

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 1ST DAY OF MARCH, 2019 BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

W.P.Nos.58183-58184/2017 (GM-RES)

SMT. TUNGAMMA W/ O NINGANAGOUDA GOUDAR

v/s.

UNION OF INDIA

ORDER

I have heard the arguments of the petitioners ' counsel and respondents ' counsel.

2. These two petitions are filed by the mother and the brother of the deceased Yogeshgouda Goudar seeking writ jurisdiction under Articles 226 and 227 of the Constitution of India r/ w Section 482 of Cr.P.C. seeking relief of issuing writ of mandamus directing the respondent-Central Bureau of Investigation to investigate the murder of Yogeshgouda Goudar and submit report and to take action as per the law and further writ of mandamus directing respondent Nos. 4 and 5 to initiate action against all the erring Police Officials who shielded the respondent No. 10-Vinay Kulkarni and other culprits in the conspiracy of murder of Yogeshgouda Goudar and issue any other order or direction which this Hon'ble Court deems fit under the facts and circumstances of the case.

3. In the nut-shell, the case of the petitioners that Yogeshgouda Goudar is the elected member of Zilla Panchayat, Dharwad from Hebballi Constituency and respondent No. 10 is the sitting Member of Karnataka Legislative Assembly from Dharwad Rural Constituency and he is the Minister of Mines and Geology, Government of Karnataka and he is the In-charge Minister of Dharwad District. There was a political enmity between them and the same is exposed in a meeting dated 23/4/2016, regarding supply of drinking water in the District which went to an extent of addressing each other in unparliamentary words. The other contention that one alleged agreement of sale was executed between accused No.1 and Nagendra Todakar, who is a witness in the charge sheet and though the deceased neither interested nor having an intention to purchase the said land, the Investigating Officer willfully not enquired in these aspects and not recorded the statement of the complainant and also not investigated about the source of sale consideration and the said alleged document was totally created to narrate a story to the said murder and as a tool to escape from the clutches of law and alleged document came into existence on 24/5/2016.

4. The case of the petitioners also that one letter posted in Dharwad R.M.S. post Office to the deceased by the anonymous person on 6/6/2016 stating that his brother Uday Gouda was got murdered by Vinay Kulkarni and H.K. Patil and Vinay Kulkarni is waiting to get to kill and the said letter was reached the Hebballi post office on 7/6/2016 and the same was received by Yogeshgouda's family on 14/6/2016 and same was brought to notice of Yogeshgouda Goudar and he did not take any serious about the said letter.

5. The incident of murder of Yogeshgouda Goudar was taken place on 15/6/2016 at 7.37a.m. to 7.38 a.m. that accused Nos. 1 to 6 are gathered before the Uday Gym, Saptapur, Dharwad and killed him mercilessly and there was CCTV footage of next building of the place where the offence committed was recorded. The investigation only relied upon three minute footage. The murderer may be there in the spot prior to the said incident. But, taking into consideration of the CCTV footage of minutes is wholly suspicious. Even there is ATM in the said building, where incident took place and investigation officer relied upon the CCTV footage of next building, which creates doubt on the investigation. In the CCTV footage relied upon by the police authority also reveals one Hundai Accent Car (Black) was involved in the said murder. Accused person gave signal to the said car which comes from the KCD towards Saptapur Circle and surprisingly, the said car again returned back towards KCD circle within 70-75 seconds. But, police official did not enquired about the said car, even though it is important clue in this case. Surprisingly, the driver and conductor of the bus belongs to BTS was examined by the police, but, they have failed to examine the car, which is part of the said murder.

6. The FIR was registered in Crime No. 135/2016 on 15/6/2016 at 9.30 a.m. and within a span of one hour, the Home Minister statement was published in the News channel immediately that the murder was due to the land disputes. It clearly shows that it is fully planned murder with the political influence and accused were not traced till 17/7/2016. Even police Investigation Officer confirmed on 15/6/2016 that still no reason was found about the murder, how can the Home Minister make such a statement itself creates doubt about the fair investigation and accused Nos. 1 to 5 were arrested on 17/6/2016 at 6.30a.m., and accused No.6 was arrested on 20/6/2016. Recoveries are made and there is no Mahazar drawn by the Investigating Officer of the place of arrest of the accused persons nor the exact place of their arrest is mentioned in anywhere.

7. The petitioners also contends that the resident of Vikasa Nagar, Dharwad, informed the police that one unattended black colour Hundai Accent car is parked in the locality since a week and they suspect some foul play. The police came to the spot and taken the car and promptly returned the said car to its owner without any enquiry.

8. The police after investigation have filed charge sheet on 9/9/2016 against accused Nos. 1 to 6 for the offences punishable under Sections 143, 147, 148, 120 ( B), 302, 201 r/ w Section 149 of IPC along with the list of witnesses and the complainant who is the widow of the deceased gave a representation to the Commissioner of Police requesting the enquiry about involvement of some other person and also involvement of car in the present case on 9/11/2016 and also gave a representation to the Chief Minister of Karnataka for seeking for re enquiry and fair investigation in the above case on the basis of letter received by her on 14/6/2016 and also stated the involvement of influential person in the said case vide representation dated 17/2/2017. The other contention of the petitioners that on 23/10/2017 date is fixed for commencing the trial and the evidence of CW- 1, i.e. the widow of the deceased was recorded and on that that day, early hours of the day four persons claiming to be mufti police entered her residence and forcefully taken her to the Court for recording evidence. Out of four alleged mufti police one was remained in the house of widow with her eight years old son by name Udayagouda. On the way to Court, in the vehicle, the other persons threatened the widow of the deceased that her son is with their man and think about his safety and got her examined as CW- 1. Even the Public Prosecutor before the Court submitted inability of widow of deceased to attend the Court, but surprisingly the presence of the widow of the deceased was

secured before the Court and she has been examined and the trial Judge did not record her statement which actually deposed and further alleged that respondent No. 10 is the mastermind in the conspiracy to murder her husband and trial judge initially refused to mark the caution letter as Exhibit and after serious efforts made by the Public Prosecutor, the letters are marked as Exhibits- 1 and 2. However, he did not record the full version of the widow of the deceased.

9. The other allegation made in the petition that respondent Mr. Tulajappa Sulfi, i.e. Respondent No.11 who is working as Deputy Superintendent of Police in the Office of Inspector General, Belagavi, visited the residence of petitioner No.2 on 27/10/2017 around 11.15a.m. and threatened the second petitioner to settle the matter with Minister Vinay Kulkarni and give evidence in favour of the accused of his brother's murder and again he visited the residence of the second petitioner at around 6.00p.m. and asked him to speak to Minister Vinay Kulkarni over his mobile. Reluctantly, the second petitioner did speak to Vinay Kulkarni to ask the second petitioner to meet him and to settle the case by compromising with the accused. The said respondent No. 11 Tulajappa Sulfi was served in the Dharwad District as C.P.I. in Town Police Station, Dharwad and he is very close to the said Minister and even though he is not at all related to this case in his official capacity and not serving in Dharwad, he is trying to help the accused as well as the Minister from escaping the clutches of law by forcing the witnesses to give evidence in favour of accused and same raised the doubt on fair trial as well as on fair investigation.

10. The petitioners in view of the said development on 3/11/2017 gave a complaint to the Hon'ble Chief Justice of Karnataka High Court seeking change of Court for trial, specifically stating in an affidavit about no confidence about the trial judge.

