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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
TRANSFER PETITION (CRIMINAL) NO. 225 of 2020

IN THE MATTER OF:

Rhea Chakraborty Petitioner

//Versus//

State of Bihar & Anr Respondents

REPLY ON BEHALF OF THE STATE OF BIHAR

I, Upendra Sharma, aged about 36 years, Son of Shri Chandra Bhushan Sharma R/o SSP Residence, M/6, Strand Road, Patna do hereby solemnly affirm and state as under:-

1. That I am presently posted as Senior Superintendent of Police, Patna and I have been duly authorized in the above mentioned case and I am conversant with the facts and circumstances of the case on perusal of official record and competent to swear this affidavit on behalf of the State of Bihar.
2. That I have gone through the contents of the present Transfer Petition along with List of Dates and in reply thereto the deponent seeks to file this short reply Affidavit

in order to oppose the averments and contentions of the Transfer Petition.

3. That, at the very outset, the deponent denies each and every averment of the Transfer Petition, except those, which have been specifically admitted hereinafter.
4. The present affidavit is being filed by the deponent pursuant to order dated 05.08.2020 passed by this Hon'ble to file reply.

MAINTAINABILITY OF TRANSFER PETITION

5. It is most respectfully submitted that the transfer petition filed by the petitioner u/s 406 of Cr.P.C is premature, misconceived and non-maintainable. The provision of section 406 Cr.P.C has been extracted hereunder:

“ 406. Power of Supreme Court to transfer cases and appeals.

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal

Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney- General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney- General of India or the Advocate- General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate In the circumstances of the case.

6. That from the bare perusal of the provision of section 406 Cr.P.C, it transpires that the aforesaid section provides for transfer of “cases and appeals” from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or

superior jurisdiction subordinate to another High Court. It is apposite to mention here that the words “case or appeal” used in section 406 Cr.P.C has been used to mean trial and appeals pending before one court may be transferred to another court to secure the ends of justice. The object of section 406 Cr.P.C has never been to transfer investigation from one state to another state. Insofar as the present case is concerned, the FIR has been registered on 25.07.2020 and the case is still at the primary stage of investigation. Hence, the transfer petition filed by the petitioner u/s 406 Cr.P.C is not maintainable and the same is liable to be dismissed at the very outset.

7. This Hon’ble Supreme Court in **Ram Chander Singh Sagar (Dr.) Vs. the State of Tamilnadu & Anr reported (1978) 2 SCC 35** while dealing with scope of transfer of investigation has held that there is no power in the Supreme Court to transfer case during investigation stage. The relevant portion of the judgment has been extracted as hereunder:

“The Code of Criminal Procedure clothes this Court with power under Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High

Court to another High Court or to a Court subordinate thereto. But, it does not clothe this Court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is forwarded to a Court. The application before us stems from a misconception about the scope of Section 406”.

8. In *Maneka Gandhi Vs. Rani Jethmalani* reported in (1979) 4 SCC 167, this Hon’ble Court has held that “*..normally the complainant has the right to chose any court having jurisdiction and the accused cannot dictate where the case against him should be tried*”
9. It is most respectfully submitted that the law relating to transfer of criminal proceedings has been well settled by catena of judgment passed by this Hon’ble Court, wherein this Hon’ble Court has repeatedly held that the mere apprehension of bias is no ground to transfer proceedings. In the case of **Nahar Singh Yadav Vs. Union of India** reported in (2011) 1 SCC 307, this Hon’ble Court has held that power under section 406 Cr.P.C has to be used sparingly and with great circumspection. It was further held that prayer for transfer should be allowed only when

there is well substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias.

10. It is most respectfully submitted that the petitioner has not mentioned anything to substantiate bias except for the general and bald allegation that the complaint has been lost due to influence of the informant of the case. Therefore, in the absence of any substantiated bias, merely on the apprehension of bias cannot *ipso facto* be a ground for transfer of criminal proceedings.

