IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 441/2024.

Shahrukh Ziya Mohammad,
aged about 31 years, Occupation -
Business, resident of Plot No.104,
Rose Colony, Rajaram Layout,
Rukhmini Nagar, Katol Road,
Nagpur 440013. ... PETITIONER.

VERSUS

1.The State of Maharashtra,
through its Secretary, Department
of Home Affairs, Mantralaya,
Mumbai.

2.The State of Maharashtra,
through Commissioner of Police,
Nagpur City, District Nagpur.

3.The State of Maharashtra,
through its PSO of PS Tahsil,
Police Station, Nagpur.

4.Shri Parshuram Baval,
the Police Sub-Inspector, Tahsil
Police Station, Nagpur. ... RESPONDENTS.

Rgd.

Mr.A.G. Hunge, Advocate for the Petitioner.
Mr. D.V. Chavhan, Senior Advocate/G.P. with Shri N.H. Joshi, A.P.P. for Respondents.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : AUGUST 30, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule made returnable forthwith and with the consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. This petition is filed in terms of Article 226 of the Constitution of India seeking a writ of mandamus for transferring the investigation to the State Crime Investigation Department (CID) for fair, proper and impartial investigation in the matter of first information report bearing Crime No.122/2024 registered with

Tahsil Police Station, Nagpur, for the offence punishable under Sections 304-A, 279, 337, 338 of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

3. At the outset it can be stated that on the intervening night of 24.02.2024 to 25.02.2024 a lady namely Ritika Malu drove her car in excessive speed under influence of liquor. She gave dash to a two wheeler from behind, which took life of two youngsters. A crime, came to be registered at the instance of kin of one of the deceased. The aspect of arrest of Ritika Malu (accused) is entangled in legal process till date, to which we are coming shortly.

4. Since beginning the first informant and kins of the deceased are blaming the police for shielding the accused. It is allged that the investigation was purposely delayed to facilitate a safe passage to the accused in future trial. The investigating officer (IO) has deliberately kept certain lacunae at the behest of influential accused. Despite seriousness, due to dilly-dally tactics adopted by the police, the family of the victim has lost faith in the investigating agency which

caused them to make several representations. Since no cognizance was taken by the higher police authorities, as well as by the State, they are invoking writ jurisdiction of this Court for transfer of investigation.

5. At the inception it necessitates us to quote few factual aspects in tabular form for the purpose of quick understanding.

Dates	Events
25.02.2024	Incident [accident] took place around 1.30 to 1.45 a.m. at Ramjhula Bridge, in which two person died.
25.02.2024	First information report bearing Crime No.122/2024 was registered around 9.31 a.m. with Tahsil Police Station, Nagpur for the offence punishable under Sections 304-A, 279, 337, 338 of the Indian Penal Code and Section 184 of the Motor Vehicles Act.
25.02.2024	Blood sample of accused Ritika Malu was taken at 7.30 a.m. for analysis
25.02.2024	.Panchnama of the scene of offence was drawn in between 9.30 a.m. to 10.10 a.m.
25.02.2024	Accused Ritika Malu was arrested, produced before the Magistrate and released on bail. (Bailable offences)
02.03.2024	Police have added Non-bailable sections i.e. Section 304, 427 of the Indian Penal Code and Section 185 of the Motor Vehicles Act.
07.03.2024	Police applied for cancellation of bail and permission to re-arrest.

12.03.2024	Accused Ritika Malu filed pre-arrest bail in which interim protection was granted on 13.03.2024.
03.04.2024	Application of police dated 07.03.2024 came to be rejected by the Magistrate.
03.04.2024	Application was filed by the police for cancellation of bail and permission to rearrest, which was rejected.
24.05.2024	Pre-arrest bail application was rejected by the Sessions Court.
27.05.2024	Application filed by the prosecution seeking permission to rearrest was withdrawn as not pressed.
26.06.2024	This Court has rejected the pre-arrest bail application of accused Ritika Malu.
01.07.2024	Accused Ritika Malu surrendered / arrested before/by the Police.
02.07.2024	Accused was produced before the Magistrate who refused P.C. and released the accused by holding that the arrest is illegal.
05.07.2024	Police filed an application seeking permission to rearrest.
09.07.2024	Application to rearrest dated 05.07.2024 was rejected by the Magistrate.
15.07.2024	State filed Criminal Revision No.160/2024 against the order of rejection of P.C. remand dated 02.07.2024.
15.07.2024	State filed Criminal Revision No.161/2024 against the order rejecting permission to rearrest dated 09.07.2024.
25.07.2024	Both the Criminal Revisions came to be rejected.
30.07.2024	State filed an application under Section 439[2] of the Code of Criminal Procedure before the Sessions Court for cancellation of bail and permission to arrest, which is pending.