11. The petitioner further contended that on 10/11/2017 the said respondent No. 11 Tulajappa Sulfi, police officer again visited the residence of the second petitioner at about 10.50 a.m. and asked him to meet Vinay Kulkarni at around 6.00p.m. Tulajappa Sulfi, had taken the second petitioner into his car and taken him to Inspection Bungalow near D.C. office, Dharwad. From there he had taken the second petitioner to the residence of one Mahesh Shetty at around 10.30 p.m. where he had arranged to meet the second petitioner with respondent No. 10-Vinay Kulkarni and respondent No. 10 -Vinay Kulkarni pressurised the second petitioner to settle the matter i.e. murder case of his brother with the accused and also said he will call accused No.1 for the talks and when the second petitioner asked about his personal interest in settling the matter, one Mr. Chandrashekar, Deputy Superintendent of Police, who was also present there threatened the second petitioner to follow the instructions of the Minister and close the case and thereafter, the second petitioner left the place at around 11.30 p.m.

12. Respondent No. 10-Vinay Kulkarni threatened the practicing Advocate by name Anand of dire consequences over phone who helped the petitioners to get the certified copies of the Court proceedings in SC No.50/2017 on 20/11/2017 and that on 23/11/2017 the CC TV footage of meeting with Gurunatha Goudar by Tulajappa Sulfi, has published in the Suvarna News Channel and question was also raised by Vishweshwar Hegde Kageri in the assembly regarding the investigation and interference of the Government bodies in the present case. Hence, the second petitioner had made one more representation to the Hon'ble Chief Justice supported by an affidavit stating the reason that life threat which the complainant is facing and reason for inability to sworn the affidavit on

3/11/2017 by the widow of deceased. In the said affidavit, petitioner No.2 acknowledged the signature of widow of deceased in complaint dated 3/11/2017 and the threat call made to the Advocate-Anand was also published in the print and electronic media on 24/11/2017. The Bar Association, Dharwad and the said Advocate Anand together lodged complaints before the Superintendent of Police, Dharwad for taking appropriate action against Vinay Kulkarni, but, no action is initiated. Second petitioner has filed the complaint before the Director General and Inspector General of Police, Karnataka and Minister, Home Department, Government of Karnataka for taking action against Mr. Tulajappa Sulfi and other police officers who conspired to kill his brother. But, no action is taken on the said complaint. The other contention of the petitioners that in a press meet which was called on 25/11/2017, Vinay Kulkarni admitted his conversation with the said Advocate-Anand and also admitted his presence in the residence of Mahesh Shetty on 10/11/2017 and meeting with the second petitioner.

Ultimately, the second petitioner lodged the complaint with the Superintendent of Police, Dharwad to take legal action against Vinay Kulkarni, Tulajappa Sulfi and Chandrashekar and others on 29/11/2017 since high rank police officers are involved in the matter. On 30/11/2017, the second petitioner had filed an affidavit before the Additional S.P., I.G.P. to take legal action against them and also on the same day, made a representation to the Hon'ble Chief Minister and Home Minister through Deputy Commissioner, Dharwad, for initiation of legal action against them since all are involved in the murder of his brother Yogeshgouda Goudar and demanded inquiry by Central Bureau of Investigation to unearth the truth and to bring the culprits to book.

13. It is contended that even all these efforts are made by the petitioners and approached all the concerned department Minister, Chief Minister no steps are taken and without any other alternative and efficacious remedy, the petitioners have approached this Court invoking writ jurisdiction seeking relief of the direction to the respondent-Central Bureau of Investigation to investigate the murder of Yogeshgouda Goudar and submit report and take action on the persons who have all involved in the crime and seeking to direct respondent No.4 and 5 to initiate action against all the erring Police Officials who have shielded the said Vinay Kulkarni in the conspiracy of murder of Yogeshgouda Goudar. Hence, prayed this Court to invoke writ jurisdiction.

14. The petitioners in support of their case also relied upon the following documents:-the Copy of caution letter, copy of the complaint, copy of F.I.R. Charge sheet, representation given to the Police Commissioner by widow of deceased and a representation given to the Chief Minister dated 16/1/2017 and 17/2/2017, copy of the evidence of CW- 1, copy of the order sheet and copy of the complaint dated 3/11/2017 along with affidavit of Mallamma who is the widow of the deceased to the Hon'ble Chief Justice, copy of the representation given by the petitioner No.2 to the Hon'ble Chief Justice, a copy of the video recording which has been recorded about the conversation and translated copies of the same and copy of the call recording, copy of the transcription of conversation, copy of the representation given by petitioner No.2 to I.G. and D.G. Bangalore, Home Minister, S.P.Dharwad, Addl. S.P. Belagavi, complaint dated 30/11/2017 given to the Chief Minister by petitioner No.2, complaint dated 30/11/2017 given to the Home Minister by petitioner No.2, copy of the representation dated 30/11/2017 given to I.G. by petitioner No.2 are annexed as Annexures- A to AA in support of this petition.

15. In pursuance of this petition this file is received from the Principle Bench, Bangalore and an application is also filed to implead the original complainant as respondent No. 18 and this Court heard the matter on 30/1/2018 both the petitioners ' counsel as well as the Additional Advocate General and reserved the matter for orders and ultimately, the same was released on 1/8/2018 and Sri M.B.Kanavi, learned standing counsel takes notice for respondent No.1 to 3 and when the matter again listed before this Court on 30/1/2019 heard the impleading application and this Court allowed the impleading application and as a result, the original complainant came on record as respondent No.18 and heard both the counsel and reserved for judgment.

16. The counsel appearing for petitioners in support of his arguments he contended that these petitioners are the mother and brother of the deceased and murder was taken place on 15/6/2016 at 7.37 a.m. and respondent No. 1 to 3 are C.B.I. Officials and respondent Nos. 4 to 9 are officers of police department and respondent Nos. 10 and 11 are the former Minister and Dy.S.P. who indulged in causing threat to the witnesses and respondent Nos. 12 to 17 are the accused who are facing the trial for the murder and contends that the original complainant who is the wife of the deceased has lodged the complaint at 9.30a.m. and there was a political rivalry and an anonymous letter was also received just prior to the murder and those letters are also given to the police on 16/6/2016 i.e. on the very next day of the murder. Immediately, the I.O. was transferred within two days and documents placed before the Court shows that there was a political ill-will and the Investigating Officer did not made any attempt to find out political ill will and on going through the entire investigation, it clearly shows that it is sham investigation.

17. The counsel also contended that the murder is a barbaric murder, he has sustained 35 injuries which reflects in the PM report and CCTV footage of next building was taken and not taken the CCTV footage of the very same building, wherein the bank is also situated and only to eye wash, the driver and conductor of the KSRTC bus which passes through at the time of incident were examined and no enquiry is conducted with regard to the black car which was in the scene of occurrence and only a deliberate attempt is made to shield the real culprits and the respondents have not denied the Annexures- E F and G given by the wife for the re-investigation and representation also given to the Chief Justice of Karnataka and also produced audio and video. Though the officer is not connected to Dharwad, he made all efforts to bring petitioner No.2 to the former Minister and all this clearly shows that Minister is behind or otherwise he would not have threatened petitioner No.2 and also witnesses and there is no any fair investigation. Further the second petitioner also filed complaint with the respective police department, Ministers of home Department, Chief Minister and also filed affidavit before the Chief Justice of High Court of Karnataka and police Officers, who are under the obligation did not conduct the fair investigation and contended that there are sufficient materials to believe the case of the prosecution. In support of his contention, the petitioners ' counsel relied upon the following judgments:

