

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Writ Petition No. 1515/2025

Ketan Banjara S/o Shri Tola Ram, Aged About 54 Years, Resident Of Plot No. 96, 12Th Road Circle, Banjara Mohalla, Masuriya, Jodhpur, District Jodhpur, Rajasthan.

-----Petitioner

Versus

1.

State Of Rajasthan, Through The Principal Secretary Department Of Home Affairs, Government Of Rajasthan, Jaipur.
2.

Union Of India, Through The Secretary Minister Of Personnel Public Grievances And Pensions (Department Of Personnel And Training) Room No. 112, North Block, New Delhi 110001.
3.

The Director, Central Bureau Of Investigation (Cbi) C.g.o. Complex, Lodhi Road, New Delhi.
4.

Station House Officer, P.s. Devnagar Jodhpur (Rajasthan)
5.

Satish Banjara @ Shaitan Banjara S/o Shri Gokal Ji, R/o Masuda Bus Stand, Masua, Tehsil And District Beawar (Rajasthan)
6.

Reena D/o Ghewar Chand Banjara, R/o Lawa, Sardargarh, District Rajsamand (Rajasthan).
7.

Dimple W/o Shri Prakash, R/o Lawa, Sardargarh, District Rajsamand (Rajasthan)
8.

Ravi S/o Sampat Banjara, R/o Nearby Panchayat Samiti, Desuri, District Pali (Rajasthan)
9.

Ganpat S/o Shri Panchu Ram, R/o Opp. Bus Stand, Nadol Bus Stand, Nadol, District Pali (Rajasthan)

-----Respondents

For Petitioner(s)	:	Mr. Ashok Joshi, Adv. with Mr. Rahul Joshi, Adv.
For Respondent(s)	:	Mr. P.C. Solanki, Spl. PP for CBI with Mr. Lalit Kishore Sen, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment

- 1. Date of conclusion of arguments : 29.04.2026**
- 2. Date on which the judgment was reserved : 29.04.2026**
- 3. Whether the full judgment or only the operative part is pronounced : Full Judgment**
- 4. Date of pronouncement : 20.05.2026**

1. Instant writ petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India read with Section 528 of the BNSS, seeking directions to the CBI to conduct fair and impartial investigation in FIR No. 28/2018 registered at Police Station Devnagar, District Jodhpur for offences under Sections 364, 302 and 120B of the IPC.

2. The brief facts of the case are that on 26.11.2017, the petitioner submitted a written report at Police Station Pratap Nagar, Jodhpur, stating that his son, Naresh, a student of Class XII studying at Mahesh Senior Secondary School, Jodhpur, had gone missing. It was stated that on 25.11.2017 at about 6:00 PM, Naresh had left the house without informing any family member and did not return thereafter. Despite extensive searches and inquiries made among relatives, friends and persons in the locality, no information regarding his whereabouts could be obtained. On the basis of the said report, Missing Person Report No.86/2017 came to be registered on 26.11.2017 at Police Station Pratap Nagar, District Jodhpur.

3. Thereafter, the petitioner filed a complaint before the learned Chief Metropolitan Magistrate, Jodhpur Metro, alleging involvement of the accused persons in the disappearance of his

son. In the complaint, it was alleged that prior to the lodging of the Missing Person Report, the petitioner's brother-in-law, Jagdish, informed the petitioner's other son, Arjun, that accused Ravi Banjara had demanded a photograph of Naresh. However, Arjun did not provide the same.

4. The petitioner further alleged that the engagement ceremony of Naresh with Ms. Reena, daughter of Ghewar Chand Banjara, was scheduled to be held on 30.11.2017. However, Naresh went missing on 25.11.2017, just a few days before the proposed engagement. According to the complaint, accused Satish alias Shaitan was allegedly in a relationship with Reena and harboured animosity towards Naresh on account of the proposed engagement. It was alleged that Satish, along with his sister Dimple and Reena, entered into a criminal conspiracy against Naresh and, in furtherance thereof, instructed accused Ganpat to procure Naresh's photograph.

5. The complaint further stated that the accused persons had been monitoring the movements of Naresh and that they had allegedly abducted him on 25.11.2017, either with the intention to murder him or to get him eliminated through hired persons. It was also alleged that the call detail records indicated the location of accused Satish in Jodhpur on 16.11.2017 and further revealed frequent telephonic conversations between Satish and Ganpat between 15.11.2017 and 20.11.2017.

