

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT: THE HON'BLE JUSTICE JAY SENGUPTA

WPA 703 of 2024

PADMA MONDAL

... PETITIONER

VS.

THE STATE OF WEST BENGAL & OTHERS

... RESPONDENTS

For the petitioner : Mr. Billwadal Bhattacharyya, Sr. Adv.
Ms. Sagnika Banerjee

For the CBI : Mr. Amajit De
Ms. Hasi Saha

For the State : Mr. Amitesh Banerjee, Sr. Standing Counsel
Ms. Ipsita Banerjee

Heard lastly on : 20.03.2025

Judgment on : 30.06.2025

JAY SENGUPTA, J.

1. This is an application under Article 226 of the Constitution of India, *inter alia*, praying for reinvestigation of the case in respect of Nazat Police Station Case No. 141 dated 09.06.2019 under Sections under Sections 147, 148, 149, 325, 326, 302, 379, and 427 of the Indian Penal Code, Sections 25 and 27 of the Arms Act and added Section 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989,

by an independent and specialized agency like the Central Bureau of Investigation.

2. Learned senior counsel appearing on behalf of the petitioner submitted as follows. After completion of the Lok Sabha Elections in 2019, miscreants belonging to the ruling party in the state of West Bengal under the leadership of Sahajahan Sk. and Firoz Kamal Gazi were threatening one Debdas Mondal and other members of the family that they not be spared and would be killed since they have supported Bharatiya Janata Party. On 08.06.2019 at about 4.30 pm, the accused persons with the miscreants belonging from the ruling dispensation entered into the village where the petitioner resided. They were carrying a number of modern fire arms and various sharp weapons and attacked the house of the deceased Pradip Mondal, the husband of the petitioner along with some of the neighbouring houses of the petitioner. The accused persons as mentioned in the FIR along with paid henchmen and miscreants belonging from the ruling dispensation, started to search for the petitioner's husband, being Pradip Mondal and Debdas Mondal and vandalized and looted the house of the petitioner along with some of the neighbouring houses of the petitioner. At the time of the said incident, the husband of the petitioner namely, Pradip Mondal and one Sukanta Mondal were present in a garment shop which was situated just adjacent to the house of the petitioner. The prime accused being Sahajahan Sk. and Firoz Kamal Gazi @ Babu Mastar attacked the petitioner's husband with sharp edged weapon, and to save his life, the said Pradip Mondal

tried to run away from the said shop and to take shelter in his house just adjacent to such shop room. As soon as the husband of the petitioner tried to run away toward his house, the prime accused being Sahajahan Sk. shot a bullet from the back which hit the said Pradip Mondal on his head and he fell down at the spot and his left eye came out of his face. Sukanta Mondal who was also present in the said shop room at the time of the incident tried to hide from the accused persons in the said shop room. But on the direction of Sahajahan Sk. Firoz Kamal Gazi along with their henchmen and miscreants of Trinamool Congress Party entered into the shop room and forcefully pulled out the said Sukanta Mondal from the said shop room. After taking the said Sukanta Mondal out of the said shop, the accused person being Firoz Kamal Gazi shot the said victim and because of that, Sukanta Mondal fell on the ground and died. The petitioner along with some of the petitioner's neighbour tried to prevent the FIR named accused persons from carrying out such illegal activities, but they opened fire on the petitioner and her neighbours. But, somehow the petitioner and her neighbours ran away from the spot and left the village in order to save their lives. When the accused persons opened fire to the petitioner and other neighbours, one of the agents of the accused persons namely, Kyum Molla suffered a fatal injury and some of the agents of the accused persons suffered minor injuries. Thereafter the police and some of the villagers took the petitioner's husband, Sukanta Mondal and Kyum Molla to Bashirhat Hospital where the doctors declared them dead. The petitioner lost her consciousness due to such

traumatic and tragic incident which happened in front of her. Inspite of such tragic incident, the Police Station being Nazat Police Station did not lodge any case suo moto. It was only when the petitioner, after regaining her senses on the next day, made a representation before the Nazat Police Station on June 9, 2019 stating the entire incident and requested the police authorities to take appropriate steps against the perpetrators that an FIR was lodged. On the basis of such complaint by the petitioner dated June 9, 2019 before the Nazat Police Station, an FIR being No. 141/19 dated 9.06.2019 under Section 147/148/149/302/325/326/379/427 of Indian Penal Code read with Section 25/27 of Arms Act and Section 3(2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered. Meanwhile, the case was transferred to CID west Bengal on 23.08.2019. Even after the control of the investigation being given to CID, West Bengal, it was apparent that the investigation was tainted and biased and there was unnatural delay in concluding the investigation. Because of the inaction on the part of the state police authorities in delaying in filing charge sheet and conducting biased and partial investigation solely with the intention to shield Sahajahan Sk. and other accused persons, belonging from the ruling dispensation, the petitioner was constrained to approach this Court vide WPA no. 16458 of 2019 before regarding the partiality and arbitrary investigation before the filing of charge sheet in the Learned Court below. The matter was heard by a Co-ordinate Bench, but the mentioned application of writ became infructuous after the