FACTUAL BACKGROUND OF THE CASE

11. The deceased namely Sushant Singh Rajput, who belonged to Patna, Bihar, was a famous bollywood actor who has acted in various movies. The said actor allegedly committed suicide on 14.06.2020 at his residence in Mumbai. On the same date, i.e. Mumbai police reached the place of occurrence and started investigating a case of unnatural death u/s 174 Cr.P.C
12. That on 25.07.2020, the father of the deceased Mr. Krishna Kishore Singh gave a written complaint before the SHO, Rajeev Nagar P.S stating that in the year 2019, the petitioner Rhea Chakraborty came in contact with

deceased actor with a sole intention to grab crores of rupees which was hard money of the deceased actor. It is further stated that the petitioner and her relative namely Indrajeet Chakraborty, Sandhya Chakraborty, Shovik Chakraborty used to completely interfere in the life of the deceased actor. The petitioner and her relative desperately attempting to give impression to the deceased actor that he is suffering from mental illness for which he required treatment. The petitioner also took the deceased to her house where she started giving him overdose of medicine. It is further stated in the complaint that the petitioner also took all belongings of the deceased into her possession and made every attempt to keep deceased away from his family. The petitioner also took her bank account details and started using the bank account according to her wishes. The deceased actor wanted to leave film industry and do organic farming in Coorg, however, the petitioner started blackmailing the deceased actor by saying that she will give his medical report to media and prove him mad after which he will not get any kind of work. On 08.06.2020, the petitioner took away cash, jewellery, laptop, credit card important documents with her and left

the house of deceased actor. The deceased actor informed her sister that the petitioner will falsely implicate him, if the deceased did not pay heed to her. On 14.06.2020, the deceased actor committed suicide due to torture by the petitioner. It is also stated that doctors who were treating Sushant Singh Rajput were also involved in the conspiracy with the petitioner. It is further stated by the informant that there was Rs. 17 Crore in the Kotak Bank account of the deceased an year ago, however, Rs. 15 Crore was transferred to accounts of person not connected with the deceased actor. On the basis of of written complaint of Mr. Krishna Kishore Singh, father of the deceased actor Sushant Singh Rajput, an FIR bearing Rajeev nagar P.S Case No. 241 of 2020 was registered u/s 341, 342, 380, 406, 420, 306, 506 and 120B IPC against Rhea Chakraborty, Indrajit Chakraborty, Sandhya Chakraborty, Shaumik Chakraborty, Samiyal Miranda and other unknown persons.

13. That in compliance with provision of section 157 Cr.P.C, the copy of the aforesaid FIR was sent to the court of Ld. Additional Chief Judicial Magistrate-III, Patna Sadar, Patna. Thereafter, a special investigation team comprising

four members was formed to investigate the offence. In order to conduct thorough probe, the SIT went to Mumbai on 27.07.2020 and has been investigating the case since then. On 02.08.2020, in order to expedite the investigation and to conduct holistic probe and to properly coordinate with the SIT in the present case, Mr. Vinay Tiwary, the City Superintendent of Police, Patna (Central) was also sent to Mumbai. It is apposite to mention here that SSP Patna had already given prior information to the DCP Zone-9, Bandra, Mumbai about Mr. Vinay Tiwari reaching mumbai vide letter no 4471/Conf dt. 01.08.2020.

NON-COOPERTATION BY THE MUMBAI POLICE

- 14.** That the members of SIT who reached Mumbai requested the concerned police officer to provide necessary support to carry out the investigation, however, Mumbai Police refused to co-operate and provide necessary support for the reasons best known to them. Further, Mr. Vinay Tiwary, the City Superintendent of Police, Patna (Central) was forcibly quarantined (on 02.08.2020 late night) by the BMC despite the fact that he was on official duty in connection with investigation of offence subject matter of the present transfer petition.

- 15.** It is most respectfully submitted that the forcible quarantine of the IPS officer Mr. Vinay Tiwary is nothing but a result of afterthought on part of Mumbai Police aimed at obstructing the investigation by the Patna Police which is amply clear from the fact that when the four members of the SIT went to Mumbai, they were not quarantined. However, when IPS officer Mr. Vinay Tiwary reached Mumbai, he was forcibly quarantined by the BMC. The aforesaid fact casts a serious aspersion on the role of Mumbai Police who is apparently siding with the petitioner for the reasons best known to them.
- 16.** The non-cooperation by the Mumbai Police with the Patna Police, who is already there in Mumbai for a probe, is very much clear from the fact that the Mumbai Police has not supplied any documents such as Inquest Report, Post Mortem report, FSL report, CCTV footage etc. to the Patna Police despite several requests made by the latter. It is most respectfully submitted that the Mumbai Police has been making lame excuses that only Mumbai Police has jurisdiction to investigate the offence which it has already been investigating despite the fact that no cognizable case

has been registered in Mumbai in connection with death of the deceased actor Sushant Singh Rajput.

