

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.634 OF 2023
(Arising out of SLP (Crl.) No.2454 of 2022)

Royden Harold Buthello & Anr.

.... Appellant(s)

Versus

State of Chhattisgarh & Ors.

.... Respondent(s)

With

Crl.Appeal No.635 of 2023 @ SLP (Crl.) No.7306 of 2022

J U D G M E N T

A.S. Bopanna, J.

1. Leave granted.

2. The appellants, as also the respondents are common to these appeals and the subject matter relates to the same issue.

Hence, they are taken up together and disposed of through the

common judgment. The appeal arising out of SLP Criminal No.2454 of 2022 is filed assailing the order dated 10.01.2022 passed in WPCR No. 686 of 2020. In an appeal arising out of the SLP Criminal No.7306 of 2022, the order dated 15.09.2021 passed in Criminal Revision No.468 of 2021 is assailed. Both the said orders are passed by the High Court of Chhattisgarh, Bilaspur.

3. The said order dated 10.01.2022 is passed in Writ Petition filed under Article 226 wherein the appellant had prayed to direct for investigation under the supervision of the Court, by the Central Bureau of Investigation (for short, 'CBI') relating to (i) FIR No. 232/2020 registered at Azad Chowk Police Station, Raipur, (ii) FIR No.255/2020 registered at Kotwali Police Station, Raipur, (iii) Online complaint No. 3334104012000003 dated 27.10.2020 made before the Superintendent of Police, Raipur and (iv) Online complaint No. 24488049072000014 dated 06.11.2020 made before the Talcher Police Station, Angul, Odisha. The appellant had also prayed to quash the charge sheet in Special Case No.87/2020 and Special Case No.98/2020 filed by the respondent Azad Chowk Police, Raipur and Kotwali Police, Raipur filed pursuant

to the said FIRs No.232/2020 and 255/2020, pending before the learned Special Judge under NDPS Act, Raipur. The further direction which was prayed is for the CBI to submit a periodical progress report of the investigation to the Court and to monitor the same.

4. In the connected appeal, the challenge is to the order dated 15.09.2021 whereby the Criminal Revision Petition filed by the appellant herein, before the High Court assailing the legality and correctness of the order dated 14.07.2021 passed by the Special Judge under NDPS Act at Raipur in Special Case No.98/2020 whereby the appellants application filed under Section 227 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') was dismissed and charges were framed against the appellant under Section 29 read with Sections 22(b), 22(c), 25 and 27 of the NDPS Act, which was not interfered by the High Court.

5. The brief facts leading to the above appeals are that the appellant No.1 is accused of indulging in sale of psychotropic NDPS substance, due to which the prosecuting agency under the respondent No.1 has registered the FIRs No.232/2020 and 255/2020 and are proceeding in the matter as noted above.

The appellant No.1 claims to be innocent, while the appellant No.2 who is his father being agitated by such alleged illegal action by the prosecuting agency under the respondent No.1 had filed the online complaints dated 27.10.2020 and 06.11.2020 raising his concern and sought for action in that regard.

6. The appellants claim that they are residents of Mumbai and the appellant No.1 is a qualified automobile engineer, who is an income tax payee. The appellant No.2 is a businessman carrying on business of logistics, transportation, renting out vehicles etc. for the last 36 years in the name and style, M/s Buthello Travels at R/3, Mathur Estate, Premier Road, Kurla (W), Mumbai. The appellant No.1 was also taking care of the business of his father and as such was visiting the State of Odisha as also the State of Chhattisgarh in respect of contracts relating to the transportation of minerals. It is averred that appellant No.1 had accordingly travelled to Odisha and had booked room no.220 in Hotel Green Park, Talcher, District Angul, Odisha from 15.10.2020 to 20.10.2020. It is the case of the appellants that on 20.10.2020 at 13.00 hours, four unknown persons visited the said hotel in a white Innova car

with a broken front bumper, impersonating themselves as police officers. They contacted Shri Vijaya who is working as a receptionist and accordingly met the appellant No.1 in room No.220. The appellant No.1 was thereafter abducted and taken into the car and was driven to Raipur.

