

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 5TH DAY OF MAY 2022 / 15TH VAISAKHA, 1944

WP(CRL.) NO. 509 OF 2021

PETITIONER:

ARSHIKA S.,
AGED 26 YEARS, W/O. LATE SANJITH A., D/O. SIVAN K.,
MAMBARAM, KINASSERY POST, PALAKKAD-678701.

BY ADVS.S.SREEKUMAR (SR.), P.MARTIN JOSE, R.GITESH, P.PRIJITH
THOMAS P.KURUVILLA, AJAY BEN JOSE, MANJUNATH MENON,
SACHIN JACOB AMBAT, HARIKRISHNAN S.

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,
HOME (SECRET SECTION A) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, TRIVANDRUM, PIN - 695001.
- 3 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF PERSONAL,
PUBLIC GRIEVANCES AND PENSIONERS, DEPARTMENT OF PERSONNEL
AND TRAINING, NORTH BLOCK, NEW DELHI-110 001.
- 4 THE CENTRAL BUREAU OF INVESTIGATION,
6TH FLOOR, LODHI ROAD, PLOT NO.5-B,
JAWAHARLAL NEHRU STADIUM MARG,
CGO COMPLEX, NEW DELHI, DELHI-110003,
REPRESENTED BY ITS DIRECTOR.
- 5 THE STATION HOUSE OFFICER,
PALAKKAD TOWN SOUTH POLICE STATION,
PALAKKAD-678013.

R1, R2 & R5 BY SRI. GRACIOUS KURIAKOSE, ADDL.DGP

SRI.C.K. SURESH, SENIOR PUBLIC PROSECUTOR

R3 & R4 BY SRI. MANU S., ASG OF INDIA

SRI.SUVIN R.MENON, CENTRAL GOVERNMENT COUNSEL

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
07.04.2022, THE COURT ON 05.05.2022 DELIVERED THE FOLLOWING:

JUDGMENT

This is a writ petition filed under Article 226 of the Constitution seeking the following reliefs:

- i. entrust the investigation of Crime No.1989 of 2021 of Palakkad Town South Police Station and Crime No.457 of 2020 of Palakkad Kasba Police Station with 4th respondent CBI for further investigation;
- ii. issue such other Writ, order or direction as may be necessary in the interest of justice.

2. Petitioner is the widow of late Sanjith who was attacked and brutally killed by a group of five identifiable persons on 15.11.2021 while he was moving on a motor cycle with the petitioner on the pillion seat, for dropping her at her workplace. The attack was made at a place by name Mambaram Pudugramam within Palakkad Town South police station limits. While they were moving on the motor cycle, as there were gutters on the road, the vehicle had to be slowed down and at that time a group of five persons was found standing beside a white Maruti car on the side of the road. When the motor cycle was slowed down, they unleashed attack against Sanjith; both of them fell on the road along with the motorcycle. At that time, one of the assailants dragged the petitioner from the spot and they brutally attacked Sanjith using dangerous weapons, swords carried by them. When people gathered, they left the scene in the car. Sanjith was

immediately taken to the District hospital, Palakkad. The Doctor declared him dead. On 15.11.2021 Palakkad Town South police registered the crime on the basis of the first information furnished by her.

3. According to the petitioner, her husband Sanjith was the Secretary of Rashtriya Swayamsevak Sangh (RSS), Thenari Mandalam in Elappully panchayat. He was an eye-sore to the Popular Front of India (PFI) and Social Democratic Party of India (SDPI), both are known organisations indulging in propagating extremist ideologies throughout the country. Deceased Sanjith had tried to maintain peace between various communities and was against extremist groups as there were sharp differences in ideologies among RSS, SDPI and PFI; both SDPI and PFI have roots outside India. They are engaged in conversion of people from other communities to Islam by threat, coercion and intimidation. Their activities have caused tensed situations in that area. The husband of the petitioner and his co-workers opposed the extremist ideologies of SDPI and PFI who wanted to suppress the growth of RSS and propagated terrorism in the minds of innocents. On 27.06.2020 an attack was made against Sanjith by SDPI and PFI workers following which crime 457/2020 of Kasba police station was registered alleging offence under Sections 452,