17. It is apposite to mention here that the subject matter of investigation before the Mumbai Police is only a case of unnatural death u/s 174 Cr.P.C which has a very limited scope as has been held by this Hon'ble Court in Manoj Kumar Sharma Vs. the State of Chhatishgarh reported in (2016) 9 SCC 1. In Manoj Kumar case (supra), this Hon'ble Court has held that the purpose of investigation under section 174 Cr.P.C is only to ascertain if the death is unnatural or not and the same cannot be categorized under information relating to commission of cognizable offence within the meaning and import of section 154 Cr.P.C. The relevant portion of judgment has been extracted as hereunder:

“19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or

under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174. This section is intended to apply to cases in which an inquest is necessary. The proceedings under this section should be kept more distinct from the proceedings taken on the complaint. Whereas the starting point of the powers of the police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing. As such,

the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. The purpose of registering FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report and only after registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. In George v. State of Kerala [George v. State of Kerala, (1998) 4 SCC 605 : 1998 SCC (Cri) 1232] , it has been held that the investigating officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. A similar view has been taken in Suresh Rai v. State of Bihar.

20. *In this view of the matter, Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of “inquiries” in cases of accidental or suspicious deaths and are entirely distinct from the*

“investigation” under Section 157 of the Code wherein if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case. In the case on hand, an inquiry under Section 174 of the Code was convened initially in order to ascertain whether the death is natural or unnatural. The learned Senior Counsel for the appellants claims that the earlier information regarding unnatural death amounted to FIR under Section 154 of the Code which was investigated by the police and thereafter the case was closed.

On a careful scrutiny of materials on record, the inquiry which was conducted for the purpose of ascertaining whether the death is natural or unnatural cannot be categorised under information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code...”

In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with Police Station Mulana neither any investigation nor any report under Section 173 of the Code was submitted. Therefore, challenge to the impugned FIR under Crime No. 194 of 2005 registered by Police Station Bhilai Nagar could not be assailed on the ground that it was the second FIR in the garb of which investigation or fresh investigation of the same incident was initiated.

- 18.** That on 03.08.2020, the Inspector General of Police, Patna Range wrote a letter vide letter no 1357/Conf dt. 03.08.2020 to the Commissioner, Brihanmumbai Mahanagar Corporation (BMC) thereby requesting him to release Mr. Vinay Tiwary from quarantine on the ground that detention of Mr. Vinay Tiwari in quarantine center is affecting the probe in the present matter, however, the BMC flatly refused vide letter no AMC/P/2358 dt.

04.08.2020 to release the aforesaid IPS officer from quarantine center. It is submitted that inspite of the observation made by this Hon'ble Court during course of hearing on 05.08.2020 to the effect that the confinement of the police officer does not send out a good message, the BMC has refused to accept the request for release of the IPS Officer from quarantine center. The aforesaid act on part of the BMC is contemptuous.

19. That even without little support from the Mumbai Police, the members of SIT carried out investigation wherein various witnesses have been examined and the Kotak bank account details of the deceased actor has been verified, the details whereof has been mentioned in the FIR with regard to siphoning of money by the petitioner and other accused persons.

20. That after reaching Mumbai, the Patna Police has examined following witnesses:

S.no	Details of Witness	Relevance to the case
1	Mahesh Shetty s/o Krishna Shetty Age 46 yrs	Close friend of deceased

	r/o A/501, Winchester Appt, 2nd Cross Lane, Lokhandwala, Mumabai	
2	Ashok Kumar Khasu Age-32 s/o Dal Bahadur Khasu, r/o Shiv Gali, Versova, Andheri, Mumbai	Previous cook of deceased
3	Mitu Singh Age-40 w/o Amritraj Singh r/o B-21, Rajnigandha Appt, Goregaon, Mumbai	Elder sister of deceased
4	Ankita Lokhande Age-33 d/o Shashikant Lokhande r/o 403/404, Interface	Previous girlfriend of deceased