7. The appellant No.1 claims that while taking dinner at dhaba between Sambalpur and Sonipat he overheard the name of the four persons who had taken him to be, Pramod Behra, Sultan, Santosh and Ali, from their discussion. He also contends that the mobile phone was with the appellant No.1 and he made calls from his cell No. 8249518758. It is averred that after reaching Raipur at about 12:30 AM on 21.10.2020 the said four persons took the appellant No.1 to respondent No.5 where he was detained for some time and his cell phone as also laptop were taken. It is claimed that the appellant No.1 was thereafter kept in the lockup throughout the night without disclosing the reasons for such action and on 21.10.2020 about 19:15 hours, police Sub-inspector Shri Priyesh Mathew John lodged FIR against him, bearing No.232/2020 for an alleged offence under Section 22(b) of the NDPS Act. Thereafter

his name was also included in the earlier registered FIR No.255/2020 which is noted above.

8. In that background, the grievance put forth on behalf of the appellants is that the appellant No.1 though being a qualified citizen, who was travelling with regard to his business has been illegally abducted, detained and a case under NDPS has been foisted on him due to which online complaints were lodged by his father- appellant No.2. It is in that light, the appellants are seeking for the directions as prayed and noted above.

9. The respondents have filed their objection statement denying the allegations and also contending with regard to the involvement of the appellant for which he has been apprehended and is proceeded against in accordance with law.

10. In that background, we have heard Shri Shyam Divan and Shri Gopal Sankaranarayanan, learned senior counsel for the appellants, Dr. Abhishek Manu Singhvi, learned senior counsel for the State of Chhattisgarh as also the counsel for State of Odisha and perused the appeal papers.

11. At the threshold it is necessary to take note that though initially the petition filed before the High Court had included

the relief to quash the charge sheet and the further proceedings, considering that charges have been framed by the trial court and also detailed orders have been passed declining discharge of the appellant No.1, at present, the reliefs sought is essentially limited with regard to the direction to the CBI to conduct an investigation into the issue.

12. In that regard, the contention as noted is that, the FIR No.232/2020 is registered on 21.10.2020 alleging that at about 19:15 hours the appellant No.1 was apprehended by the Azad Chowk Police when the appellant No.1 was near Ashram Tiraha in front of Sulabh Complex Police Station, Azad Chowk, Raipur attempting to sell contraband and on apprehending 9.240 grams cocaine was recovered from him. It is contended by the appellants that such offence could not have been alleged against the appellant to have been committed in Raipur on 21.10.2020, when in fact the police personnel named Pramod Behra, Sultan, Santosh and Ali of Chhattisgarh Police had abducted and taken away the appellant No.1 from the hotel in Odisha on 20.10.2020 itself. As such, he was in their illegal custody at the point when it is alleged that he had indulged in committing the offence. The circumstances are referred to

claim that there is something more than what meets the eye. The concern expressed is that a citizen who is carrying on his lawful business activities in various states has been 'framed' and a case has been foisted, whereby the personal liberty has been taken away, which warrants a detailed investigation. It is contended that the situation which unfolded in Hotel Green Park on 20.10.2020 at about 1 PM would indicate that the said four persons acting on behalf of the Chhattisgarh Police had taken him away from the hotel. Subsequent thereto his name has been included in FIR No.255/2020 as well, though it was an earlier registered case.

13. The learned senior counsel for respondent No.1-State would contend that the allegations are unjustified. Pursuant to the registration of the FIR, an investigation has been conducted and the charge sheet has been filed. The contentions urged by the appellants are available to be put forth in defence, in the proceedings before the trial court where the charges have been framed and the trial is proceeding. Insofar as the allegation that he was abducted and taken away from the hotel, it is denied and contended that even though the police had gone to Odisha in connection with the earlier F.I.R., they were unable

to trace the appellant No.1 there, but he was subsequently found to be indulging in the illegal activity in Raipur itself when he was apprehended and proceedings have been initiated. It is contended that the claim for investigation by the CBI is without basis and the well laid down guidelines of this Court does not permit referring the investigation to CBI in every case where the accused makes an allegation against the law enforcing authorities.