<b>Sl . No.</b>	<b>Citations</b>
1 .	Hema V. State , Thr . Inspector Of Police , 11 12 Madras [ 2013 ] 3 S.C.R.1

2 .	<b>Babubhai vs. State of Gujarat and Others , 2010 ( 12 ) SCC - 254</b>
3 .	State of Punjab V. Central Bureau Of Investigation & Ors . [ 2011 ] 1 1 S.C.R.281
4 .	Pooja Pal V / s Union of India
5 .	Samaj Parivartan Samudaya and others vs. State of Karnataka and others ( 2012 ) 7SCC 407
6 .	Narmada Bai v . State of Gujarat and others ( 2011 ) 5 SCC 79
7 .	Dharam Pal v / s State of Haryana & Ors .
8 .	K.V. Rajendran v . Superintendent of Police , CBCID South zone , Chennai and others ( 2013 ) 12 SCC 480
9 .	Dinubhai Boghabahai Solanki V / s State of Gujarath ( 2014 ) 4 SCC 626
10 .	E Shivakumar V / s Union of India AIR 2018 SC 2486
11 .	Narendrer Goel V / s State of Maharastra ( 2009 ) 6 SCC 65
12 .	Ashok Kumar Todi V / s Kishor Jahan and others ( 2011 ) 3 SCC 758
13 .	Kedar Narayan Parida and others V / s State of Orrissa ( 2009 ) 9 SCC 538
14 .	<b>Mithilesh Kumar Singh V / s State of Rajastan ( 2015 ) 9 SCC 795</b>
15 .	R.S Sodhi V / s State of U.P 1994 Supp ( 1 ) SCC 143

16 .	Subartha Chatteraj V / s . Union of India ( 2014 ) 8 SCC 768
17 .	Inder Singh V / s . State of Panjab ( 1994 ) 6 SCC 275
18 .	Zahira Habudulla Sheikh V / s . State of Gujarath ( 2004 ) 4 SCC 158
19 .	Ramesh and others others V / s . State State of Haryana Criminal appeal 2526/2014
20 .	Sunil Kumar pal V / s Phota Sheikh and others ( 1984 ) 4 SCC 533
21 .	Mohd . Hussain @ Julificar Ali V / s . State ( 2012 ) 9 SCC 408
22 .	The Criminal Procedure Amendment Bill 2006

18. The Additional Advocate General representing for respondent Nos.4 to 9 in his arguments contends that charge sheet was filed on 9/9/2016 and out of 63 witnesses 57 witnesses are already examined and one of the witnesses is the petitioner, who is CW-19 and other petitioner who is mother is not the witness and he did not appear before the Court in spite of the summons was served on him and there was no allegation or request till filing of the charge sheet and the petitioners did not participated in the trial, but, filed the writ petition before this Court when the trial has been commenced. The other contention that there are 30 cases against petitioner No.2 and also there were number of cases against the deceased and petitioner No.2 is also a rowdy sheeter and attempt to murder case is registered against petitioner No.2 and also there are number of cases against accused Nos. 1 and 2 and attempts are made against each other and the bald allegation is made against the investigation and not only that, also made against the Presiding Officer. Further, alleged that the police officials are involved and other allegation that threat is made to the witnesses and came forward to report the same to the Sessions Judge about the threat. The allegation is made against the police officers who are not the investigating team and only an allegation is made that there was black car in the scene of occurrence and where where they got the material about the same is not stated. The Additional Advocate General in his arguments also contends that in order to commit the murder motive is established since there was a land dispute. Weapons are seized from accused Nos. 1 to 6 and recovery is made and charge sheet has been filed within time on 9/9/2016 and started making the complaint only from the month of November 2016 and the second petitioner has not made any request, only wife has made a request and no ground is made out to invoke writ jurisdiction to direct the C.B.I. to investigate the matter.Only in order to stall the proceedings, filed the present petition before the Court.He further contended that the trial was commenced on

23/10/2017 and almost it is in the fag end of trial and only 4-5 witnesses are remaining and petitioner No.2 is not appeared before the Court, instead of giving evidence before the Court is making all efforts and further contended that when the charge sheet has already filed and trial has been almost completed, question of referring the matter to the C.B.I. does not arise.

He further contends that referring the matter to the C.B.I. is only is an exceptional circumstances and the same has to be sparingly invoked and there is no allegation except the writ allegation and nothing is to enquire into the matter and if any grievance, same can be addressed before the District Judge.

19. The counsel for respondent No. 18 in his arguments he contends that a false allegation is made against respondent No. 18 in para Nos. 16 and 17, she has already been examined before the Court and hence, the question of entertaining the petition does not arise. In support of his contention, respondent Nos. 4 to 10 relied upon the following judgments:

Sl . No.	CASE NAME
1 .	K.V.Rajendran V. Superintendent of Police , CBCID South Zone , Chennai & Ors ( 2013 ) 12 SCC 480
2 .	<b>Brijendra Singh &amp; Ors V. State of Rajasthan ( 2017 ) 7 SCC 706</b>
3 .	Sujatha Ravi Kiran v . State of Kerala & Ors ( 2016 ) 7 SCC 597
4 .	State of West Bengal & Ors V. Committee for Protection of Democratic Rights , West Bengal & Ors
5 .	State of Punjab v . Davinder Pal Singh Bhullar & Ors ( 2011 ) 14 SCC 770

20. The counsel appearing for the petitioners in his reply arguments he contended that the very investigation conducted is only with an intention to shield the original culprit and the same is mala fide and also relied upon the judgment reported in (2013) 10 Supreme Court Cases 192, in respect of passport duplication CBI enquiry is sought and brought to the notice of this Court paragraphs No.10 and 31 of internal page No.11. The counsel also by relying upon the judgment reported in (2010) 12 Supreme Court Cases 254, paragraphs No.33 and 45 of the judgment contends that the State has not denied the contention raised by the petitioner by filing any objection. The counsel also relied upon



the judgment reported in AIR 2011 Supreme Court 2962, paragraph No.15, so also relied upon the judgment reported in (2016) 3 Supreme Court Cases 135, paragraphs No.31, 38, 43, 45, 86 to 89, 90, 100 and 102 and further relying upon the judgment reported in (2012) 7 Supreme Court Cases 407, paragraph No.37 contend that guilty is to be punished, the very object of investigation is to punish the guilty person.

21. The counsel also relied upon the judgment reported in (2011) 5 Supreme Court Cases 79 and brought to the notice of this Court paragraphs No.63, 64 and 65. The counsel relied upon the judgment reported in (2016) 4 Supreme Court Cases 160 and also relied upon the judgment reported in (2013) 12 Supreme Court Cases 480 and brought the notice of this Court paragraph No. 17 regarding biased investigation. So also relied upon the judgment reported in (2014) 4 Supreme Court Cases 626, paragraph No.48. The counsel also relied upon the judgment reported in AIR 2018 Supreme Court 2486, paragraphs No.8, 9 and 10. The counsel relying upon the judgment reported in (2009) 6 Supreme Court Cases 65, brought to the notice of this Court paragraphs No.11 and 13 and also relied upon the recent judgment reported in (2018) 2 Supreme Court Cases 801 regarding section 65- A and 65- B of the Evidence Act contending that the same is not mandatory and also brought to the notice of this Court the judgment of Anvar P.V. vs. P.K.Basheer reported in (2014) 10 SCC 473 and the judgment of State (NCT of Delhi) Vs. Navjot Sandhu reported in (2005) 11 SCC 600 are discussed in the said judgment.