completion of investigation and filing of the charge sheet dated 11.09.2019. Investigating agency submitted a charge sheet, being charge sheet no. 193 of 2019 dated 11.09.2019 under section under Section 147/148/149/302/325/326/379/427 of Indian Penal Code, Section 25/27 of Arms Act and Section 3(2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against four accused persons out of which none were named in the FIR and in the written complaint made by the petitioner. The investigating agency with malafide intention, did not charge sheet twenty-eight FIR accused persons out of whom one, being Sahajahan Sk. was the prime accused person and only referred them as suspected persons when there were sufficient materials and incriminating evidence against them to prosecute them. Even after being mentioned in the FIR and written complaint and specific statements against Sahajahan Sk. and twenty-seven other accused persons, none of them were charge sheeted and four persons who were charge sheeted were not were named in the FIR or in the written complaint. This showed the partial and tainted investigation being conducted by the Investigation agency solely to guard and shield the accused persons who were involved in such gruesome and barbaric offences even after specific statements of eye witnesses. Vide order dated 12.08.2020, the Learned Court below granted bail to one of the charge sheeted accused person, being Akher Ali Gayen, thereby observing the pandemic Covid situation and that other three charge sheeted accused person being Mainuddin Molla @ Majed, Maijuddin Molla and Javed Ali

Molla were enlarged on bail by this Court. Being aggrieved by such tainted and biased investigation, being conducted by CID, the petitioner, being the wife of the deceased, was compelled to once again approach this Court seeking relief to transfer the investigation to an independent investigation agency, being CBI for conducting re investigation or fresh investigation. The matter first came up for hearing on 17.01.2024 and this Court was pleased to stay the proceedings before the learned trial court. However, even after the stay granted by His Lordship, a Supplementary charge sheet was filed on behalf of the investigating agency on 31.03.2024, almost after more than two years of filing charge sheet and four years of lodging FIR. The investigating agency had filed the Supplementary charge sheet against **Sahajahan Sk** as well against other accused persons, thereby violating the order of this Court. This Court was pleased to direct the investigating agency not to place the Supplementary Charge sheet before the Learned Trial Court. Thus, the manner in which the investigation had been conducted reflected the biased and malafide intention of the investigating agency in conducting the investigation. If such investigation was allowed to be carried on, then the victims would be deprived of the justice as the investigating agency would continue to shield the accused persons as previously the FIR named accused person, being Sahajahan Sk and twenty-seven others who were exonerated even after having incriminating materials against them. This was sheer violation of the provisions of impartial and unbiased investigation which was the basis of any investigation and to

render justice. In exercise of the jurisdiction under Article 226 of the Constitution of India, the High Courts did not only have the power and jurisdiction but also an obligation to protect the fundamental rights of the victims as guaranteed by Part III in general and under Article 21 of the Constitution of India. The mode and manner in which the investigation with respect to the instant case had been carried only to safeguard the prime accused Sahajahan Sk and the leader of ruling party in the State of West Bengal, is arbitrary and malicious in nature. The investigation agency had not charge sheeted twenty-seven persons even after being named in the FIR. The written complaint lodged by the petitioner clearly made out the offence of double murder specifically naming the accused persons. Even after such findings, the investigating agency did not charge sheet the prime accused person, being Sahajahan Sk. knowing fully well about his involvement in the offence and having statements against him by the witnesses and the petitioner. It was extremely shocking as to how a case bearing such an importance, the investigation was concluded only after the petitioner, being helpless, approached the Hon'ble Court seeking justice against such gruesome act committed by the accused persons. It is a settled proposition of law that this Court could exercise its constitutional power to transfer investigation from to CBI where the investigation *prima facie* is found to be tainted and biased. It was essential to state herein that twenty-eight FIR named accused persons were not charge sheeted arbitrarily, thereby misleading the investigation and conducting an arbitrary investigation, violating the

