IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 14th OF OCTOBER, 2024

WRIT PETITION No. 29556 of 2024

AVANISH K. ARJARIA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:
Shri Ravindra Kumar Gupta – Advocate for the petitioners.
Shri Swapnil Ganguly – Deputy Advocate General for the respondents/State.

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O R D E R

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

1. To issue the writ of Mandamus & Quo-warranto. To direct the respondent No.3 or their subordinate Thana not to arrest the petitioner/ stay of arrest/ on cohesive action till disposal of this petition or during investigation as the petitioner are ready to cooperate to investigating agency. and/or;
2. To direct to take action on complaint made to Respondent no 3 dated 29.7.2024 (P/9) and 29.7.2024 (P/10) by the petitioner with other ageents and employees/ Subhidha kendra Manager and/or;
3. To direct to formulate SIT/ STF under this Hon’ble Court for further investigation into the matter or after reopening the case or to transfer to CBI for the same if deems fit and/or;

4. To direct to safeguard the investors and their deposits, all accounts in Banks/ Financial institutions/ Cooperative Bank of Respondent no 6 to 12 to be seized (requisite amount to the extent of, to cover public money/ deposit) with immediate effect of till completion of hearing the petition and/or;
5. To direct in the called upon to explain the steps taken or to be taken, into the matter from Respondent no 1 to 5 on the complaints of the petitioner; and to monitor the remedies and steps taken by respondent time to time, covering the whole issues as raised in this petition and/or;
6. To direct to take action/ to investigate/ respondent no 5 under Multi State Cooperative Societies Act 2002 and to submit their report;
7. Any other order/ or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

2. It is the case of petitioners that petitioners had acted as Agents of the company, which had de-frauded multiple innocent investors. One of the investor, who was also a Journalist, made a complaint to the Police, but no action was taken and accordingly, he approached this Court by filing Writ Petition No.17126/2021 (PIL), which is pending and interim directions have been issued to Union of India. State has filed reply in favour of the depositors, but instead of arresting the main accused (according to petitioners, respondents No.6 to 12), police is harassing and arresting employees and Agents of the company including the petitioners. Petitioners approached Superintendent of Police, Tikamgarh and filed a complaint, but instead of making proper investigation, Police is out and out to arrest the petitioners, who had merely acted as Agents of the company, which has defrauded innocent investors and

accordingly, this petition has been filed seeking the reliefs, as already reproduced in the earlier part of the order.

3. Heard learned counsel for the petitioners.

4. The present petition has been filed in a most casual manner. Copies of the FIRs which have been registered against the petitioners have not been placed on record. One of the reliefs sought by the petitioners is to issue a writ of mandamus and quo warranto.

5. Accordingly, counsel for petitioners was directed to address that who is the respondent who does not hold the qualification to occupy the public office.

6. It is submitted by counsel for petitioners that writ of quo warranto be issued against Superintendent of Police, Tikamgarh.

7. Accordingly, counsel for petitioners was directed to point out from the petition as to how the Superintendent of Police, Tikamgarh is not eligible to hold the office of Superintendent of Police, Tikamgarh.

8. It is submitted by counsel for petitioners that since the Superintendent of Police, Tikamgarh is not investigating the matter in proper manner, therefore a writ of quo warranto be issued against him.

9. It appears that counsel for petitioners does not know the meaning of writ of quo warranto.

10. After realizing his mistake, it was fairly conceded by counsel for petitioners that writ of quo warranto has been wrongly prayed against Superintendent of Police, Tikamgarh. However, it was submitted that a wrong prayer was made under an impression that if a person is not effectively discharging his duty then writ of quo warranto can be issued.

11. Since counsel for petitioners is accepting his mistake in praying

for a writ of quo warranto against the Superintendent of Police, Tikamgarh, therefore no further discussion is required on this issue, but one thing is clear that prayer for issuance of writ of quo warranto against Superintendent of Police, Tikamgarh is misconceived and there is no allegation that the person holding the post of Superintendent of Police, Tikamgarh is not eligible to hold the said post. Even the said person has not been impleaded as a party in his personal capacity.

12. Faced with such a situation, counsel for petitioners seeks withdrawal of prayer for issuance of writ of quo warranto.