6. It emerges from the material on record that the accused

along with co-passenger (Smt. Sarda) had been to C.P. Club, Nagpur on 24.02.2024 in the late evening. They had consumed alcohol and while on return journey the untoward incident occurred. At the relevant time, the accused was driving her Mercedes Benz car bearing registration No. MH-49 AS-6111 with the co-passenger Smt. Sarda. The car driven in rash and negligent manner was heading towards Mayo Hospital square from Sadar area. While the offending car has almost crossed Ram jhula bridge, it gave forceful dash from behind to one white coloured two wheeler (Activa) bearing registration No.MH 31 Q 2948. The deceased no.1 Mohd. Hussain was the rider, whilst the deceased no.2 Mohd. Ateque was pillion rider on the said two wheeler. By forceful dash both flung into the air and fell on the road. The deceased no.1 Mohd. Hussain instantly died on the spot, whilst deceased no.2 Mohd. Ateque died during treatment at Mayo Hospital, Nagpur. The said incident occurred in late midnight around 1.30 a.m. to 1.45 a.m. of 25.02.2024. The informant Iftekhar Ahmed is cousin brother of deceased no.1. Within short time he learnt the mishap, hence rushed to the Mayo Hospital. After realizing the

things, he went to the police station and lodged report, which was registered around 9.30 a.m. of 25.02.2024.

7. On the basis of registration of a cognizable offence, the investigation has commenced. Police have drawn panchnama of the scene of offence on the very day in between 9.30 to 10.10 a.m. After accident the accused as well as co-passenger, though remained on the spot for some time, however, they went away. Later on they have been arrested in bailable offences, produced before the Magistrate who in turn released them on bail. Blood sample was collected of both the ladies around 7.30 a.m. in the Government Medical Hospital and sent for analysis. On receipt of the blood report showing contents of alcohol, the police have added Sections 304, 427 of the Indian Penal Code, and Section 185 of the Motor Vehicles Act. It was followed by taking efforts to arrest the accused, but the legal battle is still in process.

8. The issue for consideration is limited to the extent – whether the petitioner has made out a case for transfer of the

investigation. It is the contention of the petitioner that since inception, the police did not investigated the matter properly. They failed to perform their statutory duty to investigate into the crime in accordance with law. The investigation is tainted with animosity at the behest of family members of the accused. The investigating officers have purposefully left loop holes to facilitate the accused to have an easy escape in future trial. The family of the victim is deprived from fair investigation which would frustrate their right to have a fair trial.

9. The learned Counsel for the petitioner while emphasizing the pressing need for transfer of investigation, has highlighted some aspects to impress that it is a case of an exceptional nature which warrants indulgence of this Court. For easy appreciation, we have culled out the gist of his submission as below :

(i) Respondent no.4 PSI Bhaval, arrived on the spot when both ladies were present, however, he has allowed them to go away, instead taking them to the police station.

(ii) Soon after the accident, two persons, perhaps family members of the accused came to the spot and in presence

of respondent no.4 PSI Bhaval, removed the liquor bottles from the offending car to destroy the evidence. It was in connivance with the respondent no.4 PSI Bhaval.

(iii) Though the police appeared within short time at the place of occurrence, panchnama of the scene of occurrence was not drawn immediately to facilitate disappearance of the traces, marks and to wipe out the material evidence.

