

Sessions Case No 128 of 2013
CNR-WBCS01-000139-2013
Present: Shri Sukumar Ray
JO Code No: – WB00590.
Chief Judge,
City Sessions Court, Calcutta.

Order No. 209 dated 05.06.2025

1. Today is slated for passing order.
Hazira has been filed on behalf of the widow of the deceased (Bharati Tamang).
Ld. Special Public Prosecutor is also present.
2. The hearing of this case has arisen out of an application filed by one Bharati Tamang on 26.07.2024.
3. By filing instant application the applicant has prayed for issuance of direction upon the investigating agency for making seizure of the hard disc in possession of the Intelligence Bureau, Government of West Bengal containing call intercepts in relation to the murder of Madan Tamang and obtaining the data of the said call intercepts through CFSL, New Delhi.
4. None can deny that the Investigating Agency has a tremendous responsibility to conduct the investigation unbiased and in strict adherence to the procedure known to law. In **Sidhartha Vashisht Versus State (NCT Delhi), (2010) 6 SCC 1**, the Hon'ble Supreme Court has held that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not *prima facie* be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law *de hors* his position and influence in the society.
5. The expression "*fair and proper investigation*" in criminal jurisprudence was held by the Hon'ble Apex Court in **Vinay Tyagi Versus Irshad Ali (2013) 5 SCC 762** to encompass two imperatives; *firstly*, the investigation must be unbiased, honest, just and in accordance with law; and *secondly*, the entire emphasis has to be to

bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication.

6. In the same vein, it was ruled in *Samaj Parivartan Samudaya Versus State of Karnataka (2012) 7 SCC 407* that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.
7. The Hon'ble Supreme Court in *NHRC Versus State of Gujarat (2009) 6 SCC 767* has been pleased to proclaim in a lucid manner that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d'être for their existence*.
8. Coming to our case, it appears that since charge has not been framed we can safely hold that trial of the case has not yet been commenced. It is now no longer *res-integra* that a Magistrate, even after post-cognizance stage till commencement of trial, can direct *further investigation* in terms of the provision enunciated in Section 173(8) Cr.P.C. (*Vinubhai Haribhai Malaviya Versus The State of Gujarat AIR 2019 SC 5233*) . To put it differently, a Court, therefore, can exercise the power to give direction for further investigation *suo motu* if the facts and circumstances of the case so warrant. Authority to direct further investigation continues till the stage of the trial commences and the trial commences only after

the charges are framed. (*Anchal Adhikary Versus State of West Bengal, CRR no. 18 of 2021, decided on August 25, 2021...relied on*) .

9. Here, it goes beyond saying that on submission of a report by police after purported investigation, the Court has to apply the maxim *contra veritatem lex nunquam aliquid permittit* to exercise its powers while granting approval or declining to accept the report. The Court is not to accept the report which is *contra legem* but (sic) to ensure judicious and fair investigation and submission of a report in accordance with Section 173 of the Code of Criminal Procedure which places a burden and obligation on the State Administration.
10. In our case, the petitioner (wife of the deceased victim) has prayed for collection of the hard-disc having the conversations of the leaders of which is of vital import to unearth the fact relating to the murder of the victim.
11. *Prima-facie*, the said conversations seem to have a role to play in our case in hand.
12. It is the contention of the CBI that despite making several efforts made on their part in this regard to the concerned authority having the custody of the said hard-disc, no effective result could be yielded.
13. On the other hand, it is found from the correspondence made by Inspector General of Police, Intelligence Branch, West Bengal dated 21.04.2025 before this Court, annexing the letter being no. 35/M Cell dated 18.04.2025 of Deputy Inspector General, Intelligence Branch, North Bengal addressing to the Inspector General of Police, that the CPU bearing Model No. 12Q, SL No. L9A4344, Machine Type 9215, Mfg. Date- 511, Make- IBM, presumably containing the Hard disc-in-question is kept under lock and key till date, which was last used on October, 2011. (*Item no. 6 at last page of the letter no. 35/M. Cell dated 18.04.2025*).
14. None can repudiate that the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of

investigation or inquiry even though he may be connected with the commission of the offence.

15. In **Amar Nath Choubey Versus Union of India, (2021) 11 SCC 804**, the Hon'ble Supreme Court of India has been pleased to observe that –

11. “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.”

16. Therefore, borrowing sapience from the observation of the Hon'ble Court and relying upon the information of Deputy Inspector General, Intelligence Branch, North Bengal dated 18.04.2025, as above, this Court disposes of the application on carpet by directing the CBI (investigating agency) to collect the concerned Hard-disc, said to be containing in the CPU bearing Model No. 12Q, SL No. L9A4344, Machine Type 9215, Mfg. Date- 511, Make- IBM, as informed by the Deputy Inspector General, Intelligence Branch, North Bengal and to get it examined by any Government Laboratory (preferably CFSL, Hyderabad) and to produce the same along with a supplementary report by strict adherence of the procedures established by law.

17. A copy of this order along with a copy of letter issued by Deputy Inspector General, Intelligence Branch, North Bengal dated 18.04.2025, be handed over to the investigating officer for information and compliance.

Dictated & corrected by me
Sd/-
Chief Judge
City Sessions Court, Calcutta.

Sd/-
Chief Judge
City Sessions Court, Calcutta.

Later order dated 05.06.2025

Today one bail petition is filed on behalf of accused **Purna Bahadur Rai**.

Copy served to the other sides.

Now the bail petition is taken up for hearing.

The bail application is moved.

Ld. Advocate for the accused person prays for bail of the accused person on the ground that he is detained in custody since 06.02.2025 and he has been falsely implicated in this case. He further submits that all the other accused persons are on bail and this accused person has a fixed place of residence and there is no chance of his absconsion.

Ld. Special Public Prosecutor opposes the prayer for bail of this accused person.

I have carefully perused the materials on the record.

Considering the nature and gravity of the offence and conduct of the accused person as it appears from the record, I do not find any just cause to allow the bail prayer of this accused person.

The bail prayer of the accused person namely namely **Purna Bahadur Rai** stands rejected.

To date i.e. on 26.06.2025 for production, appearance and framing of charge.

Ld. Special Public Prosecutor files a report regarding return of the warrant of arrest issued against accused Pradeep Pradhan. Let it be kept with the record.

Dictated & corrected by me

Sd/-

Chief Judge

City Sessions Court, Calcutta.

Sd/-

Chief Judge

City Sessions Court, Calcutta.