13. Accordingly, prayer for issuance of writ of quo warranto is **dismissed as withdrawn.**

14. As already pointed out, petitioners have not filed copies of FIRs in which they are wanted by the Police. Admittedly, certain companies which were floated in violation of law of the land and without permission from the Reserve Bank of India to carry out the banking activities, collected huge money from the innocent investors and thereafter ran away. It was fairly conceded by counsel for petitioners that petitioners were agents of such companies and apart from salary they have also received commissions for the investments done by innocent investors on the persuasion by the petitioners.

15. Since petitioners had also persuaded the innocent investors to invest their hard earned money, therefore it cannot be said that they have not committed any offence.

16. So far as the prayer for a direction to Police not to arrest the petitioners is concerned, no such relief can be granted.

17. The Supreme Court in the case of **Neeharika Infrastructure**

Private Limited Vs. State of Maharashtra and Others reported in **(2021) 19 SCC 401** has held as under:-

> "**23.** So far as the order of not to arrest and/or "no coercive steps" till the final report/charge-sheet is filed and/or during the course of investigation or not to arrest till the investigation is completed, passed while dismissing the quashing petitions under Section 482CrPC and/or under Article 226 of the Constitution of India and having opined that no case is made out to quash the FIR/complaint is concerned, the same is wholly impermissible.
> **24.** This Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142], as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482CrPC. In the aforesaid case before this Court, the High Court dismissed [*Habib Abdullah Jeelani* v. *State of Telangana*, 2014 SCC OnLine Hyd 1299] the petition filed under Section 482CrPC for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438CrPC, albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really

inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

25. In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 CrPC to the effect that if the petitioner-accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are dehors the powers conferred under Section 438CrPC. That thereafter, this Court in para 25 has observed as under : (*Habib Abdullah Jeelani case* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] , SCC p. 794)

> "*25*. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mind that the culture of adjudication is stabilised when intellectual discipline is maintained and

> further when such discipline constantly keeps guard on the mind."
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> **26.** We are at pains to note that despite the law laid down by this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142], deprecating such orders passed by the High Courts of *not to arrest* during the pendency of the investigation, even when the quashing petitions under Section 482CrPC or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice."

18. It is next contended by counsel for petitioners that Police may be directed to investigate the matter freely and fairly or else, SIT, STF may be constituted who should investigate the matter or the matter may be transferred to CBI.

19. When specific question was put to counsel for petitioners that whether accused has a right to file a petition for direction to the investigating agency to investigate the matter as per the wishes of the petitioners or not, then it was submitted by counsel for the petitioners that this issue is not involved in the present case.

20. Whenever a query is put by the Court, then it is with a solitary intention to give an opportunity to the counsel to meet out the legal or factual provisions involved in the case. If a Lawyer is not ready to answer that query, then petitioners have to face the consequences. Even otherwise, an Advocate who has been engaged by the litigant is supposed to be ready with all the legal provisions of law and he cannot

arrogantly submit that since according to him any particular issue is not involved in the case, therefore he is not supposed to give reply to said query.

21. Be that whatever it may be.

22. The moot question for consideration is as to whether this Court can direct for change of investigating agency or can allow the accused to dictate its terms to Police to investigate the matter in a particular manner or not? and;

Whether accused has any right to dictate as to how investigating agency should investigate the matter?

23. In view of the admitted facts that the petitioners were agents of the companies who have defrauded multiple innocent investors, *prima facie* case is made out against them.

24. The Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

> "23. After having given our anxious consideration to the rival submissions and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:
> 23.1. (i) Should the investigating agency be changed at the behest of the named five accused?
> 23.2. (ii) If the answer to Point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?
> 23.3. (iii) If the answer to Questions (i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or

directing the court-monitored investigation by an independent investigating agency?

23.4. (iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?