	Height 'B', Malad West, Mumbai	
5	Dr. Kersi Chavda Age-62 s/o Bomi Chavda r/o 202, Srinathji Appt, 16 Cross road, Khar West, Bandra, Mumbai	Psychiatrist and doctor of deceased
6	Harsh Patel Age-32 s/o Bharat Patel r/o Lodha Amara, Wing No 13, Flat 1701, K M Sheth road, Thane west, Mumbai	Relationship manager of deceased in Kotak Mahindra Bank
7	Rumi Zafri Age-55 s/o Quresh Ahmed Siddiqui r/o 305/306 Excellence Appt, Near Mahda	Writer and Director of upcoming movie of deceased

	Telephone Exchange, SVP Nagar, Andheri West, Mumbai	
8	Kushal Javari s/o Janak Javari r/o Hilcrest Building, Road no 16, Bandra West, Mumbai	Friend of deceased since struggle times, Also he is TV serial director of first two serials of deceased
9	Neeraj Singh Age- 22 s/o Gagan Singh r/o Mahendra Nagar, Road no 8, Mahakali PS, Kanchanpur, Nepal At present Mumbai	Present sweeper of deceased
10	Mukesh Chabbra Age-40 s/o Tarachand Chabbra r/o A 2802, Oberoi Spring, Andheri	Director of latest film of deceased (Dil Bechara)

	West, Mumbai	
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- 21.** That on the basis of preliminary investigation conducted by the Patna Police, it surfaced that the various facts and evidences surrounding the present case may be obtained in Mumbai or rest of India and **given the sensitivity of the matter and the inter-state ramification and presence of most of the accused in Mumbai**, the Director General of Police, Bihar requested the Govt. of Bihar to recommend the investigation of the case to Central Bureau of Investigation.
- 22.** In exercise of power conferred by section 6 of the Delhi Police Establishment Act, 1946, the Governor of Bihar vide notification bearing memo no. 5101 dated 04.08.2020 recommended the investigation of the case i.e. FIR NO. 241/2020, dated 25.07.2020, registered with Rajeev Nagar P.S (Patna) u/s 341, 342, 380, 406, 420, 306, 506, 120B IPC to the Central Bureau of Investigation. The aforesaid notification has been published in official gazette of the State of Bihar on 04.08.2020 vide Gazette notification No. 454. A true copy of the Gazette Notification dated

04.08.2020 published in Bihar Gazette is annexed herewith and marked as **ANNEXURE-C/1 (Pages 24)**

- 23.** That after receipt of the recommendation of the Govt. of Bihar for investigation of the case by the CBI, the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Personnel, Govt. of India has accepted the recommendation of the Govt. of Bihar vide notification contained in File No. 226/20/2020-AVD-II dated 05.08.2020. Hence, as a result of the aforesaid notification, the investigation of the case has now been taken over by the CBI. A true typed copy of the notification dated 05.08.2020 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Personnel, Govt. of India is annexed herewith and marked as **ANNEXURE-C/2 (Pages 25)**

JURISDICTION AT PATNA

- 24.** It is most respectfully submitted that in the present case, the Patna Police has jurisdiction to register the FIR and investigate the same as per the law laid down by the constitution bench of this Hon'ble Court in Lalita Kumari Vs. the State of Uttar Pradesh reported in (2014) 2 SCC 1. As per the law laid down in Lalita Kumari case (supra),

this Hon'ble Court has held that if any information is given with regard to commission of cognizable offence, it is mandatory on part of the station house officer to register the FIR and investigate the case.

- 25.** The submission of the petitioner that the entire cause of action arose in Mumbai and the State of Bihar has no jurisdiction to register FIR is liable to be rejected in view of the provisions contained under section 179 Cr.P.C. The provision of section 179 Cr.P.C has been extracted hereunder:

179. Offence triable where act is done or consequence ensues.-

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

- 26.** Therefore what transpires from the bare perusal of section 179 Cr.P.C is that the offence can be tried either at the place where the offence has been committed or the consequence ensues. It is most respectfully submitted that in the present case the victim is the informant Mr. Krishna

Kishore Singh who has lost his young, vibrant son due to act committed by the accused persons including the petitioner herein. Hence, the Patna Police has jurisdiction to register the FIR and the court at Patna has jurisdiction to try the offence as mentioned in the FIR No. 241/2020 registered with Rajeev Nagar P.S (Patna).