14. Having noted the rival contentions, we have also perused the impugned order passed by the High Court while taking note of the plea put forth by the parties. In fact, the High Court having framed two points for its consideration, on the aspect relating to the transfer of the case to CBI as sought for, has considered it while answering point No.2. The guidelines as laid down by this Court has been referred to in detail before adverting to the facts and has thereafter declined the prayer for referring to an investigation by CBI. In that background, as noted, the case sought to be made out seeking for CBI investigation is on the allegation that the appellant No.1 has been illegally detained and thereafter was charged with a serious offence, though he is completely innocent. In

this regard, it is contended that the allegation of the appellant No.1 being in possession of 9.240 grams of cocaine on his person and that he was attempting to sell the same near Ashram Tihara in front of Sulabh Complex in Raipur on 21.10.2020, is a false case. It is to establish this aspect of the matter it is contended that the police personnel of respondent No.1-State of Chhattisgarh had illegally abducted him on the previous day itself i.e. on 20.10.2020 from the hotel in a different State where he was staying. According to the appellants, it is a foisted case against appellant No.1 with an illegal and ulterior motive and the matter requires a detailed investigation by the CBI.

15. The learned senior counsel for the appellants in order to buttress his contention with regard to the contradictory stand being taken by the respondents has sought to rely on the affidavit filed before this Court. In that regard, an affidavit filed by respondent Nos.1 to 5 before this Court, the counter affidavit filed by the respondent No.6-State of Odisha, as also the additional affidavit filed on behalf of respondent Nos.1 to 5 in reply to the affidavit filed by the respondent No.6 are relied upon. Though the specific averments contained in the affidavits

were placed before us and have been taken note of, by us, we do not propose to refer to each of the statements made therein to analyse the manner in which the learned senior counsel for the appellant has sought to highlight, which according to him contradicts the stand of State of Chhattisgarh. We have adopted this course since the consideration herein is the limited scope of this petition and it should not affect the rights of the parties in the pending criminal proceedings. Such a serious dispute on facts, in any event, is to be resolved based on evidence and not based on affidavits.

16. However, the limited aspect which we propose to note is that the affidavit filed by the respondent No.6-State of Odisha is essentially to explain the manner of consideration made by them in relation to FIR No.0027 dated 22.01.2021 lodged at Talcher Police Station, Angul District, Odisha which is pursuant to the complaint on behalf of the appellants. The said affidavit also refers to the investigation made relating to the online complaint. In the course of the said affidavit, reference has been made to the process of investigation during which they had visited the Green Park Hotel and recorded statements relating to the four persons having come to the hotel and

having introduced themselves as Chhattisgarh Police and asked them about the room number of the appellant No.1. The staff of the hotel had indicated that the appellant No.1 himself had stated that there is no problem and he had checked out after paying the bill. In reply to the said affidavit, the respondent Nos. 1 to 5 have sought to indicate that even as per the said affidavit, appellant No.1 himself had indicated that everything was alright and it is contended that even so far as the Police Officers mentioned by the appellants, they belong to a different department. The learned senior counsel for the State of Chhattisgarh in fact referred to the counter affidavit on behalf of the respondent Nos. 1 to 5 to clarify that the Police Officers of the Chhattisgarh Police having travelled to Odisha were not denied, in as much as, they have disclosed that a team of abled Police Officers had travelled to Odisha to look up for the appellant and his whereabouts but it was of no avail and they came back empty handed. It is therefore contended on behalf of the respondents that the appellant No.1 being a habitual offender was required to be investigated in relation to FIR No.255/2020. Though on information, an attempt was made to apprehend him in Odisha, the same was not

successful but he was found in Raipur itself the next day where he was indulging in the illegal activity when he was apprehended. Hence the incident in Green Park Hotel as put forth by the appellants is disputed. Whether these seriously disputed facts justifies the prayer seeking for investigation by CBI, is the question to be answered herein.

17. Having noted this aspect of the matter it is appropriate to refer to the decision in the case of ***State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors.*** (2010) 3 SCC 571 wherein it is held as hereunder:-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 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. 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 levelled 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 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 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.”

Also ***Mithilesh Kumar Singh vs. State of Rajasthan & Ors.***

(2015) 9 SCC 795 wherein it is held hereunder:-

“12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the

ultimate purpose of any investigation and who can do it better than an agency that is independent.

13. Having said that we need to remind ourselves that this Court has, in several diverse situations, exercised the power of transfer. In *Inder Singh v. State of Punjab* this Court transferred the investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in *R.S. Sodhi v. State of U.P.* investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, “would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter”.

14. Reference may also be made to the decision of this Court in *State of Punjab v. CBI* wherein this Court upheld the order transferring investigation from the State Police to CBI in connection with a sex scandal even when the High Court had commended the investigation conducted by the DIG and his team of officers. In *Subrata Chatteraj v. Union of India*, this Court directed transfer of the Chit Fund Scam in the States of West Bengal and Orissa from the State Police to CBI keeping in view the involvement of several influential persons holding high positions of power and influence or political clout.