24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)

> "64. … It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."
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> (emphasis supplied)

25. Again in Sanjiv Rajendra Bhatt v. Union of India, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)

> "68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha, Mayawati v. Union of India, Dinubhai Boghabhai Solanki v. State of Gujarat, CBI v. Rajesh Gandhi, CCI v. SAIL and Janata Dal v. H.S. Chowdhary."
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> (emphasis supplied)

26. Recently, a three-Judge Bench of this Court in E. Sivakumar v. Union of India, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

> "10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly

considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. This Court in Divine Retreat Centre v. State of Kerala, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.13 In paragraph 70 of the said decision, the Constitution Bench observed thus:

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by

> Articles 32 13 (2010) 3 SCC 571 38 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 the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This 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 the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39 Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing

> investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal 40 remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.
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> 30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.....”

25. The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat**, reported in **(2014) 4 SCC 626** has held as under:-

> **“50.** In *W.N. Chadha* [*Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , the High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing

the order rogatory, on the application of a named accused in the FIR, Mr W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows: (SCC pp. 290-91 & 293, paras 89, 92 & 98)

> "*89*. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.
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> *92*. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are

> various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.
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> *98*. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

51. In *Rajesh Gandhi case* [*CBI* v. *Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , this Court again reiterated the law as follows: (SCC pp. 256-57, para 8)

> "*8*. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should

> investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. … There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) CrPC, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

The aforesaid observations would clearly support the course adopted by the High Court in this matter. We have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It was only when the High Court was of the opinion that even further investigation was not impartial, it was transferred to CBI.

52. Again in *Sri Bhagwan Samardha* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court observed as follows: (SCC pp. 742-43, paras 10-11)

> "*10*. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang* v. *State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] . The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
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> *11*. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."

These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by CBI.

53. We had earlier noticed that the High Court had come 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. The legal position has been reiterated by this Court in *Narender G. Goel* [*Narender G. Goel* v. *State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] : (SCC pp. 68-69, paras 11-13)

> "*11*. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] this Court observed: (SCC p. 743, para 11)
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> '*11*. … There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.'
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> *12*. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.
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> *13*. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter."

26. This Court in the case of **Prabal Dogra vs. Superintendent of Police, Gwalior and State of M.P.** by order dated **30.11.2017** passed in **M.Cr.C.No.10446/2017** has held that accused has no say in the matter of investigation.

27. Therefore, it is clear that the petitioners who are accused in certain offences have no right to seek either change of investigating agency or have no right to seek direction to investigating agency to investigate the matter in accordance with the wishes of the accused.

28. Furthermore, the Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others**, reported in **(2014) 2 SCC 532** has held as under:-

> "38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.
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> 39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such "Court-directed" or "Court-

> monitored" cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression "Court-monitored" has been interchangeably used with "Court-supervised investigation" Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."

29. Thus, it is clear that this Court in exercise of power under Article 226 of Constitution of India cannot supervise the investigation and any direction to the Police to investigate the matter in a particular manner would certainly come under the definition of supervision which is not permissible under the law.

30. It is next contended by counsel for petitioners that the offence was committed by the Company, however Police is not taking any action against the owners of the said Company and is harassing the petitioners.

31. Whether the owners of the Company have been arrayed as an accused or not is not an important issue because once this Court has come to a conclusion that petitioners are also guilty of persuading the innocent investors to invest their hard earned money in bogus and fake Company, then they cannot run away from their criminal liability specifically when they had received commission in lieu of investments got done by the petitioners from the innocent investors.

32. Furthermore, an accused cannot be discharged or acquitted merely on the ground that some more persons who had also committed offence have not been arrayed as accused. Furthermore, if the charge-sheet is filed by leaving certain other persons who have also committed offence, then the Court has a jurisdiction to summon additional accused in exercise of power under Section 319 of Cr.P.C. (358 of BNSS, 2023)/ 190 of Cr.P.C (210 of BNSS, 2023).

33. Furthermore, investigation cannot be transferred to CBI just on the saying of the petitioners. No exceptional circumstances have been pointed out by the petitioners to transfer the investigation to CBI. Furthermore, as already held, matter cannot be transferred to CBI on the saying of the accused.

34. So far as the prayer for clubbing this petition along with W.P. No.17126/2021 (PIL) is concerned, the same is misconceived.

35. According to the petitioners, said PIL has been filed by the investor complaining against the Company/ accused and therefore,

subject matter of the said PIL is completely different from the subject matter of the present petition.

36. Accordingly, no case is made out warranting interference.

37. Petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

S.M.