22. The counsel relied upon the judgment reported in (2011) 3 Supreme Court Cases 758, paragraph No.52, so also the judgment reported in (2009) 9 Supreme Court Cases 538, paragraph No.53. The counsel also relied upon the judgment reported in (2015) 9 Supreme Court Cases 795, so also 1994 Supp.( 1) Supreme Court Cases 143, paragraph No.2. The counsel relied upon the judgment reported in (2014) 8 Supreme Court Cases 768, paragraphs No.1 and 9 and the judgment reported in (1984) 4 Supreme Court Cases 533, paragraphs No.2 and 9 and so also the judgment reported in (2004) 4 Supreme Court Cases 158, paragraphs No.32 No.32,, 40, SO also paragraph No.36.

23. The counsel mainly relying upon section 173 ( 8) of Cr.P.C. contend that with regard to allegation against the Investigating Officer section 173 ( 8) of Cr.P.C. is not an answer and scope of Article 226 of the Constitution of India and Section 482 of Cr.P.C. not fetters the powers of the Court and validity of the CD has to be considered so far as to the provisions of section 65- A and 65- B of the Indian Evidence Act and the victim got limited right in respect of the same.

24. The counsel also relied upon the judgment in the case of Mithilesh Kumar Singh Vs. State of Rajasthan and others reported in (2015) 9 Supreme Court Cases 795 and further contended that merely referring the matter is not correct and very purpose should be served while referring the matter to the CBI and with that object the matter has to be looked into and further contended that it is a matter of serious concern about the involvement of former minister and also the higher police officials who engaged in causing threat to the witnesses immediately when the matter is set down for trial and hence this Court has to with the object of punishing the guilty, exercise the scope of section 482 of Cr.P.C. and writ jurisdiction and hence prayed this Court to refer the matter to CBI for further investigation.

25. Having heard the arguments of the petitioners ' counsel and also the respondents counsel, this Court has to examine whether this Court can invoke the writ jurisdiction as sought in the writ petition

referring the matter to the CBI as well as punishing the erred officials initiating the action against erring police officials as sought.

26. Having heard the arguments of the petitioners ' counsel and also the respondents ' counsel, this Court has to examine whether this Court can grant the relief sought in the writ petition.

27. The main contention of the petitioners in the arguments is that the investigation conducted by the police is nothing but a sham investigation and the same is conducted with the object of shielding the main accused and failed to take note of the contents of the complaint and also there was a political rivalry and an anonymous letter was received just prior to the incident of murder and the same was handed over to the police on the very next day of the alleged murder and the investigation has not been conducted to find out the political ill-will and also the nature of brutal murder and failed to take note of the CCTV footage of the place of incident and no enquiry is conducted with regard to the role of the persons involved in the murder and a deliberate attempt is made to slide out the real culprits.

28. In support of the said contention the counsel appearing for the petitioners has relied upon the judgment reported in 2014 ( 4) SCC 626 case between Dinubhai Boghabhai Solanki Vs. State of Gujarat and others. In this judgment the petitioners counsel relying upon paragraph No.42 contended that there was no application before the High Court to either hear or to make the appellant party to the proceedings before directing that the investigation be conducted by CBI and further contended that the Apex Court made an observation that the High Court comes to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clean chit to the appellant, in spite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. Relying upon this judgment, he contends that the petitioners before this Court are the father and brother of the murdered deceased and it was the cry for justice by the father and brother and rule of law can be maintained only by fair, impartial and independent investigation by the law enforcement agency, in every reported incident of commission of offence and it was only when the High Court was of the opinion that even the further investigation was not impartial, was it transferred to CBI and Apex Court held that the High Court's order is justified in referring the matter to the CBI.

29. The counsel also with regard to technicality in respect of the compliance of Section 65- A and 65- B of the Indian Evidence Act, relied upon the recent judgment of the Apex Court reported in (2018) 2 Supreme Court Cases 801 case between Shafhi Mohammad Vs. State of Himachal Pradesh and contended that requirement of certificate under section 65- B ( 4) of the Evidence Act being procedural, can be relaxed by the Court wherever interest of justice so justifies. Thus, requirement of certificate under section 65- B ( 4) is not always mandatory and the counsel also contended that the Apex Court in this judgment discussed the judgment of Anwar P.V. VS. P.K.Bashir, SO also the judgment of State (NCT of Delhi) Vs. Navajot Sindhu.

30. The counsel appearing for the petitioners relying upon the judgment reported in AIR 2018 Supreme Court 2486 case between E.Sivakumar US. Union of India and others, contends that the accused was not entitled to opportunity of hearing as a matter of course. In writ petition seeking impartial investigation and the name of the person who has been shown as accused in the FIR, has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of

course, cannot be heard to say that direction issued to transfer the investigation to CBI is a nullity. The counsel relying upon the judgment reported in 2009 ( 6) Supreme Court Cases 65 case between Narender G. Goel Vs. State of Maharashtra and another, brought to the notice of this Court paragraph No. 11 and contended that the accused has no right to be heard at the stage of investigation.

31. The counsel referring the judgment of the apex Court reported in 2011 ( 3) Supreme Court Cases 758 case between Ashok Kumar Todi Vs. Kishwar Jahan and others contend that when the Court had satisfied based on the materials particularly as to conduct of State police and apprehension of mother and brother of deceased about getting justice at the hands of State CID and directed investigation by CBI and there cannot be any parallel investigation by State CID and referring this judgment he contended that a sham investigation has been conducted by the police and these petitioners who are the mother and brother of the deceased have no confidence that they may get justice.

32. The counsel relying upon the judgment reported in 2009 ( 9) Supreme Court Cases 538 case between Kedar Narayan Parida and others Vs. State of Orissa and others, contended that informant wife writing letter to the High Court that police were inactive in not arresting all accused persons who were involved in murder of her husband and informant wife also stating that main culprits were moving freely and senior police officers at intervention of MLA discarding supervision report implicating all accused persons and making a new report on the basis of polygraph test and alibi provided by MLA Effect High Court quashing second supervision report of senior officers and directing the additional charge sheet to be filed based on the first supervision report Whether within the scope of section 482 though normally Courts cannot interfere, High court in exercise of its inherent power under section 482, held, can interfere with investigation to do justice to the parties and relying upon this judgment he contends that the factual aspect of this case is also similar and the police who conducted the investigation shielded the real culprit.

33. The counsel relying upon the judgment reported in 2015 ( 9) Supreme Court Cases 795 case between Mithilesh Kumar Singh Vs. State of Rajasthan and others, contends that the Apex Court while considering the matter with regard to referring the matter to CBI investigation, reported the scope and grounds and considerations and held that there can be no hard-and-fast rules. But following facts are relevant ( a) sensibility of victims or their next kin ( b) sensitivity of issues like loss of human life, ( c) shabby and partisan investigation etc., or when investigation by State police does not inspire confidence and held that discovery of truth is the ultimate purpose and it can be done best by independent agency, unfair investigation would affect the fairness of trial, investigation simply cannot be ordered just because a party seeks to lead investigator to a given conclusion, but a prayer for transfer of the investigation should not be viewed with suspicion and Court should not hesitate to direct CBI investigation.to promote cause of justice.

34. The counsel referring the said judgment, also brought to the notice of this Court paragraph No. 15 and contends that making the process of discovery of truth credible what is important is that Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion, there is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where the intervention is called for, nor is it necessary for the petitioner seeking a transfer

to make out a cast-iron case of abuse or neglect on the part of the State police, before ordering a transfer and also brought to the notice of this Court paragraph No.22 of the judgment wherein it is observed that transfer of investigation from the State police to CBI can be allowed only in rare and exceptional circumstances when fair investigation by the State police does not inspire confidence on account of any external influence or otherwise.