15. Suffice it to say that transfers have been ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this 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 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. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.”

18. The above-noted decisions are in fact cited by the learned Senior Counsel for the appellants to contend that this Court should exercise its extraordinary power to refer to the matter to CBI in the instant facts. In that regard, it is also necessary to note that the High Court on the other hand has referred to the various decisions on the said aspect and has also taken into consideration the recent decision in the case of ***Arnab Ranjan Goswami vs. Union of India*** (2020) 14 SCC 12 wherein the entire aspect has been crystalized and this Court has held that the power to transfer an investigation must be used sparingly. The relevant portion reads as hereunder:-

“52. In assessing the contention for the transfer of the investigation to CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a

conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances” comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.”

19. Hence it is clear that though there is no inflexible guideline or a straightjacket formula laid down, the power to transfer the investigation is an extraordinary power. It is to be used very sparingly and in an exceptional circumstance where the Court on appreciating the facts and circumstance arrives at the conclusion that there is no other option of securing a fair trial without the intervention and investigation by the CBI or such other specialized investigating agency which has the expertise.

20. In that background, even if the rival contentions are taken note, we do not find that there is any issue of public

importance which requires to be unearthed by an investigation to be conducted by the CBI. Even from the facts noted above and the allegations made against the police, though we are sensitive to the sentiment of the appellants herein, the contention ultimately is that the offence alleged against him to have been committed on 21.10.2020 could not have been committed by him inasmuch as he had been abducted from a different State and was already in the illegal detention of the police on 20.10.2020 itself. This essentially would be the defence in the criminal trial. As already noted, the charges have been framed and the evidence is being tendered. Insofar as the allegation that the said persons namely Pramod Behra, Sultan, Santosh and Ali had gone to Odisha and had illegally abducted him, from the very details furnished by the appellants themselves, it is noted that the High Court had through the order dated 17.03.2022 in a collateral proceeding directed that the five officers stated in the said order be called as witnesses for examination and cross-examination.

21. In that view, even though it is contended that the CCTV footage would be relevant to establish the presence of the said four persons in the hotel at Odisha and the same has not been

seized by the police, the fact remains that even from the same what is sought to be established is that the said four persons had abducted the appellant No.1. In the course of trial the five persons specified by the appellants would now be available to be cross-examined and any other orders in that regard can be sought in the pending proceedings. That apart, on the other aspects also since the trial is under progress, the appellant No.1 would be entitled to put forth his case when the statement under Section 313 of CrPC is recorded and also he would be entitled to tender evidence if necessary. The case of the appellant is clear as to the reason why he contends that the appellant No.1 cannot be held to have committed the offence as registered in FIR No.232/2020 based on which his name has also been included in an earlier FIR No.255/2020. These are matters which could be established through evidence in the trial before the Competent Court in the judicial proceedings wherein all these matters would be appreciated and a conclusion would be reached. In that regard, the appellants in any event would have the further remedy of the legal course which is available to them if they are dissatisfied. Further, insofar as the complaint said to have been lodged by

the appellant No.2, from the affidavit as filed by the respondent No.6, the nature of investigation carried out by them has been stated. In that regard also the appellant No.2 would have the legal remedy in accordance with law.

22. In addition, in the said process of the judicial proceedings if the appellants bring out the fact that the appellant No.1 who was not involved, had been framed up and a case was foisted, the appellants would still have the legal remedy to take action for malicious prosecution, loss of reputation, action against involved persons, compensation and for such other relief in that regard. Therefore, when the issue raised is only a matter of evidence to be considered in the judicial proceedings to arrive at a conclusion, we are not convinced that in a case of the present nature, a direction to the CBI to hold an investigation would be justified nor is it required at this juncture when the trial in the judicial proceedings has progressed unhindered. Hence to that extent, all contentions of the appellants are kept open. For the very reason, at this stage either quashing or discharge would also not arise. All contentions are left open to be urged before the trial court.

23. For all the aforesated reasons we see no reason to interfere with orders impugned in these appeals. The appeals are accordingly dismissed with no order as to costs.

24. Pending applications if any, shall stand disposed of.

.....**J.**
(A. S. BOPANNA)

.....**J.**
(AHSANUDDIN AMANULLAH)

New Delhi;
February 28, 2023