(iv) Panchnama of scene of offence was purposefully carried out in the morning in between 9.30 to 10.10 a.m. during which time the incriminating material has disappeared and thus, nothing was seized under panchnama.

(v) Though kins of victim went to the police station in late midnight for registration of first information report, however, the police have purposefully delayed registration of the crime.

(vi) Police have intentionally delayed in taking of blood samples of accused to facilitate their cause.

(vii) Though there were several eye witnesses to the occurrence who went to the police station, however, their statements were not recorded.

(viii) After accident the car was taken in possession by police, however, police allowed to let off the car to destroy the material evidence.

(ix) The husband of the accused has applied to the Magistrate

for return of seized car, however, in connivance with the investigating officer, the car was released without executing bond, and thus, the application for return of property was not pressed.

(x) The offending car was spotted by kins of the deceased in a motor garage, on which a huge uproar was made, that is why again the car was taken back into the custody by the investigating officer to hush up the matter.

(xi) Neither respondent no.4 PSI Bhaval, nor respondent no.3 PSO took photographs of both vehicles on the spot soon after the occurrence which would have assisted to bring real picture on record.

(xii) The police gave safe access to the husband of the accused to take photograph of the car which demonstrates the soft attitude of the investigating officer towards the accused.

(xiii) Forensic team was not called to collect the relevant material from the place of occurrence.

(xiv) Some passerby have videographed the scene showing presence of accused, deceased lying on the spot but, said evidence was not collected.

(xv) The learned A.P.P. representing the State before the trial Court made a grievance against the investigating officer about his non-cooperation which shows his partisan attitude.

(xvi) The investigating officer failed to take accused in custody till date.

10. Besides that some other allegations have been levelled that, soon after the accident husband of both ladies arrived on the spot, who embraced respondent no.4 PSI Bhaval. They had talk, in which respondent no.4 PSI Bhaval assured to take care of the matter. Videographed clip depicts that liquor bottles were hastily removed from the offending car in presence of PSI Bhaval. Panchnama of the scene of offence was not carried properly, since no exact distance, description, scratches on the road divider were noted. The petitioner and other kins of the deceased made several representation to various authorities for proper investigation and for transfer, but, no heed was paid. From all above circumstances, the petitioner formed a firm opinion that the investigation is not carried out in fair, proper and impartial manner. Rather to save influential persons/accused, purposefully things have been delayed, and thus, the constitutional right of the petitioner to have a fair and impartial investigation has been jeopardized.

11. The learned Senior Counsel/Public Prosecutor representing the State has a stiff resistance to this petition. At the inception, on technical front he would submit that the petitioner has not specifically prayed for a writ of mandamus. Prayer clause [a] as it stands, seeks direction against respondent no.1 Secretary, Department of Home Affairs to transfer the investigation, meaning thereby no specific writ of mandamus for transfer of investigation has been sought. It is argued that though the petitioner made several representations, however, none of the representation was addressed to the proper authority i.e. the Secretary, Department of Home, and therefore, unless there is a demand and refusal by the authority, writ of mandamus would not lie.

12. The learned Public Prosecutor would submit that the investigation is properly carried in accordance with the law. All essential steps in the process of investigation have been timely taken. He took us through the order passed by this Court in Criminal Application (ABA)No.375/2024 dated 26.06.2024 to impress that

this Court has noted the serious efforts taken by the investigating agency while rejecting the pre-arrest bail. He would submit that this Court may take appropriate decision to transfer the investigation, after perusal of the case papers. Learned Public Prosecutor has reminded us about the self imposed limitations and restrictions on the exercise of constitutional powers. He would submit that the power of transfer of investigation must be exercised sparingly, cautiously and in exceptional situation/circumstances. In other words, on mere asking or on the basis of newspaper reporting, the investigation cannot be lightly transferred by distrusting the investigating agency.