principles of natural justice. It was apposite to mention herein that in the opposition filed on behalf of Respondent no. 1,2,3,4,6 and 7, on the bare perusal of the said affidavit in opposition, it could be ascertained that it was a bundle of lies only to shield the prime accused being Sahajahan Sk. from being implicated in the instant case. This was reflected from the mere fact that the police respondent authorities, out of their whims and fancies, did not charge sheet twenty-seven FIR named accused persons including the prime accused person being Sahajahan Sk. only because of the fact that he belongs from the ruling party in the State of West Bengal. The submissions made by the State that the petitioner has filed the instant writ petition after 52 months from the date of filing of the charge sheet for reinvestigation by CBI or NIA and was silent so long which reflected that the petitioner was silent regarding the investigation was absolutely false, fallacious and arbitrary in nature. There was not time bar to approach the Court for transfer of investigation. If the investigation was tainted and appeared to be arbitrary and improper, it was the right of every victim to get justice and for that the victim can approach the Court any time before trial commenced for re investigation or de novo investigation by an independent agency. It seemed that even after transfer of investigation to the CID, proper investigation was not conducted because of which while filing charge sheet, the names of prime accused persons were not included even after having strong corroborative statements and eye witnesses against them. This was nothing but sheer attempt to shield the accused purely of their allegiance with the ruling

party in the state of West Bengal. Moreover, the State respondent authorities have admitted in their affidavit in opposition filed that they have omitted the names of the persons who were named in the written complaint and FIR. Moreover, it had been stated in the affidavit of opposition filed by the State Respondent that investigation could be transferred if there was justified reason by the Court to believe that the investigation had not been conducted properly. Moreover, it had been admitted by the State respondent that the Court could exercise constitutional powers for transferring an investigation from State investigating agency to other independent investigating agency like the CBI only in rare and exceptional circumstances such as where high officials of State authorities are involved or the accusation itself was against the top officials of the investigating agency thereby allowing them to influence the investigation and further that it was so necessary to do justice and to instil confidence on the investigation or where the investigation was *prima facie* found to be tainted/biased. This clearly reflected upon the admission made by the State respondents with regard to transfer of Investigation. The present case was one which shocked the conscience of the people and the continuance of the barbarises was still prevalent. The petitioner had time and again proved and submitted that the investigation agency only intended to conduct biased investigation, thereby being influenced by the high and mighty belonging from the ruling dispensation. As such, in the interest of justice, the petitioner humbly prayed to transfer the investigation to an independent agency

such as CBI so that fresh investigation could be conducted to unearth the truth and punish the offenders of such heinous crimes. It was apposite to state herein that a case was instituted at the behest of the Enforcement Directorate upon the incident dated 5.01.2024 where the officials of Enforcement Directorate were attacked by the men and agents of the leader of the ruling party in the state of West Bengal; Sahajahan Sk., being Nazat Police Station case no. 8 of 2024, Nazat Police Station case no. 9 of 2024 thereby seeking for transfer of Investigation to CBI vide WPA 802 of 2024. The matter was heard by this Court vide order dated 17.01.2024, was pleased to disposed of the writ petitioner by constituting a Special Investigating Team consisting of officers of CBI and State Police. Being aggrieved by such order, the Enforcement Directorate preferred an appeal against the order of the Hon'ble Single Bench, being MAT 169 of 2024 and the State of West Bengal and State Police Authorities also preferred an appeal against the same impugned order vide MAT 191 of 2024. The Division Bench presided over by the Hon'ble Chief Justice of India observed that the case involves highly politically powerful persons including Sahajahan Sk. For the same, fair, honest and complete investigation was required which can alone retain public confidence in the impartial working of the State Agencies. The Hon'ble Court while transferring the investigation to CBI further observed that it had become imperative and absolutely necessary for doing complete justice and enforcing the fundamental rights of the public in general and public of the locality that the cases were transferred to the CBI for

investigation and to proceed further. An appeal in the form of Special Leave to Appeal was preferred before the Hon'ble Supreme Court of India vide no. 5875-5876/2024 and Their Lordships, vide order dated 11.03.2024, dismissed the Writ petition and upheld the judgment passed by the Hon'ble High Court at Calcutta. Meanwhile, Sahajahan was arrested by CID West Bengal on 28.02.2024. A criminal revision was also filed by the Enforcement Directorate to quash the FIR no. being 7 of 2024 vide CRR 164 of 2024 and the Single Bench had stayed the FIR no. 7 of 2024. Further, the stand taken by the state respondent authorities in their affidavit of opposition was contradictory to that of the supplementary affidavit filed by them. In the affidavit in opposition filed by the state authorities, they had, on repeated occasions stated that the investigation was proper and impartial and further that the petitioner knew about the charge sheet much prior but had deliberately raised it at present. However, if this be so that the investigation conducted by them and charge sheet submitted as a result, was not biased and was impartial, then the need for filing supplementary charge sheet extinguished. It reflected that the filing of the supplementary charge sheet was the result of the instant writ petition filed by the petitioner seeking for proper, fair and impartial investigation as the prime accused person, including Sahajahan Sk. and others, against whom specific allegations were made out, were not charge sheeted. This was only to make the writ petition infructuous. Under such circumstances and considering the precedents and the series of criminal cases filed against