35. The counsel relying upon the judgment of R.S.Sodhi VS. State of U.P. and others, reported in 1994 Supp.( 1) Supreme Court Cases 143, brought to the notice of this Court paragraph No.2 of the judgment wherein it is observed that 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 and relying upon this judgment contend that that the the very higher police officials involved along with the accused persons to shield the real culprits.

36. The counsel also relying upon the judgment of Subrata Chatteraj Vs. Union of India and others reported in (2014) 8 Supreme Court Cases 768, by relying upon paragraph No.9 of the judgment contends that it is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the state police to CBI in cases where such transfer is considered to discover the truth and to meet the ends of justice.

37. The counsel referring the judgment of Zahira Habibulla H. Sheikh and another VS. State of Gujarat and others reported in (2004) 4 Supreme Court Cases 158, contends that in this judgment the Apex Court held that failure of State machinery to protect the citizens life, liberties and property and investigation conducted in a manner helpful to the accused persons, it is the duty of Courts arising therefrom to maintain confidence of the public in the judicial system.

The Courts to ensure that accused persons are punished and the might and authority of the State are not used to shield itself or its men, deficiencies in investigation or prosecution to be dealt with an iron hand appropriately within framework of law, judicial criminal administration to be kept clean and beyond the reach of whimsical political wills or agendas prohibited by the Constitution, role of State Government in not getting the offenders to book deprecated in the strongest terms, described as " modern-day ' Neros " " who looked elsewhere whilst innocent children and helpless women were burning and further contend that the complainant is given liberty to have a say in appointment of public prosecutor to get the justice and the very object of ordering for further investigation, the investigation if it is tainted, biased and not fair, though for different reasons, investigating agency directed to act under section 173 ( 8) of Cr.P.C. A trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. By referring to this judgment he further contends that the Court should not be mute spectator and the counsel further contends that the presiding officer who is conducting the trial is not recording the evidence as deposed by the witnesses and referring to this judgment he contends that the presiding Judge must cease to be a spectator and mere recording evidence as machine and he must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth and administer justice with fairness and impartiality both to the parties and to the community and the same is missing in the case on hand.

38. The counsel also relied upon the judgment of Sunil Kumar Pal Vs. Phota Sheikh and others reported in (1984) 4 Supreme Court Cases 533 and brought the notice of this Court paragraph No.2 of the judgment contending that though representations were made to the higher authorities for according protection to the witnesses and also doubting the very fair investigation contends that in the case on hand also the witnesses are threatened through the police officials and the former minister also involved in getting the witnesses to him through the police officials and the above judgment is aptly applicable to the case on hand and referring paragraph No.9 of the judgment the counsel further contends that it cannot be disputed that when the trial was going on and witnesses were giving evidence, there were large number of supporters to the communist party who are allowed to assemble in the Court compound and who created a hostile atmosphere against the prosecution and the Apex Court also held, a hostile atmosphere is created against the prosecution and in favour of the witnesses and contends that the judgment is also aptly applicable to the case on hand and similar situation has arisen in the case on hand.

39. The counsel appearing for the petitioners also relied upon a judgment reported in (2013) 10 Supreme Court Cases 192 case between Hema Vs. State through Inspector of Police, Madras, and referred internal page No.10 and contends that the Apex Court held in the judgment that it is settled law that not only fair trial but fair investigation is also part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India.

Accordingly the the investigation must be fair, transparent and judicious and it is the immediate requirement of the rule of law.The counsel also referring to paragraph No.17 of the judgment brought to the notice of this Court regarding the judgment discussed in NHRC Vs. State of Gujarat contend that interest of society is not to be treated completely with disdain and as persona non grata.The Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-often referred to as the duty to vindicate and uphold the majesty of the law.

40. The counsel also also relying upon the judgment reported in (2010) 12 Supreme Court Cases 254, case between Bahubhai Vs. State of Gujarat and others, brought to the notice of this Court paragraph No.33 of the judgment and reference made with regard to State of Bihar Vs. P.P.Sharma, wherein the apex Court held that investigation is a delicate and painstaking and dextrous process.Ethical conduct is absolutely essential for investigative professionalism, therefore before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the Court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the Court.

41. The counsel further relying upon the judgment reported in AIR 2011 Supreme Court 2962, case between State of Punjab Vs. Central Bureau of Investigation and others, brought to the notice of this Court paragraph No.15 and contends that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that investigating agency may undertake further investigation and the subordinate Court may direct further investigation into the case where charge sheet has been filed under sub section ( 2) of section 173 of Cr.P.C. and such further investigation will not mean fresh

investigation or re-investigation, but these limitations in sub section ( 8) of section 173 of Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the Court under section 482 of Cr.P.C. for securing the ends of justice.

Further referring the judgment the counsel contends that even though the investigation has been completed, and charge sheet has been filed by the police, it is necessary in the ends of justice CBI should carryout the investigation into the case. The section 482 of Cr.P.C. has to be exercised coupled with Article 226 of the Constitution of India sparingly cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications.

42. The counsel also referring the judgment of Pooja Pal Vs. Union of India and others, reported in (2016) 3 Supreme Court Cases 135, contends that proactive role of Court in constitutional Courts alone empowered to direct fresh investigation/reinvestigation and further investigation, while regular court empowered only to direct further investigation.

The fact that charge sheet is already filed and trial is pending, relevance to whether fresh investigation/reinvestigation or further investigation can be ordered and further bringing to the notice of the Court paragraph No.38 of the judgment the counsel contends that political vendetta against the private respondents being her rivals, in the case on hand there was a political vendetta and hence it is justifiable reason in law to direct an investigation by CBI when the trial is under way and the contention that the trial is already commenced cannot be accepted and also brought to the notice of this Court paragraphs No.43 and 45 of the judgment and contends that in order to find out the truth it is necessary to order for CBI investigation and also brought to the notice of this Court paragraph No.100 of the judgment and contends that, if the cause of complete justice and protection of human rights are the situational demands in such contingencies, order for further investigation or reinvestigation, even by an impartial agency as CBI ought to be a peremptory measure in the overwhelming cause of justice.

43. The counsel relying upon the judgment of Samaj Parivartan Samudaya VS. State of Karnataka and others, reported in (2012) 7 Supreme Court Cases 407, brought to the notice of this Court paragraphs No.25 and 26 of the judgment and contends that the machinery of criminal investigation is set into motion by the registration of a first information report (FIR) by the specified police officer of a jurisdictional police or otherwise. CBI, in terms of its manual has adopted a procedure of conducting limited pre-investigation enquiry as well and section 154 of Cr.P.C. places an obligation upon the authorities to register the FIR of the information received, relating to commission of cognizable offence, whether such information is received orally or in writing by the officer in charge of a police station and thereafter conducting investigation under section 156 ( 3) of Cr.P.C. and further bringing paragraph No.37 to the notice of this Court he further contends that, the investigation of a case or filing of charge sheet in a case does not by itself bring the absolute end to exercise the power by the investigating agency or by the Court.

44. The counsel relying upon the judgment of Narmada Bai Vs. State of Gujarat and others, reported in (2011) 5 Supreme Court Cases 79, referred paragraphs No.63, 64 and 65 and contends that it would be desirable to allow the Gujarat State police to continue with the investigation, accordingly,

to meet the ends of justice and in the public interest and further observed that, they feel that CBI should be directed to take the investigation having considered the factual aspects of the case.