324, 326, 307 read with 34 of the Indian Penal Code. The investigation in that crime is moving at a snail's pace, that no final report is filed yet, the attempt of the police is to shield the real culprits. Even thereafter there were constant threats against the life of Sanjith from SDPI and PFI activists. The death of Sanjith is the result of a larger criminal conspiracy hatched among the activists of SDPI and PFI. But the investigating agency has not conducted proper, effective and timely investigation in crime 457/2020, which resulted in the unfortunate death of her husband. The larger conspiracy involved in these attacks is not being investigated by the police. The brutal attack was conducted in broad day light, in front of her, at 8.45 am on 15.11.2021. Even though she had made repeated requests to respondents 1 and 2 to investigate the larger conspiracy, those were not considered at all. Even when crime 1989/2021 was registered, they were reluctant in naming the organisations SDPI and PFI, in the FIR. These organisations have roots all over India and abroad, that there are national and international ramifications in the commission of the ghastly murder. The SDPI and PFI activists have indulged in attack against RSS workers in different parts of the country. On 05.02.2019 they had killed one Ramalingam in Tamil Nadu and the investigation was taken over by the

National Investigation Agency and a final report was laid against 18 PFI and SDPI activists. The death of her husband is the result of interference of the deceased with the propagators of extremist activists. Accused had travelled out of the State and the vehicle used by them was found in a demolished condition in Tamil Nadu. The murder of Sanjith was the result of a larger conspiracy hatched among the national leaders of SDPI and PFI. It is only a sequel of murders that had taken place in the last few months in which at least four people were killed by the extremist organisation. Earlier, even though attempts were made against the life of Sanjith, which led to registration of Ext.P2 crime, effective and proper investigation was not conducted so far. Even though Ext.P4 final report was laid during the pendency of the Writ Petition, investigation was conducted in a perfunctory manner. It is also pointed out that a top police official of the rank of Additional Director General of Police had revealed in a recent interview that after the commission of such crimes the assailants go underground and have backing of terrorists and difficult to book them. So far accused Nos.8 to 11 and 15 to 19 have not been arrested; many of the accused might have left the country and sought asylum in terrorist countries. Considering the fact that there is a larger conspiracy in the

murder of Sanjith and having regard to the national and international ramifications and the perfunctory manner of conducting investigation by the local police, it is only appropriate that investigation of the cases be handed over to the CBI, which agency alone can unfold the truth and take the case to a logical end.

4. The Writ Petition was filed on 21.12.2021. The final report in crime 1989/2021 was filed on 10.02.2022. When that fact was revealed, the petitioner carried out certain amendments to the Writ Petition and an amended Original Petition has been filed. At first the 5th respondent had filed a statement negating the contentions of the petitioner. Later, the Investigating Officer, Dy.SP Palakkad also filed a statement. According to him, the investigation has been conducted on proper lines, that there is absolutely no basis in the contentions of the petitioner, that further investigation should not be handed over to the CBI.

5. According to him, immediately on registering the crime on the basis of the first information furnished by the petitioner, the SHO, Town South police station had started investigation, the weapons of offence used by the culprits were found abandoned in a sack about six kilometres away from the place of occurrence at Kannanoor on the National Highway and

retrieved by the police. The items were sent to the Regional Forensic Science Laboratory, Thrissur for examination. The five persons who had executed the murder of Sanjith were moving in an old Maruti 800. On their return from the place of occurrence some mechanical flaws developed and the car had to be shown in two workshops between Kannanoor and Kuzhalmannam. Verification of the CCTV footages revealed that the 1st accused had reached there on KL-70-7945 motorcycle for taking the car from the workshop. The motorcycle belonged to one Sakkir S/o Mohammed, an employee of the 1st accused, and thus the police arrested the 1st accused and arrest of other accused was also made without further delay. Considering the gravity of the situation, a special investigation team was constituted on the directions of the Additional Director General of Police, L & O, Thiruvananthapuram. They could arrest five persons who had actually executed the crime, besides prime persons who had hatched the murder conspiracy. Moreover, material objects are also seized. The accused persons are the activists of the SDPI. The persons who attacked Sanjith which led to the registration of crime 457/2020 of Kasba police station are also sympathizers of the SDPI. Earlier, one Sakeer Hussain, an SDPI sympathizer was attacked which led to the registration of crime