Sahajahan Sk., it was imperative that for the ends of justice and fair investigation, the case was transferred to CBI for re investigation as the present investigation reflects the malafide intention of the investigation agencies. Judgments relied on the point of transfer of Investigation to CBI were i) Priyanka Tibrewal v. The State of West Bengal and Others, WPA 4011 of 2024, WPA (P) 104 of 2024, WPA (P) 78 of 2024, WPA (P) 93 of 2024, ii) Vinay Tyagi v. Irshad Ali alias Deepak and Others reported in (2013) 5 SCC 762, iii) Vinubhai Haribhai Malaviya v. State of Gujarat reported in (2019) 17 SCC 1, iv) Babubhai v. State of Gujarat and Others, (2010) 12 SCC 254. For further clarification, it was stated that the occurrence of the incident was on 08.06.2019 at around 4.30 pm. outside the house of the petitioner. First Information Report was registered as Nazat Police Station Case No. 141 of 2019 dated 09.06.2019 under Sections 147/148/149/325/326/302/379/427 of the Indian Penal Code read with Sections 25/27 of the Arms Act adding Section 3(2)(v) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act. Charge Sheet no. 193 of 2019 dated 11.09.2019 under Section 147/148/149/315/326/302/379/427 of the Indian Penal Code read with Section 3(2)(v) of Schedule Castes and Schedule Tribes Prevention of Atrocities Act read with Sections 25/27 of Arms Act. Name of accused persons in the FIR were i) Sahajahan Shek, ii) Firoz Kamal Gazi, iii) Jiauddin Mondal, iv) Abdul Kader Mollah, v) Akher Gayen (charge sheeted accused person), vi) Motiur Rahman Mollah, vii) Raju Mollah, viii) Alamgir Shek, ix) Kutubuddin Shek, x) Nur Islam Mollah, xi)

Hasibur Mollah, xii) Siraj Shek, xiii) Gobinda Mondal, xiv) Sapan Mridha, xv) Ajamuddin Mollah, xvi) Jafar Ali Mollah, xvii) Shaukat Mollah, xviii) Satyajoti Sanyal, xix) Raja Sanyal, xx) Dhrubajoti Sanyal, xxi) Ranjit Das, xxii) Dilip Malik, xxiii) Gour Ray, xxiv) Kedar Sardar, xxv) Hasanujjaman Mollah. Name of the persons charge sheeted, i) Moinuddin Mollah, ii) Akher Ali Gayen, iii) Javed Ali Mollah, iv) Moijuddin Mollah. Other than Akher Ali Gayen, the other three charge sheeted persons were not named in the FIR. Name of the persons were mentioned in the FIR but not charge sheeted. Only suspected, 28 accused persons had been suspected whereas only 25 persons were named in the FIR (serial no. 3-4, 6-24 from the list of names of accused persons mentioned in the FIR above-stated). Only Akher Ali Gayen had been charge sheeted. Name of persons who had neither been charge sheeted nor suspected, were i) Sahajahan Sk, ii) Firoz Kamal Gazi, iii) Hasanujjaman Mollah. Name of witnesses as mentioned in the FIR and charge sheeted, were i) Petitioner (Padma Mondal), ii) Sukumar Mondal, iii) Narayan Mondal, iv) Pritam Mondal, v) Sandya Mondal. As per charge sheet, total number of witnesses mentioned in the charge sheet is 43 witnesses out of which only the petitioner and Sandhya Mondal had been included in the particulars of the witnesses to be examined and were the eye witnesses to the incident. Additional feature was that the accused persons, under the leadership of Sahajahan Sk and Firoz Kamal Gazi had shot a bullet from the back on his head for which the deceased fell down at the spot and his left eye came out of his face and he died. The accused persons opened fire on the

petitioner but somehow the petitioner managed to save her life. The petitioner in writ petition being WPA No. 703 of 2024 and WPA No. 702 of 2024 has approached this Court with a prayer for reinvestigation to be conducted by a specialised agency, being Central Bureau of Investigation on the aforesaid grounds.

3. Learned senior counsel appearing for the State submitted as follows. The writ petitioner filed this writ petition after a delay of more than 5 years with regard to an incident happened on 08.06.2019. The writ petitioner alleged that on 08.06.2019, 150-200 persons under the leadership of Sahajahan Sk. and Firoz Kamal Gazi being armed with deadly weapons entered the house of the petitioner and started searching Pradip Mondal, Sukanta Mondal and Debdas Mondal. They also entered into the rooms of the house and ransacked the furniture and other household articles. During such vandalism Pradip Mondal and Sukanta Mondal was present in a garment shop which was situated just adjacent to the house of the petitioner. The petitioner alleged that the Sahajahan Sk. along with his allies attacked the husband of the petitioner namely, Pradip Mondal. While the husband of the petitioner tried to run away towards his house Sahajahan Sk shot a bullet from the back which hit the said Pradip Mondal on his head and he fell down at the spot. On the basis of a complaint made by the petitioner dated 09.06.2019 lodged before the Nazat Police Station, an FIR being No. 141/19 dated 09.06.2019 under Section 147/148/149/302/325/326/379/427 of the Indian Penal Code read with Section 25/27 of the Arms Act and Section

