in ANB. It is stated that the investment of Rs. 76.53 crores which was to be made by MSL had to be infused in two tranches of approximately Rs. 38 crores each.

d) It is stated that the share capital of ANB was increased to accommodate the extra amount of money which was to be infused by the MSL for which a Share Subscription cum Shareholders Agreement dated 13.12.2007 was entered into between MSL, ANB and other shareholders. It is stated that out of Rs.38 crores of the first tranche only Rs.28 crores were infused by the MSL. It is stated that the shares and voting rights of ANB were transferred to the MSL on assurance from MSL that the remaining amount will be deposited with interest at a later stage. It is stated that Ashish Bhalla took charge of ANB and was in complete control of ANB.

e) It is stated that in 2008 a commercial project called "Spire Edge" was launched by the ANB at Manesar. It is stated that under the said project, a Scheme was brought out by Ashish Bhalla wherein investors were lured that they would be getting assured returns under the Lease-Guarantee Model till investors are put in possession. Material on record indicates that there were total five

towers, namely, A, B, C, D & E and by October 2011, three Towers namely B, C & D were completed and out of 1041 allottees, 1040 allottees took possession. It is stated that out of the towers A & E, the structure of Tower E was completed till the 5th floor out of total 7 floors and was sold to 153 allottees and the structure of Tower A was also completed and out of 3.25 L sq. ft. of Tower A about 18500 sq. ft. was sold to 34 allottees.

f) It is stated that when the construction of Spire Edge was going on, ANB wanted to go on expansion mode and for this purpose two parcels of land, one measuring about 11.5 Acres in Sector 103, Gurgaon and another measuring 8 Acres in Sector 113, Gurgaon, were bought. It is stated that the portion of land admeasuring 8 Acres in Sector 113 was sold at a profit of about Rs. 40 Cr. and out of the profit of 40 Cr., Rs. 18.6 Cr. was moved to Charmwood Realtech from ANB between 15.01.2011 to 29.01.2011 under the signatures of Sunil Gandhi and Sanjiv Chhabra (employees of the Ashish Bhalla) for purchasing land at Badshahpur. The fact as to whether the profits made by ANB by selling the land in Sector 113 should have been invested for the investors in Spire Edge is a matter of trial.

g) It is stated that the land at Sector 103, Gurgaon admeasuring 11.5 Acres was used for the second project named "Spire Woods" which was a residential project. It is stated that in 2013, there was a fallout between Millennium and the Ashish Bhalla on the allegations of misappropriation of funds by Ashish Bhalla and his brother. It is stated that ANB was only informed about this in September 2013 by MSL. It is stated that because of the fallout, Ashish Bhalla abandoned ANB and its projects and took away all the main staff,

computers drawings and data thus causing financial crunch and management vacuum.

h) It is stated that on 12.12.2014, Sunil Gandhi resigned from ANB. It is stated that in September 2015, Ashish Bhalla again approached Sunil Gandhi and S.K. Hooda stating that he will take the responsibility of completing the Projects and convince MSL to bring back the remaining amount of Rs.48 crores with the condition that two of his employees be named as the directors of ANB. It is stated that, thereafter, Rakesh Nagpal and Arun were brought in the company as directors and S.K. Hooda resigned from the Directorship on 11.09.2015.

i) It is stated that in October 2014, 52 investors of Spire Edge filed a company Petition, being Company Petition No. 704/2014, with this Court seeking winding up in relation to the lease guarantee charges amounting to Rs. 1.5 crores, which ANB had to pay them in accordance with the Lease guarantee model. The Company Court ordered ANB to deposit Rs. 75L which was not deposited. Thereafter, an Official Liquidator was appointed by this Court vide Order dated 08.03.2016. The assets of ANB were then taken over by the Official Liquidator, including towers B, C & D, in which out of 1041 flats, possession of 1040 was given and for 730 flats, sale deeds were also executed, and occupation certificates were given.

j) The present FIRs were registered by the Complainants against Ashish Bhalla and other co-accused persons, including S.K. Hooda and Sunil Gandhi.

3. The present petitions have been filed by the Complainants. Material

on record indicates that bail applications have been filed by Ashish Bhalla, Sunil Gandhi and S.K Hooda. Out of three main accused, Ashish Bhalla and Sunil Gandhi have never been arrested and their applications for grant of bail in the event of arrest in three FIRs being FIR No.64/2016, FIR No.116/2016 and FIR No.114/2016 have been considered by this Court in Bail Applications being BAIL APPLN. 1004/2019 etc. and BAIL APPLN. 3975/2023 etc. The third principal accused being S.K. Hooda who was in custody and who has been released on interim bail by this Court has also filed Bail Applications being BAIL APPLN. 776/2024 etc. since he was in custody pursuant to the orders passed by the Apex Court *vide* Order dated 12.01.2024. S.K. Hooda has also filed bail application for grant of interim bail which was granted to him on 19.03.2024 on medical grounds. Bail applications filed by the accused persons have been considered separately by this Court.