487/2021 of Kozhinjampara police station alleging offence under Sections 143, 147, 148, 341, 324, 307 read with 149 of the IPC; that was committed with the knowledge of deceased Sanjith. The motive behind the brutal attack against Sanjith was the said attack against Sakeer Hussain. The police unravelled the entire conspiracy hatched by the accused persons. They have already identified the actual persons who committed the act of murder and also persons who hatched the criminal conspiracy. Main culprits have already been booked. The investigation has been conducted at Kozhikode, Malappuram, Wayanad, Ernakulam and Tamil Nadu; about 450 witnesses have been questioned, recoveries have been effected, 25 CCTV footages were verified, three tower dumps were collected and analysed, six vehicles including two cars, one autorikshaw and three motorbikes were seized, 780 CDRs have been verified and analyzed and material objects have been sent to Rajiv Gandhi Centre for Biotechnology for DNA extraction. Now the charge sheet has been laid against accused Nos.1 to 8 and 12 to 14. All accused persons have been identified and steps are taken for apprehending the remaining accused; telephonic calls of all suspects are monitored. As the names of SDPI and PFI organisations were not disclosed in the first information statement, that could not be

incorporated in the FIR. But the subsequent reports indicate that their roles were established. The accused persons belong to Palakkad and Malappuram districts. There is no evidence to establish the role of other leaders of the SDPI and PFI of the State or inter-State.

6. I heard the learned Senior Counsel Sri. S. Sreekumar, assisted by Adv.Sri. P. Martin Jose for the petitioner, Sri. Gracious Kuriakose, the learned Senior Counsel and Additional Director General of Prosecution assisted by Sri.C.K.Suresh, Senior Public Prosecutor for the State and also Sri. Suvin R. Menon, the learned Central Government Counsel on behalf of the Assistant Solicitor General of India.

7. The learned Senior Counsel for the petitioner reiterated the contentions in the Writ Petition. According to him, Ext.P4 is the testimony of lack of effective investigation. At the time when the Writ Petition was filed, the prosecution had booked only three accused persons and the final report was not laid. From Ext.P4 it is evident that the final report is not complete. The investigating agency is groping in the dark and actual persons who have worked behind the curtain have not been identified or arrested. It is a known fact that SDPI and PFI are involved in the murder. Even though they had made attempts against the life of Sanjith earlier,

those were not taken seriously and that led to the unfortunate death of a 27 year old youth in front of his wife. Both SDPI and PFI are extremist organisations having deep roots beyond the territory of the State and also abroad; they are getting regular funds from abroad. If only the case is investigated by the premier investigating agency of the country, entire truth will come out. Therefore, he pressed for transferring the investigation to the CBI.

8. The learned Additional Director General of Prosecution strongly opposed the Writ Petition. He raised a preliminary objection that such a Writ Petition is not maintainable without taking the accused into confidence. In this connection, he relied on the decisions reported in **State of Punjab v. Davinder Pal Singh Bhullar and others (2011 KHC 5083)** which has been followed by a Division Bench of this Court in **State of Kerala and others v. C.P. Mohammed and others [2019 (4) KHC 359]**. According to the learned ADGP, the investigation has been conducted by the State police in a most effective manner, they have already identified the persons who had executed the heinous act and also persons who had hatched criminal conspiracy; prime accused have already been arrested and the final report was laid with least possible delay, which prevented the

accused getting released on statutory bail. Considering the gravity of the allegations, a special investigation team was constituted and they have worked arduously and laid charge sheets; consistent efforts are taken for arresting the remaining accused as well, who had played only lesser roles. The first and the sixth accused, who were the main conspirators, have already been arrested and are in jail. At this stage, if investigation is handed over to the CBI, there is likelihood of causing further delay and the accused persons getting released on bail. According to the learned ADGP, the very intention of the petitioner is to conclude the criminal proceedings at the earliest. If the investigation is handed over to the CBI, further delay is imminent and in that gap the accused may get released on bail.

9. According to the learned ADGP, valid grounds are not urged to hand over the investigation to the CBI. There is absolutely no pleadings in the Writ Petition to support the prayer for handing over the investigation to the CBI. There is no allegation by the petitioner that the investigation is conducted in an arbitrary or biased manner. Referring to the first information statement of Sanjith, which led to the registration of crime No.457/2020 of Kasba police station, he said that even though he had no allegation that any SDPI and PFI activist was behind the attack, during

investigation the police traced the actual culprits and found that SDPI and PFI activists were behind the attack; the actual culprits have already been identified. The contention that there are national and international ramifications for the case, has no basis. There is no evidence that the accused had received money from outside the State or from abroad. The weapons used are indigenous weapons like swords which have already been recovered and sent for forensic examination. According to the learned ADGP, the CBI has been constituted for the purpose of investigating given classes of offences like under the Prevention of Corruption Act, serious cases involving defalcation of accounts, etc. In the absence of valid reasons, if investigation is handed over to the CBI, that would adversely affect the morale of the local police who have effectively conducted investigation with least possible delay and identified the culprits. If at all the activities of the SDPI and PFI have to be investigated, that can be done separately. Referring to the first information statement given by the deceased which led to the registration of Ext.P2 crime, he said that Sanjith had no case that such organisations were involved in the act, that was why the statement was suppressed, the petitioner is guilty of suppression of material facts. Still investigation revealed that SDPI/PFI

workers were behind the attack.