13. It is submitted that always it is a prerogative of the investigating agency as to in which manner the investigation is to be carried. The contentions or so called faults canvassed by the petitioner are their own perception, which can not be weighed. It is submitted that for arrest of the accused, straneous efforts have been made by the investigating agency. The order of this Court rejecting anticipatory bail itself reflects the promptitude of the investigating

agency in collecting the evidence. On receipt of the blood sample report, immediately Section 304 of the Indian Penal Code has been added, and statements of eye witnesses have been recorded. Several positive steps have been taken to further the investigation. The serious efforts taken by the investigating agency cannot be doubted. It is submitted that still the efforts to arrest the accused are underway and proceeding in that regard is pending at the level of Sessions Court. In short the learned Public Prosecutor resisted the petition by asserting that the investigation is carried in fair and proper manner., on mere asking, the investigation cannot be transferred.

14. The petitioner has produced certain photographs to substantiate his contention that soon after the occurrence when both ladies were on the spot, respondent no.4 PSI Bhaval arrived. Photographs have been produced to show that the offending car was parked at a garage, as well as to show serious damage to the car. Arrival of respondent no.4 PSI Bhaval on the spot when both ladies were present is not denied by the prosecution. In order to buttress the allegation that liquor bottles have been hurriedly removed from

the offending car, some newspaper reports have been produced. Likewise some newspaper cuttings have been produced to impress that since beginning family of the victim is begging for fair investigation.

15. Certainly we are not prepared to act on the photographs or news items however, it is a matter of fact that news items have been widely reported in newspaper about various stages of investigation, steps taken therein, uproar and Court proceedings. Some news items are in vernacular, whilst some are reported in English news papers. On exemplary basis we quote some of the captions under which those news items have been published in English language, they are like " I vow justice to Ram jhula accident victims, Says C.P.", "C.P. gives hope to kin of Ram Jhula victims", "Rash driving by woman claims 2 lives", "Ram Jhula accident : Driver was under influence of liquor", "Janta Foundation for action against culprits in Ram Jhula mishap case", "Ram Jhula accident : cops seize club bills". Besides that news items published in vernacular conveys the caption as "Driver was under influence of alcohol", "liquor bottles were thrown out of car", "Horror

by Mercedes car lady drivers takes two lives", "Sub inspector Bhaval [respondent no.4] allowed the lady occupants of the car to go", "Footage from CP Club was seized", "Please give justice to us from affluent class who knocked two wheeler by Mercedes". We make it clear that we are not going by the news items, however, the above exercise is to quote that the incident has attracted public eye of the City.

16. The learned Counsel appearing for the petitioner has relied on the following decisions to contend that, if the material satisfies that the police has not investigated properly, then the Constitutional Court is obliged to transfer the investigation.

(1) Amar Nath Chaubey .vrs. Union of India and others – AIR Online 2020 SC 898.

(2) Dharam Pal .vrs. State of Haryana and others – (2016) 4 SCC 160.

(3) Neetu Kumar Nagaich .vrs. The State of Rajasthan and others – 2020 All SCR (cri) 1394.

(4) Aruna Bhimrao Athwale .vrs. State of Maharashtra and

others – 2019 [5] Mh.L.J. (Cri) 398.

(5) Mukul Karandikar .vrs. State of Maharashtra and others – 2017 [4] Mh.L.J. (Cri) 718.

(6) Shushma Shiv Milan Singh and another .vrs. State of Maharashtra and another – 2018 SCC Online Bom 8182.

(7) XXX Parents of Victim .vrs. The State of West Bengal and others – W.P.A.(P) No.332/2024 dated 13.08.2024 – Calcutta High Court.

17. Particularly our attention has been invited to paragraph no.8 of the decision in case of Amar Nath Chaubey [supra], which reads as under :

> *"8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But, if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional*

> *obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police."*

18. In case of Dharampal [supra], the Supreme Court has led emphasis on fair investigation and fair trial. It is observed that though extra ordinary powers have to be exercised sparingly, however, if the situation warrants to do a complete justice, the Court should step in. The powers of Constitutional Court are unlimited and investigation can be transferred even after commencement of the trial.