45. The counsel also relied upon the judgment reported in (2013) 12 Supreme Court Cases 480, case between K. V. Rajendran US. Superintendent of Police, CBCID South Zone, Chennai and others, bringing to the notice of the Court the observation made in paragraph No.7 of the judgment contends that the Apex Court held the law can be summarized to the effect that Court could exercise its constitutional powers for transferring and investigation from the State investigating agency to any other independent agency like CBI only in rare and exceptional cases where the Court found that investigation is prima facie found to be tainted or biased.

46. The counsel also referring the judgment of M.K.Kushalappa and another Vs. Sri K.J.George and others, passed in CrI. A. Nos. 1571-1572 of 2007, bringing to the notice of the Court paragraph No.7 of the judgment contends that there are no fixed parameters to determine such exceptional circumstances to send the case for investigation from State to CBI. The constitutional Court taking an overall view of the fact situation of a particular case, may feel it just and proper to direct CBI investigation.

47. The counsel by referring to this judgment contends that this Court has got ample power in order to find out the truth and to punish the guilty, order for CBI inquiry having considered factual aspects of the case that the very investigation is sham investigation and the same is made with an intention to shield the real culprit, who is an influential person and higher police officials are also indulged in not only conducting sham investigation and even after filing of the charge sheet also the police officials have made an attempt to threaten the witnesses.

48. Per Per contra, the the Additional Additional Advocate General appearing for the respondent State, in his arguments he contends by referring to some of the judgments that only with an intention to drag on the proceedings an attempt is made to protract the proceedings and almost 57 witnesses have been examined out of 63 and these petitioners and particularly petitioner No.2, who is also CW.19 in the case did not choose to come and appear before the Court and making all efforts to stall the proceedings. The other petitioner is not the witness and if really petitioner No.2 is having any material with regard to the role and real culprit and the same can be placed before the Court in which trial is going on and the investigating officer already collected the material and found prima facie material and filed charge sheet and while filing charge sheet also placed material regarding motive for committing the murder.

49. The counsel also relied upon the judgment reported in (2013) 12 Supreme Court Cases 480, case between K.V.Rajendran US. Superintendent of Police, CBCID South Zone, Chennai and others, and referring the judgment counsel contended that though complainant had brought allegation of mala fides against police officers, said allegations were non-specific complainant could not produce any subsequent development warranting transfer of case to CBI after a similar prayer had been rejected by Supreme Court. The counsel also brought to my notice that only in rare and exceptional cases where investigation can be transferred from State police to CBI, re-stated in the judgment and further brought to the notice of this Court that extraordinary power, must be exercised sparingly, cautiously and in exceptional situations 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 superior courts express their opinion on merits relating to any accusation against any individual and also brought to my notice para 13 of the judgment with regard to the issue involved and further held the Apex 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 C.B.I.

50. The Additional Advocate General by relying upon the judgment reported in (2017) 7 SCC 706 between Brijendra Singh and Others Vs. state of Rajasthan brought to my notice para 9 of the judgment and contends that the powers of the Court to proceed under Section 319 Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed.

This provision is meant to achieve the objective that real culprit should not get away unpunished and also brought to my notice the judgment of the Constitution Bench of the Apex Court Hardeep Singh v. State of Punjab & Ors., (2014) 3 SCC 92, and brought to my notice the relevant paragraph 8 of the said judgment regarding the scope of the Section 319 of Cr.P.C. and further brought to my notice para 12 of the judgment regarding scope of Section 319 of Cr.P.C. springs out of the doctrine *judez damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. and it is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

51. The counsel also relied upon the judgment reported in (2016) 7 SCC 597 between Sujatha Ravi Kiran Alias Sujatasahu Vs. State of Kerala and Others and referring the judgment he brought to my notice para 9 and contends that it is well settled that the extraordinary power of the constitutional courts in directing CBI to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter. He also brought to my notice the principles held in a Constitution Bench in State of W.B. Vs. Committee for Protection of Democratic Rights and brought to para Nos.69, 70 and 71 of the judgment.

52. The counsel also relied upon the judgment reported in (2010) 3 SCC 571 between State of West Bengal and Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others regarding Articles 32, 226, 21 and Part III with regard to the direction of High Court under Articles 226 or Supreme Court under Article 32 directly to CBI to investigate a cognizable offence in a State without consent of the State Government and brought to my notice para 70 of the judgment that 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. Insofar as the question of issuing a direction to 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 leveled some allegations against the local police.

This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations.



53. The counsel also relied upon the judgment reported in (2011) 14 SCC 770 between State of Punjab Vs. Davinder Pal Singh Bhullar and Others and brought to my notice para 75 of the judgment and in this judgment the Apex Court held that it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.

54. The counsel relying upon the above judgments in his arguments he vehemently contends that referring the matter to the CBI, has to be used sparingly and in exceptional circumstances, exercising its constitutional power must be only in order to establish the credibility of the investigation and not mere accusation made in the complaint and unless there is substance in the allegation no Court can order for CBI investigation and hence, prayed this Court to reject the prayer of the petitioners.

55. After having heard the arguments of the petitioners' counsel and also respondents' counsels this Court has to examine whether this Court can exercise writ jurisdiction invoking Articles 226 and 227 of Constitution of India referring the investigation to the CBI as prayed by the petitioners.

56. Having considered the contentions raised by the petitioners' counsel as well as the respondents' counsel and also the relief sought in the petitions invoking the writ jurisdiction and praying this Court for referring the investigation to the CBI, this Court has to examine whether there is any substance in order to grant the relief as sought keeping in mind the principles laid down in the judgments referred by the parties herein.

57. Now I would like to make a mention in brief the gist of the grounds urged in the petitions seeking an order of writ in the nature of mandamus directing the respondent-Central Bureau of Investigation to investigate the murder of Yogeshgouda Goudar and submit report and also to take action as per law and also writ of mandamus directing the respondent Nos. 4 and 5 to initiate action against all the erring police officials who shielded the respondent-Vinay Kulkarni and other culprits in the conspiracy of murder of Yogeshgouda Goudar and grant such other relief.

The gist of the grounds urged in the petitions are as follows:

1. The political enmity between the deceased and Ex-Minister-Vinay Kulkarni, who has been made as respondent No. 10 in this petition contending that both are belong to different political parties and affiliated to different national parties.
2. The sale agreement entered between the accused persons and the owners of the properties and the Investigating Officer did not investigate the source of consideration in respect of the said transaction.

3. The letter addressed to the deceased two days prior to the murder and the name of respondent No.10 is mentioned in the said letter and the same is by anonymous person.

4. The CCTV CCTV footage of the building in which the incident has taken place is not collected and only collected the CCTV footage of the next building.

5. The black Hundai Accent Car comes from KCD circle towards Saptapur Circle and again returned to the said circle and accused persons were were making making the sign and the residents of Vikas Nagar informed about the unattended black car in the vicinity of the place of the incident.

6. The Home Minister makes the statement within one hour of the said murder stating that the same is due to land dispute and accused persons were arrested after two days of the incident.

7. The widow gave representation to the Commissioner of Police about the involvement of the persons in committing the crime and also who were present in the car on 09.11.2016 and also representation given to the Chief Minister to hold a fresh investigation vide representation dated 17.02.2017.

8. The attitude of the Presiding Officer in not recording the evidence properly as deposed by PW.1 and refused to mark the anonymous letter and only at the insistence of the learned Public Prosecutor the same were marked by the Presiding Officer.

9. The police officials have caused threat to the witnesses to give false evidence in favour of the accused persons and also took CW.19 to the respondent No.10 and the respondent No.10 caused threat to give evidence in favour of the accused persons.