4. The question which arises for consideration before this Court is whether investigation in the instant FIRs is to be transferred or not.

5. Presently, the investigation is being conducted under the supervision of the Assistant Commissioner of Police. Multiple Status Reports have been filed and in fact this Court has been monitoring investigation. Chargesheet and supplementary chargesheets have been filed in the three FIRs and investigation is more or less at the fag-end. This Court has perused the Status Report meticulously. The allegations are that monies of home buyers and investors have been siphoned out and the investigation is being done by the agency to unearth the money trail to find out where the monies have been actually parked. A forensic audit was also conducted and a forensic audit report has also been submitted to the investigating agencies.

6. This Court is satisfied with the investigation and it cannot be said that

the investigating agency has been lax in the matter of investigation. The Apex Court has laid down the parameters as and when the investigation should be transferred. The Apex Court in K V Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors., **(2013) 12 SCC 480**, while deciding the issue as to whether investigation should be transferred to another investigating agency, has observed as under:-

> *"**13**. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide Gudalure M.J. Cherian v. Union of India [(1992) 1 SCC 397] , R.S. Sodhi v. State of U.P. [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248 : AIR 1994 SC 38] , Punjab and Haryana High Court Bar Assn. v. State of Punjab [(1994) 1 SCC 616 : 1994 SCC (Cri) 455 : AIR 1994 SC 1023] , Vineet Narain v. Union of India [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] , Union of India v. Sushil Kumar Modi [(1996) 6 SCC 500 : AIR 1997 SC 314] , Disha v. State of Gujarat [(2011) 13 SCC 337 :*

(2012) 2 SCC (Cri) 628 : AIR 2011 SC 3168] , Rajender Singh Pathania v. State (NCT of Delhi) [(2011) 13 SCC 329 : (2012) 1 SCC (Cri) 873] and State of Punjab v. Davinder Pal Singh Bhullar [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : AIR 2012 SC 364] .)

***14**. In Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] this Court dealt with a case where the accusation had been against high officials of the Police Department of the State of Gujarat in respect of killing of persons in a fake encounter and Gujarat Police after the conclusion of the investigation, submitted a charge-sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge-sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.*

***15**. In State of W.B. v. Committee for Protection of Democratic Rights [(2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where*

such an order may be necessary for doing complete justice and enforcing the fundamental rights. (See also Ashok Kumar Todi v. Kishwar Jahan [(2011) 3 SCC 758 : (2011) 2 SCC (Cri) 75 : AIR 2011 SC 1254] .)

***16**. This Court in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] held : (SCC p. 416, para 31)*

> *"31. ... this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done only in some rare and exceptional case, otherwise, CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them." (emphasis supplied)*

***17**. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."*

7. Similarly, the Apex Court in Himanshu Kumar & Ors. v. State of Chhattisgarh & Ors., **(2023) 12 SCC 592,** has observed as under:-

> *"**51**. Elaborating on this principle, this Court further observed : (K.V. Rajendran case [K.V. Rajendran v. State of T.N., (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , SCC p. 487, para 17)*
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> > *"17. ... the Court could exercise its constitutional powers for transferring an investigation from the*

State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

***52**. The Court reiterated that an investigation may be transferred to CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". This observation must be read with the observations made by the Constitution Bench in Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.*

xxx

***54**. It has been held by this Court in CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.*

***55**. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only*

> *"in exceptional circumstances". In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power."*

8. Applying the parameters laid down by the Apex Court, the investigation is transferred only when the Court finds that a fair, honest and complete investigation is not being carried out. Transfer of investigation to another agency is only done in rare and exceptional cases such as cases where high officials of State authorities are involved. Accusations against an investigating officer alone is not sufficient to transfer investigation unless there is sufficient material to show that the investigating officer is mixed up with the accused. Bald allegations are not sufficient for transfer of investigation. In fact, transfer of investigation from the investigating agency hits at the morale of the Police which must be avoided at all costs. In the absence of any material placed before this Court as to why the investigating agency has been lax and just because investigating agency is not acting under the dictates of the Complainants or the Complainants are not satisfied alone cannot be the factor for transfer of investigation.

9. In view of the above, the writ petitions are dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2025
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