3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 was registered. The petitioners had approached this Court after 5 years from the date of the incident. Such delay had not been explained in the pleadings of the writ petition. It was a well settled principle that a litigant should approach the Court of law at the very first instance. The writ petitioner had grievances with regard to investigation which had commenced in June, 2019. The chargesheet was filed on 13.07.2022. However, the petitioner filed this instant writ petition as late as 2024. It was an undisputed fact that the cause of action of the said writ petition was 09.06.2019 and without proper explanation as to why the petitioner approached the Hon'ble High Court so late, the said writ petition should not be allowed. The petitioners had not provided any reason for inordinate delay. Till date the petitioner had not taken any steps before the learned Magistrate stating their grievances with regard to investigation. In fact, the request for Section 164 statement under Code of Criminal Procedure, 1908 was made on 09.09.2019. The recording under Section 164 was done after filing of chargesheet. The chargesheet was filed within the statutory period, to prevent the accused to get enlarged on bail on such ground. So, it was not possible for the police authorities to include the statements recorded under Section 164 of the Code of Criminal Procedure, 1908 in the chargesheet dated 11.09.2019. Once the investigation process was set in motion, the provisions of the Code of Criminal Procedure were sufficient to take care of all exigencies. Moreover, the learned Magistrate had ample power under such Code to

direct transfer of investigation, if required or at the instance of the petitioner. But, nothing of that sort was sought for by the petitioner. Therefore, alternative remedy being available to the petitioner, no cause had been shown as to invite the Writ Court to exercise its extraordinary jurisdiction in granting relief to the petitioner. The petitioner has not made out any case whereby it was stated that conscientable justice should not be rendered before the learned Magistrate and thus the writ petitioner approached this Court. Transfer of investigation was an exception, not a rule. It is stated that order to conduct investigation by CBI was not to be passed as a matter of routine merely because the party has leveled allegations against local police. The extraordinary power in handing over investigation by CBI must be exercised cautiously and in exceptional circumstances. In the instant case, firstly, the petitioner has leveled no allegation against the current Investigating Agency, being the CID, WB and secondly, the petitioner failed to make a case where in the Hon'ble Writ Court could be invited for an interference. In the instant case, the chargesheet had already been filed on 13.07.2022 while keeping provisions open for continuing investigation against the others who were named in the FIR. Hence, such a circumstance, the Hon'ble Writ Court should lay its hand off from interfering in the matter. The respondents state, be that as it may the present investigation officer had continued with the investigation and had made breakthrough development in the instant case. In fact, the present investigation officer had prepared a supplementary chargesheet which was ready to be filed before learned

Magistrate subject to the leave of the Hon'ble Court. It was pertinent to mention that on the basis of the chargesheet and the supplementary chargesheet the 23 persons who were marked as 'suspect' had now been made accused on the basis of materials available. Furthermore, Sahajahan Sk had also been made an accused in the said case. A mindful perusal of the memo of Evidence and the supplementary chargesheet should shall make it palpably clear that the grievance of the writ petitioner made in the writ petition can longer existed, since as on today, all the issues had been taken care of. In such a situation, it was humbly sated that leave be given to file the supplementary chargesheet before the learned Magistrate and let the investigation take its own course. Reliance was placed on Himanshu Kumar and Others vs. State of Chhattisgarh and Other reported at 2022 SCC Online SC 884. To clarify further, Nazat Police Station Case No. 141/19 dated 09.06.2019 was registered under Sections 147/148/149/325/326/302/379/427 Indian Penal Code and 25/27 Arms Act and adding Section 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. Date and time of occurrence was on 08.06.2019 at about 16.40 hrs. Place of occurrence was at the house of the complainant at Nolkota Bhangipara. The previous IO Shri Sandip Kr. Sinha Roy (since retired on 31.12.2022), the then Dy. SP North, CID, West Bengal, submitted Nazat Police Station Charge Sheet No. 193/2019 dated 11.09.2019 under Section 147/148/149/325/326/302/379/427 Indian Penal Code and 25/27 Arms Act and adding Section 3(2)(v) of Schedule Castes and Schedule