58. The petitioners making all these grounds prayed this Court to refer this matter for investigation to the CBI on the ground that a sham investigation is conducted by the police in order to shield the real culprit and involvement of the respondent No.10 is clear in the act of committing the murder of the deceased since he was the Ex-Minister of the State Government. The petitioners contend that all these factors show that the investigation has not been properly conducted and the same is done with an intention to shield the real culprit and there must be a fair investigation in order to punish the guilty and the same has not been done.

59. Let this Court consider the grounds urged in the petitions and before considering the grounds urged in the petitions, I would like to refer the principles laid down in the judgments with regard to referring the matter to CBI investigation. In the judgment of the Hon'ble Apex Court reported in AIR 2018 SC 2486 in the case of E Shivakumar Vs. Union of India and Others held that a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that direction issued to transfer the investigation to CBI is a nullity and hence it is clear that no necessary to hear the accused who has been shown in the proceedings at the stage of investigation.

60. It is also important to note that the Hon'ble Apex Court in the judgment reported in (2015) 9 SCC 795 in the case of Mithilesh Kumar Singh and Others Vs. State of Rajasthan and Others held that while referring the matter to CBI the Court has to keep it in mind which are relevant i.e. ( a) sensibility of victims or their next kin ( b) sensitivity of issues like loss of human life ( c) shabby and

partisan investigation etc., or when investigation by State police does not inspire confidence and held that the discovery of truth is the ultimate purpose and it can be done by the best by the independent agency and further held that unfair investigation would affect the fairness of trial, investigation simply cannot be ordered just because a party seeks to lead investigator to a given conclusion and further observed that the discovery of truth credible what is important is that the Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion, there is no reluctance on the part of the Court to grant relief and further observed that the CBI investigation can be allowed only in rare and exceptional circumstances when fair investigation by the police does not inspire confidence.

61. For having taken note of the principles laid down in the judgments referred to supra, it is clear that mere making of an accusation that no fair investigation has been conducted is not a ground and also it cannot be referred for CBI investigation with suspicion and there must be a prima facie material that a shabby investigation is conducted and there must be an exceptional circumstances i.e. if fair investigation is not done by the police and if it inspires the confidence then only the matter has to be referred to the CBI for investigation.

62. The Hon'ble Apex Court also in the judgment reported in (2013) 10 SCC 192 in the case of Hema Vs. State through Inspector of Police, Madras held that it is settled law that not only fair trial but fair investigation is also part of the constitutional rights guaranteed under Articles 20 and 21 of Constitution of India.

The investigation must be fair, transparent and judicious and it is the immediate requirement of rule of law and keeping this principle in the judgment referred above, this Court has to examine whether the CBI investigation is necessary in the present case on hand and whether is it a case of exceptional circumstances to order for investigation as held in the judgment of the Hon'ble Apex Court in the case of Pooja Pal Vs. Union of India and others, reported in (2016) 3 SCC 135 since the ground is also alleged that political vendetta against the persons and whether any justifiable reason in law to direct investigation for CBI that too when the trial is under way and the contention that the trial is already commenced and in order to find out the truth it is necessary to order for CBI investigation and having taken note of the principles, this Court has to analyze the grounds urged in the petition.

63. I have already made the list of grounds in seeking an order of CBI direction and before considering the grounds, I would like to make a mention in the present case on hand the sequence of incident was taken place place and murder was taken place on 15.06.2016 at 7.37 a.m. to 7.38 a.m. and case was registered at around 9.30 a.m. based on the complaint of the wife of the victim and the accused Nos. 1 to 5 were arrested on 17.06.2016 and accused No.6 was arrested on 20.06.2016 and recoveries are made and investigation has been completed and charge sheet has been filed on 09.09.2016 and during the course of investigation, the wife of the victim has given the letter which has been received two days prior to the incident of murder and the said letter was handed over to the police immediately and the main contention that in spite of the said letter was given to the police, the police did not investigate the same properly. It is also the allegation that the Court also was reluctant to mark those documents and only on persistence of the learned Public Prosecutor the same were marked as Exs.P.2 and P.3 and it has to be noted that whether this Court can order for

investigation based on such letters and those letters are anonymous letters and not mentioned the name of the person who wrote that letter and mere mentioning of the respondent No.10 name in the said letter can be a basis to array him as accused as contended by the petitioners and there must be a material to array a person as an accused and hence the ground sought for referring the matter to the CBI as one of the ground, I do not find any force in the contention and the Court also cannot expect that the person who commits the murder writes such letter and there are chances of someone writing such letter to only to deviate the investigation.

64. The other ground is that there was political enmity between the deceased and the respondent No.10 and contend that the same is exposed in the meeting held in the Zilla Panchayat and no doubt the victim and the respondent No. 10 admittedly belongs to the different political parties and they are affiliated to different political parties and if any heated discussion was taken place in the meeting is it a ground to array the respondent as accused and no doubt it is contended that the rivalry is exposed in the meeting and the same cannot be a ground for referring the matter to the CBI in coming to the conclusion that the police did not conduct the investigation properly and it is the duty of the Investigating Officer to look into in different way and in the case accused persons are arrested within two days and recoveries made and found the motive for murder.

65. The other contention that there was a sale agreement and source of consideration has not been investigated and it is not the job of the Investigating Officer to investigate into with regard to the source of consideration for having entered into the sale agreement and it is the case of the petitioners that the very alleged sale agreement is concocted for the purpose of the case and it is the case of the prosecution that the very motive for committing the murder of the victim is that the victim interfered in the said sale transaction which the accused persons have entered into and I have already pointed out that it is not the job of the Investigating Officer to collect the information with regard to the source of consideration and the said ground also cannot be accepted for referring the matter to the CBI investigation and whether they were having source or not is not the issue involved in the crime.

66. The other contention that CCTV footage of the building is not collected and only collected next building CCTV footage and further CCTV footage shows that one black Hundai Accent Car comes from KCD circle towards Saptapur Circle and again returned to said circle and some persons were giving signals sitting in the said car and the residents of the Vikas Nagar informed about the unattended black car and the counsel vehemently contended in his argument that the very same car which was taken to the custody of the police was released in favour of the owner of the car and in support of the said contention for having released the vehicle and taken to the custody of the Investigating Officer no material is placed before the Court except saying that Hundai Car came during the course of incident and where the petitioner has got all these information and source of information is also stated except the CCTV footage of the next building and also it discloses that the KSRTC bus which came during the said hours and the driver and the conductor have been examined and the main contention that the Investigating Officer did not enquire into this car and in the absence of material that the car was taken to the custody and released to the owner, the very contention cannot be accepted and the Court also cannot take a decision only on hypothesis and there must be some prima facie material and I do not find the same to connect the same.

67. The other contention that the Home Minister makes the statement within one hour and he made the statement that the murder due to land dispute and and admittedly the accused persons were arrested on 17.06.2016 after two days of the incident and it is the contention of the petitioners ' counsel that how come the Home Minister comes to know about the reason for murder and normally normally when when a ghastly murder takes place the press people approaches the Home Minister and if such statement is made, may be the same also on hypothesis and mere making of such a statement by the Home Minister is not a ground to order for CBI investigation and the police have also collected the material of sale agreement and also found the motive for committing the murder and arrested the accused persons during the course of investigation and recovery also made at the instance of the accused persons and when such being the circumstances, I do not find any lapses on the part of the Investigating Officer.