10. According to him, the State Police is far more in advantageous position either in terms of men and materials or logistics whereas the CBI is working on the strength of officers working on deputation. The State Police have the expertise to unravel the mystery, except the fact that the car was taken to Pollachi, there is no inter-State or international ramifications for the case. According to the learned Additional Director General, the State Police will be able to apprehend the remaining accused as well, within no time. He also relied on the decisions reported in **Shaji T. G. v. Kerala Public Service Commission and Others [2017(3) KHC 459]**, **Bharat Singh and Others v. State of Haryana and Others[1988 KHC 1062]**, **K.C.T. Steel Pvt. Ltd. Palakkad v. State of Kerala and Others [2016 (4) KHC 336]** and **Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond and Gem Development Corporation Ltd. and Another [2013 KHC 4116]**. Regarding the prayer for transferring investigation to the CBI, he said that it cannot be granted by the mere asking. In this connection, he placed reliance on the decisions reported in **State of W.B. and Others v. Committee for Protection of Democratic Rights West Bengal and**

Others [2010 (1) KHC 841], Secretary, Minor Irrigation and Rural Engineering Services U.P. v. Sahngoo Ram Arya [2002 KHC 1280], Sakiri Vasu v. State of U.P. and Others [2008 (2) KHC 13], Director General of Police (W.B.) and Others v. Gopal Kumar Agarwal and Another [2021 KHC 2579], Prof. K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Others [2013 KHC 4641], Sajina T. v. State of Kerala and Others [2008 (2) KHC 301] and Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Another v. State of Jharkhand and Others [2019 KHC 6519].

11. In reply, the learned Senior Counsel for the petitioner extensively relied on the decision of the Division Bench of this Court in **State of Kerala and Others v. Krishnan and Others [2020 KHC 623]** which stands confirmed by the Supreme Court in **2020 (6) KHC 682**.

12. The learned Central Government Counsel, referring to the decision reported in **Dinubhai Boghabhai Solanki v. State of Gujarat and Others [(2014) 4 SCC 626]** said that the decision of the Supreme Court in **Davinder Pal Singh Bhullar**, quoted supra, stands distinguished and clarified by the Supreme Court.

13. As rightly stated, in **Dinubhai Boghabhai Solanki**, quoted

supra, the Apex Court has stated in paragraph 45 thus:-

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

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

14. Moreover, referring to the decision of the Apex Court in **Narender G. Goel v. State of Maharashtra [2009 (6) SCC 65]**, the Supreme Court held that it is well settled that accused has no right to be heard at the stage of investigation. That means the preliminary objection of the learned Additional Director General that the writ petition is not maintainable without giving notice to the accused persons cannot be accepted. Moreover, it is the settled proposition of law that accused has no say in such matters especially when investigation is continuing. Here, the question agitated is that due to faulty investigation and national and international ramifications of the acts of the accused, investigation should be handed over to the CBI. In such a matter, it cannot be heard to say that

accused will be given an audition before taking a decision. Therefore, such an objection cannot be accepted.

15. The facts of the case are not in dispute. While the petitioner was moving along with her husband, the said Sanjith, on the motor cycle, at about 8.40 A.M., when they reached at Mambaram in Pudugramam, the motor cycle had to be slowed down in view of the gutters on the road ahead, the accused persons unleashed attack with swords and caused fatal injuries to Sanjith. He was immediately rushed to hospital where he was found dead. He had 34 cut wounds on his person. The crime was registered on the first information furnished by the petitioner. It is also evident that a Special Investigation Team under the Dy.S.P., Palakkad was constituted and 20 accused persons are identified. Accused Nos. 1 to 5, who are the persons who had actually accomplished the task have been arrested; accused Nos. 6 to 14 are the persons who had hatched criminal conspiracy along with accused Nos. 1 to 5, out of them, two are remaining to be arrested. In other words, accused Nos. 1 to 7, 12 to 14 and 20 have already been arrested and who remain to be arrested are A8 to A11 and A15 to A19. According to the prosecution, they are having lesser role like harbouring the offenders etc., in the commission of the crime.