Tribes (Prevention of Atrocities) Act, 1989 against 32 accused persons in which 04 arrested accused persons and 28 accused persons were shown as suspects keeping the investigation open under the provision under Section 173(8) Cr.P.C. Only 01 accused person named Akher Ali Gayen (FIR serial No. 5) named in FIR. Other 03 accused persons Maijuddin Mollah, Mainuddin Molla @ Majed, Jabed Ali Molla were not FIR named in this case. Among 28 suspected accused persons, 20 accused persons were named in FIR and 08 accused persons were not FIR named. 04 FIR named accused persons namely (1) Sahajahan Sk (FIR serial No. 1) (2) Firoz Kamal Gazi (FIR serial No. 2) (3) Hasanujjaman Mollah (FIR serial No. 10) (4) Hasibur Mollah (FIR serial No. 12) were not mentioned in the 1st charge sheet. On 09.09.2019, IO submitted a prayer before 1d. Additional Session Judge, 1st Court, Barasat for recording the statements of the following witnesses under Section 164 Cr.P.C. for the interest of investigation. a) Smt. Padma Mondal, Complainant, b) Biva Mondal, D/o – Palan Mondal of Nalkora Bhangipara, PS – Nazat, c) Nemai Mondal S/o – Basudeb Mondal of Do. The date on 16.09.2019 was fixed for recording their statement under Section 164 Cr.P.C. by 1d. Judicial Magistrate. On 16.09.2019, the statements of witnesses namely Smt. Padma Mondal, Smt. Biva Mondal and Shri Nemai Mondal were recorded under Section 164 Cr.P.C. by JM, 1st Class, 2nd Court Barasat. Then the name of more 21 accused persons who were not named in FIR, transpired in this case. On 27.04.2021, the previous IO Shri Sandip Kr. Sinha Roy received the FSL report through O/C, Nazat Police Station vide Memo No.

1864/FSL/Bls./Phys./Bio./4601/19 dated 26.03.2021 of FSL, Calcutta in response to the Memo No.-Nil dated 11.09.2019 in c/w Nazat Police Station Case No.-141/19 dated 09.06.2019 under Section 147/148/149/325/326/302/427 Indian Penal Code and 25/27 Arms Act adding Section 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. On 14.10.2022, the previous IO Shri Sandip Kr. Sinha Roy received the FSL report through O/C, Nazat Police Station vide Memo. No. 5492/FSL dated 23.09.2022 in response to the Memo No.-Nil (CMR No.-292/19 dated 19.10.2019) in c/w Nazat Police Station Case No. 141/19 dated 09.06.2019 under Section 147/148/149/325/326/302/427 Indian Penal Code and 25/27 Arms Act adding Section 3(2)(v) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. The investigation kept open under Section 173(8) Cr.P.C. was endorsed to Shri Sankar Prasad Ghorai, Dy. SP (North), CID, West Bengal who took up its investigation on 15.02.2024 vide Org. No. 136/CI dated 07.02.2024. During further investigation of this case it is revealed that *prima facie* charge have been well established against FIR named accused persons as well as the accused persons whose names transpired in the judicial statements recorded under Section 164 Cr.P.C. of Smt. Padma Mondal, Complainant, Biva Mondal sister of Sukanta Mondal @ Fakir (since deceased), and Nemai Mondal. As per order of Superiors vide Memo No. 1616/CS dated 31.03.2024, supplementary charge sheet had been prepared by Shri Sankar Prasad Ghorai, Dy. SP (North), CID, West Bengal in this case vide Nazat Police

Station CS No. 193A/19 dated 31.03.2024 under Section 147/148/149/325/326/302/ 379/427 Indian Penal Code, 27 Arms Act and adding Section 3(2)(v) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 against the following 42 accused persons for submitting the same before 1d. Additional Session Judge 1st Court, Barasat, (Special Court) viz—Sahajahan Sk. In respect of 02 accused persons namely Illyas Molla and Khaleque Sk. full particulars could not be found and accused Jiten Mahato was expired on 18.02.2023. Serial No. 1 to 24 are FIR named accused persons, the names of rest 18 (25 to 42) accused persons had been transpired from the statements of witnesses in proposed supplementary Charge Sheet. A prayer for issuing production warrant against the above noted 4 accused persons mentioned in serial No. 1, 5, 9 and 24 would be submitted before the 1d. Court in proposed supplementary Charge Sheet. Another prayer for issuing WPA against the 38 accused persons as mentioned in serial No. 2, 3, 4, 6, 7, 8, 10 to 23, 25 to 42 would be submitted before the 1d. Court in proposed supplementary Charge Sheet.

4. Learned counsel appearing on behalf of the CBI submitted that in the event the Court directs further investigation or reinvestigation to be conducted by them, they shall be able to do the same in accordance with law.

5. I heard the learned counsels appearing for the respective parties and perused the application, the affidavits, the written note of submissions and the case diary including the chargesheet and the

proposed chargesheet prepared for submission by the Investigating Agency.