27. It is also a settled proposition of law that the concept of cause of action as understood in civil proceedings has no rigid application in criminal proceedings and the same cannot be mechanically and uniformly applied in the criminal proceedings. Hence, the provisions as embodied under section 177 Cr.P.C is only a general rule which is subject to exception engrafted under section 178 and 179 Cr.P.C.

28. In **Lee Kun Hee Vs. State of UP reported in (2012) 3 SCC 132**, while dealing with provisions of section 177, 178 and 179 Cr.P.C, this Hon'ble Court has held that “..even the place wherein the consequence of criminal act

ensues, would be relevant to determine the court of competent jurisdiction.

Upendra K.S. Sharma
DEPONENT 6/8/20.

VERIFICATION

I say that the contents of the above reply affidavit are true and correct as per my personal knowledge, no part of it is false and nothing material has been concealed there from.

Verified at _____ on this _____ day of August
, 2020.

Upendra K.S. Sharma
DEPONENT 6/8/20.



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

13 श्रावण 1942 (श0)

(सं0 पटना 454) पटना, मंगलवार, 4 अगस्त 2020

गृह विभाग
(आरक्षी शाखा)

अधिसूचना
4 अगस्त 2020

सं0 09/सी0बी0आई0-80-09/2020-गृ0आ0-5101—दिल्ली विशेष पुलिस स्थापना अधिनियम-1946 (1946 का अधिनियम-25) की धारा-6 में प्रदत्त शक्तियों का प्रयोग करते हुए बिहार के राज्यपाल, राजीव नगर (जिला-पटना), थाना कांड संख्या-241/2020, दिनांक 25.07.2020, धारा-341/342/380/406/420/306/506/120(बी) भा0द0वि0, जो बॉलीवुड कलाकार सुशांत सिंह राजपूत की मृत्यु से संबंधित है, के अनुसंधान/पर्यवेक्षण एवं अन्य अपेक्षित कार्रवाई के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों को समूचे बिहार राज्य एवं मामले से जुड़े अन्य स्थानों में शक्तियों एवं अधिकारिता के प्रयोग के लिए सहमति देते हैं।

बिहार-राज्यपाल के आदेश से,
सुनील कुमार,
सरकार के विशेष सचिव।

The 4th August 2020

No.9/C.B.I-80-09/2020 HP-5101--In exercise of the powers conferred under section-6 of the Delhi Police Establishment Act, 1946 (Act 25 of 1946), the Governor of Bihar is pleased to accord his consent to exercise of powers and jurisdiction to the whole of Bihar and other places related to the Case to the members of Delhi Special Police Establishment to investigate/supervise and inquire into the Rajiv Nagar (District-Patna) P.S. Case No-241/2020, Dated-25-07-2020, Section-341/342/380/406/420/306/506/120(B) I.P.C. which are related to Death of Bollywood Actor Shushant Singh Rajput.

By order of the Governor of Bihar,
Sunil Kumar,
Special Secretary to Government.

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।
बिहार गजट (असाधारण) 454-571+10-डी0टी0पी0।
Website: <http://egazette.bih.nic.in>

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi, dated 05.08.2020

NOTIFICATION

S.O. In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government, with the consent of the State Government of Bihar, issued vide Home Department (Police Branch) Notification No.9/C.B.1-80-09/2020 HP-5101/Patna, Dated 4th August, 2020, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Bihar for investigation into the Rajiv Nagar Police Station, District Patna, Case No 241/2020 dated-25.07.2020 under sections 341, 342, 380, 406, 420, 306, 506 and 120 B I.P.C. relating to the death of Bollywood actor Shushant Singh Rajput, and any attempt, abetment, and conspiracy, in relation to or in connection with such offence(s) and / or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/20/2020-AVD-II]



(S.P.R. Tripathi)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

To

The Manager,
Govt. of India Press,
Mayapuri, Ring Road,
New Delhi- 110064.

F.No. 228/20/2020-AVD-II

New Delhi dated 05.08.2020

Copy To

- (i) The Chief Secretary, Government of Bihar, Old Secretariat, Patna-800015
- (ii) The Director, Central Bureau of Investigation (CBI), CGO Complex, New Delhi.
- (iii) Director of Prosecution, Central Bureau of Investigation (CBI), CGO complex, New Delhi.
- (iv) Guard File



(S.P.R. Tripathi)

Under Secretary to the Government of India