16. It has also come out that fierce rivalry is existing in the area between the RSS in which the deceased was an office bearer and the activists of the SDPI/PFI, series of attacks and counter attacks have been taken place between them. Earlier on 27.06.2020, deceased Sanjith was brutally attacked by men of SDPI/PFI and caused him grievous hurt for which Crime 457/2020 was registered in Kasba police station alleging offence under Sections 326, 307 etc. of the IPC; he had been in hospital for nearly one month. At this juncture, it has been pointed out that, perusal of the first information statement furnished by the deceased which led to the registration of crime 457/2020 of Kasba police station does not reveal the involvement of any extremist organisation in the murderous attack. It was the investigating agency that brought out their involvement. Later also he was under constant threat of attack from the rival gang of SDPI/PFI activists. It appears that thereafter, one Sakkir Hussain was attacked by some of the RSS workers for which Crime No. 487/2021 was registered in Kozhinjampara police station. The prosecution has a definite case that attack against Sanjith was the continuation of the assault made against the said Sakkir Hussain. Whatever it may be, the petitioner complained that the investigating agency was lackadaisical and was not at all serious in

investigating Crime No. 457/2020 or the conspiracy behind both the crimes; if it was promptly and properly investigated, such an attack against her husband would not have taken place. She also complained that investigation is being conducted in a perfunctory manner, larger conspiracy behind it are not being investigated; as there is national, international ramifications, only CBI can investigate the matters properly.

17. It has been pointed out that charge sheet has been filed on 23.12.2021 in Crime No. 457/2020 of Kasba police station before the Judicial First Class Magistrate – I, Palakkad. Similarly, charge sheet has been laid in Crime No. 487/2021 in Kozhinjampara police station on 07.09.2021 before the Judicial First Class Magistrate - I, Chittur.

18. At the time when the writ petition was instituted only three accused persons were apprehended by the investigating agency. Most of the remaining accused were arrested during the pendency of the writ petition. Similarly, final report was laid on 10.02.2022, after the filing of the writ petition. But the learned counsel for the petitioner complained that it is a truncated final report, that many important aspects remain to be investigated.

19. The report of the Investigating Officer clearly indicates that on

conclusion of investigation, all the culprits and the respective roles played by them have been identified, although accused Nos. A8 to A11 and A15 to A19 are not arrested. In other words, out of the 20 accused, A1 to A7 and A12 to A14 have already been arrested and charge sheet was laid against them. Except A20, all are remaining in judicial custody. Accused Nos. 1 to 5 were the culprits who had translated the criminal conspiracy into action and actually committed the violent act. They have been identified by the petitioner who is the defacto complainant, who is an eye witness to the occurrence. It is also evident from the statements and argument note that about 550 witnesses were examined by the prosecution and large number of documents were seized, material objects were also seized and produced before court and sent for chemical examination report. All the prime accused are arrested and the Ext.P4 final report was laid well within the statutory period which prevented the accused from getting default bail. There are reasons to believe that investigating agency had acted promptly with a determination that the culprits should not get default bail.

20. Secondly, it is the common case that activists of the SDPI/PFI were behind the attack. There were clashes between the activists of the SDPI/PFI on the one hand and activists of the RSS on the other. There are

series of attacks and counter attacks between them. This Court take judicial notice of the fact that even after this incident, after completing arguments in this case, two such incidents have happened in Palakkad. Consequently, one person each of the rival groups have been killed. Learned Additional Director General of Prosecution submitted that Sanjith was a history sheeter, that he was accused in numerous cases. Whatever it be, merely for the reason that the accused are activists of the SDPI/PFI, investigation cannot be handed over to the CBI, as a matter of course. The Hon'ble Superme Court in **State of W.B.**, quoted supra has summarised the principles thus:-

“46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Art. 32 and Art. 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations 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. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

21. These guidelines have been followed by the Division Bench of this Court in **Krishnan**, quoted supra, in Periya double murder case relied on by the learned counsel for the petitioner. The facts of the case are distinguishable. That case related to murder of two youngsters by the men of the CPI(M); when a call was made for transferring investigation to CBI, the learned Single Judge after going into the materials, quashed the final report laid by the Crime Branch and directed the investigation to be handed over to the CBI for de-novo investigation. When the State preferred the appeal, the Division Bench found that even though there are material flaws on the part of the investigating agency, the Court did not favour quashing of the final report. Thus the appeal was allowed in part on facts and allowed the CBI to conduct further investigation and to lay supplementary final report. Even there, basing on the decision in **State of W.B.**, quoted supra, the Division Bench held that investigation cannot be handed over to the CBI by mere asking.