19. On the other hand the learned Public Prosecutor has relied on the decision of **Royden Harold Buthello and another .vrs. State of Chattisgarh and others – 2023 SCC Online SC 204**, to contend that the exercise of transfer shall be sparingly done in exceptional circumstances. The Supreme Court by relying on its earlier decision

has observed in paragraph nos. 17 and 18 of the decision that while passing an order of transfer, the Court must bear in mind certain self-imposed limitations on the exercise of constitutional powers, however, no inflexible guidelines can be laid down, but, the order should not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. The powers are to be exercised in exceptional circumstances where it become necessary to provide credible and instill confidence in investigation. An order may be necessary for doing complete justice and enforcing fundamental rights. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demands such an order. Each case will obviously depends on its own facts.

20. By keeping in mind above principles, we may further refer to the decision of Supreme Court in case of **K.V. Rajendran .vrs. Superintendent of Police – [2013] 12 SCC 480**, wherein the law has been summarized that the Court should exercise its Constitutional

powers for transferring an investigation from the State Investigating Agency to any other independent investigating agency like C.B.I. only in rare and exceptional cases, where the Court finds it necessary in order to do justice between the parties and to instill confidence in the public mind. The other factors are where investigation by the State police lacks credibility and it is necessary for having a fair, honest and complete investigation and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

We may also refer to the observations made by the Supreme Court in case of **Pooja Pal .vrs. Union of India [2016] 3 SCC 135**, in paragraph no.79, which reads as under :

> *"79. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like the Page 76 76 CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure however can by no means be a matter of*

> *course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.*

21. In substance, though the powers are to be exercised exceptionally, however, on the basis of facts and circumstances of the case, if the Court finds it necessary, the powers can be exercised to ensure fair trial and to do justice between the parties. Article 21 of the Constitution of India in its better perspective seeks to protect persons of their lives and personal liberty, except according to the procedure established by law. The said Article not only take within its fold unforeseen rights of the accused, but, also the rights of victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation. The Court must exercise the powers when the principle of fair investigation is tried to be tinkered, or from the fact it emerges that the investigation is lingering or shabby or carried in the manner other than finding of truth. Fair trial and fair investigation are part of constitutional rights guaranteed under

Articles 20 and 21 of the Constitution of India, therefore, the minimum requirement of rule of law is that the investigation must be fair, transparent and judicious. The investigating agency cannot be permitted to conduct the investigation in a tainted and biased manner, so as to take away victims entitlement for a fair investigation.

22. Before entering into factual aspect, we would like to deal with the technical objection raised by the learned Public Prosecutor about the manner and style in which the prayer clause has been coached. For the sake of convenience, prayer clause [a] of the petition is extracted below :

> *"[a] by appropriate writ or directions, the Respondent No.1 may kindly be directed to transfer the investigation in the Crime No.122/2024 registered with the Respondent No.3 to the State Crime Investigation Department, for proper and fair investigation in the interest of justice."*

23. In this regard, the learned Public Prosecutor would submit that a writ of mandamus is not asked to transfer the investigation, but, directions have been sought against respondent No.1 [State Secretary]

to transfer the investigation. Secondly, it is argued that unless a demand is made and refused by the Authority, writ jurisdiction cannot be invoked. To substantiate said contention, he has attracted out attention to paragraph no.15 of the decision in case of **The Rajasthan State Industrial Development .vrs. Diamond and Gem Development Corporation .. 2013 AIR SCW 1244**, which reads as under :

> *"15. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against*

> *whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand." (Emphasis supplied)*

24. We are afraid to buy this initial contention that the prayer is not specific for issuance of writ of mandamus. The entire tenor of the petition is that the investigation is unfair, biased and needs to be transferred. We see no deficiency in the prayer since ultimately the petitioner is seeking for transfer of investigation. Though the prayer does not sound properly, but, it unequovically conveys a demand for transfer of investigation.