6. Pursuant to the complaint filed by the petitioner, the learned Court below directed the police authorities to investigate the matter, whereupon FIR No.28/2018 dated 03.05.2018 came to be

registered at Police Station Devnagar for offences under Sections 364, 302 and 120B of the IPC.

7. The petitioner thereafter approached this Court by filing Criminal Miscellaneous Petition No.118/2018 under Section 482 Cr.P.C., alleging lack of proper investigation and inaction on the part of the police authorities. The said petition came to be dismissed vide order dated 16.05.2018, observing that an FIR had already been registered in relation to the allegations made by the petitioner. However, this Court directed the investigating officer to conduct a fair, impartial and prompt investigation.

8. As, according to the petitioner, no effective progress was made in the investigation despite the aforesaid directions, he subsequently filed Habeas Corpus Petition No.116/2018 before the Division Bench of this Court. During the pendency of the said petition, the Division Bench issued various directions to the respondent authorities from time to time for tracing the missing person. Vide order dated 20.05.2019, the Court directed the police authorities to produce Naresh before the Court after taking appropriate steps, and copies of the order were forwarded to the Commissioner of Police, Jodhpur and the Director General of Police, Rajasthan.

9. Subsequently, vide order dated 23.09.2019, the investigation was transferred to the Special Operations Group (SOG), however, on 18.10.2019, the Court was informed that the SOG has only got a handful officials and it would not be possible for it to engage in the exercise of making efforts to search out the missing person. Therefore, the Court modified its earlier order and directed

constitution of a Special Investigation Team headed by an Additional Superintendent of Police and instructed the investigating agency to take assistance from competent IT experts so as to conduct a comprehensive investigation. However, despite such directions and constitution of the SIT, the whereabouts of Naresh could not be ascertained.

10. Ultimately, the Habeas Corpus Petition came to be disposed of on 08.07.2020 after the investigating officer informed the Court that no evidence had surfaced indicating that Naresh had been abducted, murdered or illegally confined. Nevertheless, the Court directed the authorities to continue sincere efforts to trace Naresh under the Missing Person Report and to take the investigation to its logical conclusion.

11. In the aforesaid circumstances, the petitioner was once again constrained to approach this Court by filing S.B. Criminal Misc. Petition No. 4063/2020 under Section 482 Cr.P.C., seeking transfer of investigation to the CBI. However, this Court, vide order dated 09.09.2022, disposed of the said petition while observing that the police authorities had been making continuous efforts to trace the petitioner's missing son, Naresh, and that no material was available to infer incompetence on the part of the investigating agency. At the same time, this Court took note of the fact that Naresh continued to remain untraceable and accordingly directed the police authorities to persist with sincere and earnest efforts and to take the investigation arising out of the missing person report to its logical conclusion.

12. Counsel for the petitioner submits that despite the lapse of several years, no meaningful progress has been made in tracing the petitioner's missing son or in conducting a fair and effective investigation into the serious allegations of abduction and murder. Owing to the continued inaction of the investigating authorities, the petitioner and his family were compelled to approach the State Government and undertake a 122 days protest at Jaipur seeking justice and an impartial investigation. Counsel submits that pursuant to the persistent efforts of the petitioner, the State Government transferred the investigation of FIR No. 28/2018 to the CBI vide order dated 20.09.2023. However, even after the transfer of investigation, the CBI has neither registered a fresh FIR nor communicated any progress in the matter to the petitioner. It is submitted that the inaction on the part of the CBI has only deepened the petitioner's apprehension that the matter is not being investigated in a fair, impartial, and time-bound manner.

13. Counsel submits that the State Police also failed to trace Naresh and ultimately proceeded to file a closure report without conducting a proper and effective investigation, despite repeated directions passed by this Court. Counsel further submits that the petitioner is therefore left remediless and has been constrained to invoke the extraordinary writ jurisdiction of this Court by way of the present criminal writ petition seeking appropriate directions to the CBI for a fair, impartial, and expeditious investigation. Counsel thus, prays that the present writ petition be allowed and appropriate directions may be issued to the CBI.