22. After considering the materials placed before Court and

hearing counsel on both sides, I am also of the opinion that overwhelming reasons are not set out for transferring investigation to the CBI. As stated earlier, the Special Investigation Team, with least possible delay, identified the culprits and arrested the main accused and also main conspirators and laid the charge sheet, so that their release on default bail has been successfully pre-empted.

23. Secondly, all the culprits have been identified. What remains is to apprehend accused Nos. 8 to 11 and 15 to 19. Even though it was stated that there is larger conspiracy involving leaders of SDPI/PFI, materials are wanting to rope-in other persons. For the reason that the SDPI/PFI activists were behind the killing, there is no justification in seeking transfer of investigation to the CBI. Moreover, allegation that investigation was conducted in a most ineffective and defective manner etc. are lacking particulars. Only vague and sweeping contentions have been raised on the score. If investigation of a crime is transferred to the CBI in a light hearted manner that would adversely affect the morale of local police. There is no allegation that the investigating agency had acted in a biased manner, so that CBI cannot be asked to step in.

24. The decision in **Krishnan**, quoted supra, has turned upon its

own facts. As noticed earlier, it was a double murder case and both the Single Judge as well as the Division Bench had reasons to find that there were lapses in the investigation conducted by the Crime Branch. Such a view cannot be taken in the present case.

25. The arguments of the learned Additional Director General of Prosecution that the CBI is intended to investigate only corruption cases and falsification of accounts etc, unless a notification is issued under Section 6 of the Delhi Special Police Establishment Act, they cannot investigate the case etc., do not warrant serious consideration. It is settled that in appropriate cases a Constitutional Courts are entitled to handover investigation to the CBI. Moreover, it does not seem that the State has any scruples in the matter. As pointed out by the learned Senior Counsel for the petitioner, the State of Kerala had even recently handed over a case allegedly committed under Section 376 of the IPC for investigation by the CBI.

26. No doubt, SDPI and PFI are extremist organisations indulging in serious acts of violence. All the same, those are not banned organisations. The Investigating Officer has denied the involvement of State level or national level leaders in the commission of the crime. Given

the fact that police have taken care to file a final report within 90 days adds to their credibility and prove bona fides. Merely for the reason that some of the culprits remain at large, CBI cannot be asked to conduct investigation. Here investigating agency does not appear to have special interest in the case or interested in shielding the culprits. In other words, partisan attitude could not be inferred.

27. Question of transferring investigation to the CBI arises only if overwhelming reasons are made out. In other words, it cannot be done by the mere asking. Here all the culprits have been identified and many of them have been arrested. If investigation is handed over to the CBI, that would result in further delay in the proceedings. It is not in public interest. That may also pave way for raising demand by the accused persons for releasing on bail. Given the mind set of the rival groups, if the accused persons are released on bail that would entail further clashes and may lead to law and order situation.

On evaluation of the totality of the circumstances, it does not seem that the petitioner is justified in seeking transfer of investigation to the CBI. The petitioner is not entitled to get any relief and the writ petition is dismissed. However, it is noticed that some more accused are at large.

Even though the roles allegedly played by them are less important, still they have to be apprehended and brought before Court. Therefore, the second respondent is directed to personally review the progress in apprehending the remaining accused and will file fortnightly reports to this Court till the last accused is arrested.

The matter is posted to 30.05.2022, for report.

Sd/-

K. HARIPAL

JUDGE

okb/DCS/27.04.2022

/true copy/

P.A. to Judge

APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF FIR IN CRIME NO.1989/2021 DATED 15/11/2021 OF PALAKKAD TOWN SOUTH POLICE STATION.
- EXHIBIT P2 TRUE COPY OF FIR IN CRIME NO. 0457/2020 DATED 27/06/2020 PALAKKAD CUSBA POLICE STATION.
- EXHIBIT P3 TRUE COPY OF NEWS ITEM APPEARED IN INDIA TODAY ONLINE DATED 03/08/2019.
- EXHIBIT P4 TRUE COPY OF FINAL REPORT DATED 10.02.2022 IN CRIME NO. 1989 OF 2021 OF PALAKKAD TOWN SOUTH POLICE STATION.