25. To answer the second objection, the learned Counsel for the petitioner would submit that the petitioner and kins have already made several representation to the highest authorities which were not acted upon. For instance, he has attracted our intention to the

representation dated 26.02.2024 made to the Police Commissioner [page no.50 of the petition], to Human Rights Commission dated 23.04.2024 [page no.182 of the petition], to the Chief Minister dated 23.04.2024 [page no.185 of the petition], to the Home Minister dated 23.04.2024 [page no.188 of the petition], to the Director General of Police dated 29.04.2024 [page no.194 of the petition] etc. The objection canvassed by the learned Public Prosecutor is that though several representations have been made, however, none of them is addressed to respondent no.1 i.e. Secretary, Department of Home Affairs, and therefore, in absence of representation to the appropriate authority and its rejection, a writ of mandamus cannot be issued. We are not prepared to accede the said submission which is too technical. The petitioner has made representation particularly to the Highest Police Authority, to the Chief Minister and more particularly to the Home Minister under which the Secretary of Home Affair works. In the circumstances, it would not be proper to say that the representation was not made to the concerned authority. Such hyper technical objection, if entertained, then justice would be casualty.

26. The learned Public Prosecutor would submit that the order of Magistrate dated 02.07.2024 holding the arrest illegal is unsustainable in law. He would submit that the Magistrate has misdirected iteself in understanding the ratio laid down by the Supreme Court in case of **Pradeep Ram .vrs. State of Jharkhand and another – [2019] 17 SCC 326.** According to him, the situation is well covered by paragraph no.31.1, instead of 31.4 of the said decision. In other words, it is submitted that on surrender after adding cognizable and non bailable offence, in the event of refusal of bail, the accused can be arrested. Already the said order dated 02.07.2024 has been challenged in Criminal Revision No.160/2024, which came to be dismissed by the Sessions Court on 15.07.2024. Thus, the legality of the said order has to be tested before the appropriate forum and not in the present proceeding which is restricted to the extent of propriety in transfer of investigation.

27. On our request investigation papers have been produced for our perusal. We have gone through the entire investigation papers. The investigating agency do have taken steps, but, some of the

objections quoted above still remained unanswered. It is a matter of record that respondent no.4 PSI Bhaval, though present on the spot, had permitted the accused to go from the spot, instead of assiduously arranging for taking blood samples of the accused. The vital piece of evidence in like cases is the position and condition of the offending car. Though initially the car was taken into custody by the police, however, surprisingly without following the procedure, the same was handed over to the family of the accused. As the car was returned to the accused, the allegation that the car was spotted in the garage, bears substance. In that case, the strong possibility of wiping of vital material would surface. The investigation paper reveals some statements recorded in the proximity that the liquor bottles were shifted to some other car.

28. Certainly we are not prepared to entertain all the objections raised by the petitioner as the learned Public Prosecutor is right in his submission that objections are own perceptions of the petitioner. True one can point out faults on microscopic scrutiny, but,

whether it has impact on the process of investigation needs to be considered. We are conscious of the fact that the investigating agency has complete freedom to do investigation in a particular manner, but, it should be rationale and in absence of biased approach.

29. It reveals from police papers that the investigating agency has collected CCTV footage, bills from CP Club, mechanical examination of the vehicle [belated], spot verification report [belated], however, it reveals that at initial crucial period the matter was handled improperly, but, on confronting with public outcry and media reports, police swung into action.

30. The reason assigned in affidavit-in-reply for delay in registration of the report is that, there was disagreement between the relatives of the deceased as to in whose name the report is to be lodged. After discussion, the interse dispute was resolved, which according to the police caused delay in registration of the report. The police are well aware that any one can set the criminal law into motion. Admittedly, respondent No.4 – PSI Bhaval reached to the

spot within few minutes from the occurrence. Several passersby were present on the spot, even the scene was videographed, which was later on made viral. Despite noting a cognizable offence, the police did not registered the report at their own but, instead waited for the family members to come forward and resolve their dispute for registration of crime.

31. Though the petitioner has made much fuss about the approach of the investigating agency in not arresting the accused till date, we are not inclined to go into the said aspect. The reason is obvious that the tabular chart indicates that a legal process is going on at various levels and the Courts of competent jurisdiction have passed orders, therefore, to our mind the said cannot be a reason. However, the initial inaction on the part of the investigating agency of letting the accused to go from the spot without taking initial steps to sent them for medical examination bears substance.