6. At the very outset, it is made abundantly clear that this Court has all the power to direct further investigation into the alleged offences and if necessary, engage an independent and specialized agency like the Central Bureau of Investigation for such purpose. A constitutional Court can also direct reinvestigation into alleged offences provided a case is made out for the same. Such settled position of law has not been disputed by the respondents whose counterpoint is that these powers can be exercised only in exceptional cases.

7. So far as the question of delay is concerned, it is hardly an absolute bar in seeking justice for a victim, that too in a gruesome case of double murder. Here, this Court had to be approached earlier in 2019. However, as a chargesheet had purportedly been submitted, the matter was disposed of. Thus, it has been an ongoing process. The State cannot expect that each and every time they commit an error or perpetrate injustice in a case, a citizen would have to rush to the Court forthwith every time, whatever comes. That apart, the ominous presence of the prime accused Sahajahan Sk in the area before his arrest in 2024 could not be overlooked. It was only after his arrest in the earlier case of mob violence that complaints could be lodged against him about alleged land-grabbing, sexual exploitation of women and other atrocities.

8. This is a rarest of rare case where in spite of there being ample evidence including the statement of eye witness that the prime accused Sahajahan Sk, an infamous anti-social of the locality having tremendous political influence and muscle power and ability to organize violent mobs, had led an attack on the victims and shot one of the victims at the back of his head as result of which his eyes popped out and he died and his other co-accused associate shot another victim, the Investigating Agency chose to exclude him even from this list of other suspects not chargesheeted and not to file a chargesheet against him in the first occasion and for so long. It was only after such ludicrous outcome of investigation had been pointed out before this Court at the behest of the petitioner that the Investigation Agency, without taking leave of this Court, tried to file a chargesheet against the said accused and similar others before the Trial Court, but finally decided to keep the same only ready for filing.

9. It is needless to mention that the above act of non submission of the chargesheet against the prime accused in the first place was a complete travesty of justice.

10. It is elementary that if a person is caught in the act, the same cannot be wished away if he thereafter shows an attempt, that too a feeble one, to undo such wrong.

11. On merits, a careful perusal of the FIR and the materials collected even during the first investigation clearly show that a *prima facie* case is made out against all the accused, even those who are now being

attempted to be arraigned in this case. In support of the prosecution case, there are statements of witnesses including those of purported eye and/or pre-occurrence witnesses. The most important was the detailed account given by the de-facto complainant in the FIR. She was an alleged eyewitness. This was sufficient *per se* to implicate the prime accused. That apart, there were seizure lists for recoveries made and above all, the medical evidence including the postmortem report.

12. This is despite the apprehension of the petitioner that the case might not have been investigated properly or all the relevant witnesses might not have been examined and the best evidence not collected. However, a proper investigation would have yielded further corroborative evidence and made the prosecution case foolproof.

13. When a brazenly faulty and biased conclusion can be arrived at during the first investigation of leaving out the prime accused, then the whole approach of the Investigating Agency in investigating the gruesome case of double murder would become suspect and the aggrieved/petitioner would be quite justified in seeking further investigation by another investigating agency.

14. In this context, it is germane to refer to the initial allegations leveled by the petitioner including that the FIR was not registered in time. In fact, this Court had to be approached earlier to seek appropriate further relief in 2019.

15. Although the petitioner's FIR dated 09.06.2019 specifically contained the names of the prime accused Sahajahan Sk. and others, they were left out from the first charge sheet. A further statement of her was allegedly recorded on the same day made a material departure. There was no reason or logic for the informant to have actually made such further statement. Similar statement was recorded of another witness X (name withheld) on 10.06.2019 excluding the above names. Several other similar statements of witnesses were recorded by the police under Section 161 of the Code. However, during further investigation the petitioner, the said X (name withheld) and one Y (name withheld), whose earlier statement of September, 2019 before police did contain reference to those names, made statements under Section 164 of the Code making direct allegations against Sahajahan Sk. and others.

16. The above facts show that the FIR and the statements made before the Magistrate implicated Sahajahan Sk and those others, but the Section 161 statements of same witnesses, especially the initial ones, hardly did so.

17. First, these render the statements of witnesses recorded by the police under Section 161 of the Code suspect. These raise a reasonable doubt about whether statements of witnesses under Section 161 of the Code were correctly recorded.

18. Secondly, one wonders why the CID chose to file a charge sheet only in 2024 during pendency of the writ petition although the relevant

evidence, especially the statements implicating all the accused as recorded before the Magistrate were available earlier. If they wanted to correct the wrong by filing charge against such left out accused, they had all the opportunity and time to collect further evidence.

19. The existence of such suspicious exonerative statements allegedly recorded under Section 161 of the Code could be detrimental to the cause of justice as the Trial Court might decide to disbelieve any improvement to these made by a witness during trial, which might actually be the correct version. One way of solving the crisis is to have reinvestigation done in order to allay all doubts. The other option is to expect further statements of all such witnesses to be recorded before a Magistrate. But, the present investigating agency did not do so.