14. Mr. P.C. Solanki, learned Special Public Prosecutor appearing for the CBI submits that the present dispute primarily arises out of a family feud and does not involve any issue of such magnitude or public importance as would warrant investigation by the CBI. It is submitted that the allegations in the present case do not disclose offences relating to national security, terrorism, large-scale corruption, or matters having interstate or international ramifications so as to necessitate investigation by the CBI. It is further submitted that, upon completion of investigation, the State Police has already filed a final report/closure report before the learned Chief Metropolitan Magistrate, Jodhpur Metro on 28.11.2024. Counsel contends that the petitioner has not yet availed the statutory remedy available to him against the said report in accordance with law. He submits that an efficacious alternative remedy is available to the petitioner before the learned Chief Metropolitan Magistrate, Jodhpur Metro, by way of filing a protest petition against the final report, and as such, invocation of the extraordinary writ jurisdiction of this Court at this stage is not warranted and deserves to be dismissed.

15. I have heard the contentions.

16. Upon perusal of the material available on record, this Court finds that the petitioner's son, Naresh, has remained untraced since 25.11.2017. Initially, Missing Person Report No.86/2017 was registered at Police Station Pratap Nagar, Jodhpur. Subsequently, on the basis of allegations levelled by the petitioner regarding conspiracy and abduction, impugned FIR No.28/2018 came to be registered.

17. The record further reveals that the petitioner has continuously pursued the matter before various forums. Apart from approaching the local police authorities, the petitioner filed a complaint before the learned Magistrate, a Criminal Miscellaneous Petition before this Court under Section 482 Cr.P.C., and thereafter a Habeas Corpus Petition before the Hon'ble Division Bench of this Court. During the proceedings of the Habeas Corpus Petition, repeated directions were issued to the respondent authorities to intensify the investigation and trace the missing person. The disappearance of a young boy immediately prior to his engagement ceremony, coupled with allegations of prior enmity, conspiracy, suspicious call records and repeated inaction of the police, required a thorough and scientific investigation, which unfortunately has not been undertaken.

18. It is also not in dispute that pursuant to the orders passed by the Division Bench, the investigation was transferred to a Special Investigation Team headed by an Additional Superintendent of Police. The investigating agency was also directed to take assistance of technical and IT experts for conducting an effective investigation. However, despite such extensive efforts and prolonged investigation by different agencies, no conclusive result has emerged and the whereabouts of Naresh still remain unknown.

19. This Court is mindful of the legal position that transfer of investigation to the Central Bureau of Investigation is an extraordinary power and the same is required to be exercised sparingly, cautiously and only in exceptional circumstances. At the

same time, it is equally well settled that where the investigation by the State agency does not inspire confidence or where transfer becomes necessary to ensure fairness, impartiality and credibility of the investigation, the constitutional Courts would be justified in directing investigation by an independent agency.

20. In the case of **K.V. Rajendran v. Superintendent of police, CBCID South Zone, Chennai & Ors.**, reported in **(2013) 12 SCC 480**, Hon'ble Supreme Court observed as under:

"This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or 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."

21. In **Pooja Pal v. Union of India & Ors.**, reported in **(2016) 3 SCC 135**, the Hon'ble Supreme Court held as under:-

"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the

community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

....101. Judged in these perspectives, we are of the firm opinion that notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the

quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding far-seeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance.”

22. In **State of West Bengal & Ors. v. Committee for Protection of Democratic Rights & Ors.**, reported in **(2010) 3 SCC 571**, the Hon’ble Supreme Court had discussed in detail inter alia the circumstances under which the Constitutional Courts would be empowered to issue directions for CBI enquiry to be made. The Hon’ble Supreme Court noted that the power to transfer investigation should be used sparingly, however, it could be used for doing complete justice and ensuring there is no violation of fundamental rights. Relevant paragraph is being reproduced below:

“70....Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations

where it becomes necessary for doing complete justice and enforcing the fundamental rights....”

23. In **Awungshi Chirmayo & Anr. v. Govt. of NCT of Delhi & Ors.**, reported in **(2024) 10 SCC 568**, Hon’ble Supreme Court observed as under:

“16. It is to observe that unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. Criminal investigation must be both fair and effective. We say nothing on the fairness of the investigation appears to us, but the fact that it has been ineffective is self evident. The kith and kin of the deceased who live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.”

24. This Court may gainfully refer to the Judgment of **Mustak versus State Of Haryana** decided on 04.01.2024, in **CRM-M-9808-2022**, wherein Punjab and Haryana High Court observed as under:-

“16. Keeping in mind the precedents as laid down by the Hon’ble Supreme Court, following principles emerge:

- The power to transfer an investigation is extraordinary and must be used “sparingly”, cautiously and only “in exceptional circumstances”.