68. The other ground that the widow gave the representation to the Commissioner of Police with regard to involvement of the persons and some persons were present in the car and also the representation made to the Chief Minister on 09.11.2016 and 17.02.2017 respectively and in the case on hand it has to be noted that the charge sheet was filed on 09.09.2016 itself and during the course of the investigation there were no any complaints as against the Investigating Officer, who conducted the investigation and all these problems starts only in the month of November-2016 that too after two months of filing of the charge sheet and other important aspect has to be taken note of that the very wife of the victim has changed her political affiliation and her husband who was murdered was the member of Zilla Panchayat elected as BJP candidate and now she has changed her political affiliation to political party of Congress and the allegation made against the respondent No.10, who is also the Ex-Minister of a particular party and there is a changed scenario due to identifying with different political parties and affiliated to the different political parties and now the widow is denying her own signature in the representations given to the Commissioner as well as the Chief Minister and further I have already pointed out that all these troubles starts only from the month of November-2016 and during the course of investigation there was no any allegation against the Investigating Officer and also the petitioners have not made any allegation against the Investigating Officer who conducted the investigation and only the main contention is that there is role of respondent No.10 in the murder and I have already pointed out that when the parties are affiliated to the different political parties and an accusation is made and mere making of an accusation is not a ground and in order to order for fresh investigation that too through the CBI investigation, the petitioners have to make out the case for an exceptional case to order for CBI investigation. I have already pointed that though murder was taken place in June-2016, till the month of November-2016 for about six months there was no any doubt about the investigation and it starts only after two months of filing of the charge sheet and when such being the case, I am of the opinion that it is not a case for order for CBI investigation and there must be some material on record to show that the Investigating Officer has committed an error in conducting the investigation and shabby investigation is conducted and in the absence of prima facie material to comes to the conclusion that there was unfair investigation, this Court cannot exercise its writ jurisdiction to order for CBI investigation.

69. The main contention of the petitioners also that the petitioner No.2 is CW.19 who is the charge sheet witness and the petitioner No.1 is not a witness, however they are the mother and brother of the person who has been murdered and also an allegation is made against two police officials who

have been arrayed as respondent Nos.11 and 12 in these petitions and specific allegation against them is that they interfered in the proceedings and though they are not working in Dharwad District at the instance of respondent No. 10 they have approached the CW.19 and caused threat and also took the CW.19 to the respondent No.10 and there was a conversation with regard to the threat is concerned and also placed the material before the court about the conversation taken place between them and these are the developments subsequent to filing of the charge sheet that too when the trial has been commenced and now an application is filed before the trial Judge to take action against them and refer the matter to the concerned jurisdictional Magistrate and the same is considered by the Lower Court and rejected the application and this Court today set aside the order directing the Lower Court to consider the same on merits and not on technicality and I have already pointed out that these are the subsequent developments and based on these developments this Court cannot refer the matter to the CBI investigation. At the most, if any material, the same can be placed before the lower Court with regard to involvement of any other person in the crime to substantiate the same and the petitioners ' counsel vehemently argued with regard to admissibility of telephonic conversation and this Court cannot usurp the jurisdiction of the Lower Court considering the judgment on this point unless the Court below considers the aspect of admissibility.

70. I would like to refer the judgment of the Hon'ble Apex Court in this regard. The Hon'ble Apex Court in the judgment reported in (2017) 7 SCC 706 in the case of Brijendra Singh and Others Vs. State of Rajasthan held that powers of the Court to proceed under Section 319 of Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed. It is further held that this provision is meant to achieve the objective that real culprit should not get away unpunished and also the Hon'ble Apex Court in the judgment in the case of Hardeep Singh Vs. State of Punjab and Others reported in (2014) 3 SCC 92 held that the scope of Section 319 of Cr.P.C. springs out of the doctrine *judex damnatur cum nocens nocens absolvitur* (Judge is condemned when guilty is acquitted), and further held that this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 of Cr.P.C. and further held that it is the duty of the Court to do justice by punishing the real culprit where the investigating agency for any reason does not array one of the real culprit as an accused, the Court is not powerless in calling the said accused to face trial.

71. For having taken note of the principles laid down in the judgments referred supra, the Hon'ble Apex Court has made it clear that where the investigating agency does not array the real culprit, the scope of Section 319 of Cr.P.C. can bring the real culprit if any material is found during the course of the proceedings and it is also undisputed fact that the scope under Section 319 of Cr.P.C. is clear that if any material is placed, the real culprit can be booked and prosecuted.

72. In the present case on hand, it has to be noted that petitioner No.2, who is CW.19 has not been examined and it is also the case of the prosecution that he has been evading service of witness summons and not coming forward to lead evidence and instead of making all efforts to stall the further proceedings. It has to be noted that the main contention of CW.19, who is petitioner No.2 herein that the Investigating Officer did not conduct the proper investigation and the very investigation is sham investigation and I have already pointed out that nothing has been pointed out with material and also no allegation during the course of the investigation and only after filing of the charge sheet that too after two months of filing of the charge sheet this contention has been taken.

It reflects that his sister-in-law changed over party and now she affiliated to different party and the allegation is gone to the extent of personal animosity and when he makes such an allegation and prays this Court that there must be a fair investigation, he has to give evidence before the Court with regard to his accusation and the trial Judge can consider the material to invoke Section 319 of Cr.P.C. to bring the real culprit if any material is found during the course of the proceedings.

It is emerged that already out of 63 witnesses 55 witnesses have been examined and it is also pertinent to note that none of the witnesses made any allegation of threat and it is also the contention of the petitioner No.2 herein that he was subjected to threat and also an application is filed and he has to place the material before the Court in order to bring the real culprit where the investigating agency for any reasons does not array one of the real culprit as an accused as contended by the petitioners herein. In view of the principles laid down in the judgment referred supra in Brijendra Singh and Others Vs. State of Rajasthan and also Hardeep Singh Vs. State of Punjab and Others, the scope and ambit and the spirit of the enactment of Section 319 of Cr.P.C. can be invoked by these petitioners placing the material and producing the same before the Court and if the trial Court found the material then the real culprit can be added as an accused as contended by the petitioners.

73. This Court also examined with regard to whether this Court can invoke Section 173 ( 8) of Cr.P.C. directing the Investigating Officer to file additional charge sheet and I have already pointed out in detail with regard to the grounds urged in the petition referring the matter to the CBI and this Court did not find any such material to consider the case for referring the matter to the CBI and also I do not find any material to invoke Section 173 ( 8) of Cr.P.C. also asking the Investigating Officer to investigate and file additional charge sheet and having considered the contention of the petitioners only the scope of Section 319 of Cr.P.C. can be invoked if CW.19, who did not appear before the Court place if any material before the Court to array the real culprit.

74. For having taken note of the materials available on record and also the contentions raised by both the petitioners ' counsel and the respondents ' counsel and having examined the principles laid down in the judgments referred supra, it is clear that only in exceptional case where the investigation does not inspire the confidence of the Court then only the extraordinary power of this Court referring the matter to the CBI can be invoked and hence I do not find any such circumstances in the case on hand examining all the material on record and hence it is not a fit case to issue writ of mandamus as prayed by the petitioners to refer the matter to the CBI investigation and almost the trial has been completed and the same is in the verge of completion of the trial and some more witnesses including CW.19 has to be examined and at this stage it is not appropriate to refer the matter to the CBI and as this Court did not find any material to grant such extraordinary relief referring the matter to the CBI as contended by the petitioners, I do not find any merits in the case to grant the relief as sought.

75. In view of the discussions made above, I proceed to pass the following:

ORDER

The writ petitions are dismissed.