20. That apart, although there was enough suspicion in the instant case that the prime accused and similarly circumstanced others were kept out of the chargesheet as accused in an effort to save them with an obvious consequence of evidences getting destroyed in the process, no charge was added under Section 201 of the Indian Penal Code. In such peculiar circumstances as mentioned above where despite the presence of evidence in abundance against the prime accused, he was not proceeded against as an accused in the chargesheet, it would be an absolute imperative to find out whether there was any concerted effort or conspiracy behind this. Was anyone trying to destroy evidence to keep the prime accused out of the fray? The process of investigation and its outcome cannot be the handiwork of the concerned Investigating Officer

alone, especially in such an important case, although he may be primarily responsible for the same. This had to pass through the higher authorities. Therefore, it is required to find out as to whether anyone was purposely and deliberately trying to save the prime accused Sahajahan Sk and other such accused from getting implicated in this case and going out of the way to have an incomplete chargesheet filed towards achieving such end. No further investigation whatsoever has been done in this regard.

21. The case at hand involves extreme depredations and perpetration of most brazen and brutal atrocities by the alleged miscreants. It deserves much more than the ramshackle investigation done by the police that arguably had a stench of taint. Therefore, further investigation or re-investigation is an absolute imperative.

22. It is also germane to note that in respect of the earlier criminal cases filed against the said accused Sahajahan Sk, the Courts finally directed the central agencies to conduct such investigation after expressing disapproval against the State agencies. Pertinently, this Court had earlier constituted a Special Investigation Team consisting of officers from the CBI and the State agency to investigate alleged offences committed by the prime accused in respect of the mob violence that took place when officials of the ED went to investigate the said accused, but were attacked instead. The Division Bench of this Court finally directed the CBI to conduct such investigation after making certain scathing

observations against the State police. This order was affirmed by the Hon'ble Supreme Court.

23. In fact, in this case too, first the local police and then the CID failed in their duties that resulted in shielding of the influential accused. Then, after filing of the instant writ petition, the CID failed to properly account for the earlier faulty investigation and to look into the issue of possible consequent destruction of evidence. Effectively, they included the rest accused in the Supplementary Chargesheet on evidence collected earlier along with some subsequent statements recorded during further investigation in 2019. By this, they tried to show that the injustice that was perpetrated was being remedied, although without even admitting such wrong.

24. Equally disturbing was the attempt to file supplementary charge sheet without taking the leave of this Court inspite of there being an order of stay. It was only after this Court expressed surprise at such information provided on behalf of the petitioner on 01.04.2024 that the police desisted from proceeding further and only kept the proposed supplementary charge sheet ready for filing. In fact, it was submitted on behalf of the State that such attempt had been made due to some misunderstanding.

25. It appears that whenever allegations are levelled against the said accused Sahajahan Sk, the State police tend to falter, be it in the above referred case of mob violence against the ED Officials or in the instant

case. In this, no distinction can be made between the local police (as in the said earlier case) or the CID (as in the present case).

26. In the present case too, which has even more serious charges, I find that the police failed to take action against the prime accused at different stages, leading to gross miscarriage of justice. It would, thus, not be in the interest of justice to again give the reins of investigation to them. Therefore, in order to instil confidence in the public and to ensure that justice is meted out to all, it would be fit and proper to direct the CBI to conduct the further investigation of the instant case.

27. This Court has taken note of the fact that some investigation was done after the patently illegal act of deleting the prime accused from the chargesheet was detected and canvassed before this Court. Some evidence had also been collected during the first investigation. Therefore, directing *de novo* investigation or reinvestigation may only complicate things further by leading to omission of untainted relevant evidence. It would, therefore, be in the interest of justice that the further investigation is conducted by independent agency. It will be for them to decide whether to have statements of all relevant witnesses including those examined earlier recorded before a Magistrate. It shall also be open to them to examine more witnesses or leave out unreliable ones in their report/s.

28. In view of the above discussions, I direct the CBI to conduct further investigation in this case with the hope that they would treat the case

with utmost seriousness that it deserves. The CBI shall constitute a Special Investigation Team in this regard at the earliest and further investigation shall be done under the supervision of a senior officer of the of Joint Director. The further investigation shall be monitored by the jurisdictional Court. The CBI shall also be at liberty to take steps for ensuring protection of witnesses. The State respondents are directed to handover the case diary and all materials collected during investigation to the CBI forthwith.

29. With these observations and directions, the writ petition is disposed of.

30. Urgent certified copy of this order be supplied to the learned counsels for the parties upon compliance of usual formalities.

(JAY SENGUPTA, J.)