32. We must take note of a communication dated 08.07.2024 issued by the Special Assistant Public Prosecutor [Smt.Megha

Burange] addressed to the Police Commissioner specifically complaining non-cooperation of respondent No.3 Investigating Officer. The said letter conveys that respondent no.3 was totally non-cooperative to their own Advocate i.e. Public Prosecutor. The letter speaks about the approach of the investigating officer which is quite vulnerable. We are confronted with a very strange situation where the prosecutor who was representing the State before the Trial Court is blaming the investigating officer, whilst the learned Public Prosecutor is defending the investigating officer in this petition. Be that as it may, it is a matter of record that the conduct of respondent No.3 Investigating Officer was non-cooperative and unsatisfactory to their own State representative. Notably police themselves were not satisfied about the conduct of respondent no.4 – PSI Bhaval, since preliminary enquiry has been initiated against him. The said very fact also indicates that everything was not fair, ultimately the process of investigation has been hampered. The material produced on record is sufficient to form an opinion that the investigation was not carried assiduously in a proper manner. We refrain ourselves from

commenting in detail of the investigation papers, as it may cause serious prejudice to either side, as the investigation is still underway.

33. The lapses quoted above would reasonably create an impression that initial investigation was lacking the bonafides or can be said to be tainted one. The criminal offence is always against the society at large, casting an onerous duty on the State to faithfully discharge its sacrosanct responsibility in carrying a fair investigation. On the premise that the manner of investigation is a prerogative of the agency, the Courts cannot turn blind eye to the factual aspect by adhering to such general proposition. It is a bounden duty of the Courts to uphold the truth and truth means absence of deceit, fraud and absence of malafides. Impartial and truthful investigation is imperative. The people who are clamouring for justice should not harbor a feeling that, they are casualties despite demonstrating the unfairness and laxity in the process.

34. Investigation is a process of collection of evidence which is of vital importance. Delay on various fronts would badly affect the

prosecution case. Police have to ensure proper and quick investigation which is hallmark of criminal trial. During passage of time, evidence would either wither or disappear, which would weaken the prosecution case. In serious offences, the crime scene should be preserved so that the trace/physical evidence is not disturbed or tampered. The investigating officer has to use his wit and wisdom in quest of truth by collecting all necessary circumstantial evidence. The instance of late registration of the first information report despite knowledge of commission of a cognizable offence, letting the accused go without medical examination in proximity, releasing the offending vehicle without inspection, distrust shown on the investigating officer by the Prosecutor in trial Court, are the few instances which prominently raises a big question mark on the fairness of the investigation. Defective investigation tends to shake faith reposed by the members of the society including the accused as well as the victim.

35. The above circumstances persuades us to exercise inherent powers to bring the credibility and confidence in the investigating agency for ultimately reaching to the truth and to guard the

fundamental rights of a citizen. Inasmuch as the transfer of investigation from local police to some other State Agency, could cause no prejudice to the State in any manner. One of the reason for transfer is to do justice between the parties and to instill confidence in the society. In conclusion we are not satisfied about the mode and manner in which the investigating agency had worked, and therefore, as an exceptional situation we are inclined to transfer the investigation to State agency with a hope and trust for impartial, fair and truthful investigation. In the aforesaid background, we proceed to pass the following order.

ORDER

(i) Criminal Writ Petition is allowed.

(ii) We hereby direct that the investigation in Crime No.122/2024 registered with Tahsil Police Station, Nagpur, for the offence punishable under Sections 304-A, 279, 337, 338 of the Indian Penal Code and Section 184 of the Motor Vehicles Act and other provisions, shall be forthwith entrusted to the State C.I.D.

(iii) The investigating team i.e. State C.I.D. shall carry out further investigation thoroughly, properly and expeditiously to take it to the logical end.

(iv) The investigation shall be monitored by a senior officer of the State C.I.D. not below the rank of ACP or SP, and he shall take weekly review of the progress of the investigation.

(v) Tahsil Police Station, Nagpur are directed to immediately hand over complete papers of the investigation pertaining to the aforesaid crime to the newly appointed investigating agency.

(vi) Rule is made absolute in aforesaid terms.

JUDGE JUDGE

Rgd.