- No one can insist that an offence be investigated by a particular agency. An aggrieved person can only claim that the alleged offence be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.
- Transfer of investigation is not to be directed by the Court just for the asking nor the same is transferred only to satisfy the ego or vindicate the prestige of a party interested in such investigation, but the decision whether transfer should or should not be ordered, rests on the Court's satisfaction depending upon facts and circumstances of a given case.
- The power to order fresh, de novo or re-investigation is vested with the Constitutional Courts; and the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure fair and just investigation.
- Though satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the pre-condition for a direction for further investigation or reinvestigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment.
- Following exceptional situations may be considered while ordering transfer of investigation:
 - where it becomes necessary to provide credibility and instil confidence in the public mind, in the investigations, or
 - where the incident may have national and international ramifications, or
 - where such an order may be necessary for doing complete justice and enforcing the fundamental rights, or
 - when the Court feels that the investigation by the police authorities is not in a proper direction, or
 - when high police officials are involved in the alleged crime, or
 - 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...."

- when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation."

25. In respect of the arguments raised by learned counsel for the CBI, it is the firm opinion of this Court that there is no merit in the argument that the petitioner ought to have filed a protest petition against the negative final report submitted by the investigating agency. It can be seen from the final report that no final decision in respect of concluding the matter has been made by the state police authorities, the closure report has been filed solely on the basis of the fact that even after a long search, the missing person could not be located and the matter had remained pending for some time. In this situation, where the investigation itself has not reached its conclusion and is still going on, there was no justification or propriety of any sort to make the petitioner to file a protest petition because, normally, a protest petition is filed after an agency comes to a conclusive opinion about the matter under investigation and wants to close the matter; but in this case, the very report shows that investigation is still going on and efforts to trace the missing person shall continue along with other cases.

26. Applying the aforesaid principles to the facts of the present case, this Court finds that the investigation has remained stagnant as despite passage of more than eight years, repeated judicial directions, constitution of SIT and investigation by specialized

wings of the State police, the investigation has failed to yield any meaningful outcome. The petitioner has been continuously running from pillar to post in search of his missing son and the prolonged inconclusive investigation has understandably shaken his confidence in the existing investigative machinery.

27. In addition, this Court cannot ignore the socio-economic background of the petitioner, who is from a socio-economically backward community and has been striving to seek justice through various authorities, including the police and the Courts, over a prolonged period of time. Even then, the location of the missing person could not be established. Moreover, the case was deliberately referred to the CBI by the State Government on account of its sensitive nature.

28. In such peculiar facts and circumstances, this Court is of the considered opinion that in order to uphold the rule of law, ensure a fair, impartial and effective investigation and to instill confidence in the process of investigation, the matter deserves to be further investigated by an independent agency like the Central Bureau of Investigation, in order to bring out the truth.

29. Accordingly, the criminal writ petition is allowed. The investigation pertaining to FIR No.28/2018 dated 03.05.2018 registered at Police Station Devnagar, Jodhpur, along with Missing Person Report No.86/2017 registered at Police Station Pratap Nagar, Jodhpur, is hereby transferred to the Central Bureau of Investigation for conducting further investigation in accordance with law.

30. Since a closure report had already been filed in this case, the CBI is directed to file an application before the concerned Court for receiving the entire record of the case. Upon filing the said application, the concerned Court shall handover the complete record of the case to the competent authority of the Central Bureau of Investigation forthwith. The SHO concerned is also directed to handover the record of the case (i.e. case diary, statements, electronic evidence, call details records and all other connected material), if any with him, to the competent authority of CBI.

31. The stay application and pending application(s), if any, also stand disposed of.

32. Before parting with the order, this Court deems it appropriate to observe that, since the petitioner's child has remained missing for more than eight years, the possibility of substantial physical changes in appearance over the passage of time cannot be ruled out. Accordingly, as a measure to aid the ongoing search, it is suggested that an age-progressed image of the missing child be prepared with the assistance of Artificial Intelligence (AI), depicting his probable present appearance, and that the same be circulated on a pan-India basis through national news channels and other appropriate print, electronic, and digital media platforms for a period of 7–10 days.

(ANIL KUMAR UPMAN),J