
(2024) 12 SHI CK 0047

High Court Of Himachal Pradesh

Case No: CWP No. 4630 Of 2024

Balbir Singh Pathania

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision: Dec. 23, 2024

Acts Referred:

- Constitution of India, 1950 - Article 21
- Code of Criminal Procedure, 1973 - Section 176
- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 21, 29
- Indian Penal Code, 1860 - Section 120B, 224, 385

Hon'ble Judges: Tarlok Singh Chauhan, ACJ; Satyen Vaidya, J

Bench: Division Bench

Advocate: Ram Murti Bisht, Anup Rattan, Priyanka Chauhan

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

Â âœi) That directions may be issued to entrust the investigation of entire matter i.e. subject matter of three FIRs including cause of death of deceased Rishi Raj

in custody to the CBI or in the alternative to a Special Investigation Team (SIT) headed by officer not below the rank of I.G. of Police.

ii) That the directions may kindly be issued to pay appropriate compensation to the family members of the petitioner family on account of illegal act, conduct or

dead of the officers/ officials of respondent No.1 for causing death of deceased Rishi Raj.

iii) That the order may kindly be issued for registration of FIR against the officer/official who were responsible for the death of deceased in custody and also against any other persons found involved in conspiracy to involve deceased in a false case under NDPS Act as a result of which Rishi Raj died in custody.

iv) That the assets of the Sr. Police Officer of the District alongwith other police officials including role of suppliers of drugs including that of identified police informers may also be ordered to be investigated.

2. Petitioner is father of deceased Rishi Raj, whose dead body was found floating in the waters of "Suketi Khad" (rivulet) Mandi, within the jurisdiction of Police Station, Sadar Mandi, in the afternoon of 5.4.2024.

3. Petitioner by way of instant petition has expressed suspicion over the reasons assigned for the death of Rishi Raj. He has also suspected foul play with the connivance of police officials in the entire incident.

4. As per the allegations of the petitioner, on 2.4.2024 one person named as Rahul had visited the house of the petitioner on

"scooty" and Rishi Raj had accompanied him on the pretext of having some celebration. At about

7. 30 p.m., the wife of Rishi Raj had called Rishi Raj on mobile phone and in response, she was informed by Rishi Raj that he would be reaching home

in 10-15 minutes. At about 9.30 p.m., another person named Kapil had visited the house of the petitioner and informed the petitioner that Rishi Raj was

in police custody since about 7.00 p.m., as he had been caught in a case under the NDPS Act near place "Pulgharat". The said Kapil had

further allegedly disclosed that he had been deputed by the police with the offer that the matter could be hushed up and in order to settle the deal, the

petitioner should contact on mobile phone number 9115727297. The petitioner had immediately made call on mobile number so provided by the Kapil

and the receiver of the call had confirmed that Rishi Raj was in police custody. The receiver of the call had further demanded a sum of Rs. 2,50,000/-

for hushing up the matter. Thereafter, the petitioner started arranging the amount. Since it was night time, he was not able to arrange such a huge

amount. He requested for reducing the amount or in alternative to keep the gold but his offer was declined. The person seeking ransom, however,

allowed the petitioner to arrange for the amount till early morning. The request of the petitioner to have conversation with Rishi Raj was also declined

on the assurance that after receiving of ransom amount, Rishi Raj would be released and set free.

5. It is further alleged by the petitioner that on the next morning i.e. 3.4.2024, the petitioner withdrew a sum of Rs. 1,00,000/- from the account of his

wife and Rs. 40,000/- from the account of his elder son named Ajay Raj Pathania. Thereafter, as directed, the petitioner along with his son Ajay Raj

Pathania visited the place i.e. "Bagla" where the money was to be delivered but they did not find anyone there. The petitioner had then

contacted the other side and offered a sum of Rs. 1,40,000/- but the demand for entire amount was insisted upon. It was threatened that in case the

money was not arranged, Rishi Raj would be implicated in a case under NDPS Act. Thereafter, despite the efforts, the petitioner was not able to

establish link with the aforesaid mobile number, as it was found switched off.

6. It is further the case of the petitioner that on 3. 4.2024 at about 12.15 p.m., two police officials had come at a "Dhabha" near the house of the

petitioner and had inquired from the "Dhabha" owner as to whether Rishi Raj had reached home. At about 2.30 p.m., the petitioner came to

know that some police officials were standing at Pulgharat. The elder son of the petitioner had visited the place Pulgharat but there was none on the spot.

7. On 4.4.2024, the petitioner reported the matter to Superintendent of Police, Mandi. On 5.4.2024, at around 5.00 p.m., the body of Rishi Raj was

noticed in "Suketi Khad". The police also reached and it was at that time that the petitioner was called to the spot to identify the body.

8. On 6.4.2024, the post-mortem was conducted on the body of deceased Rishi Raj at Government Medical College, Mandi. As per post-mortem

report, the provisional cause of death was shown as asphyxia due to ante-mortem wet drowning. One external injury i.e. a grazed abrasion was found

on the right side of forehead and another grazed abrasion on the nose of the deceased and no other injury was noticed.

9. As per petitioner, when the body was being handed over to the petitioner, about 10-15 persons present there had disclosed that on 2.4.2024 at about

6.00 p.m., deceased Rishi Raj had been seen being interrogated by the police team headed by senior police officer of District at Pulgharat. As per

them, the police officials were in civil dress and two vehicles were standing nearby. At that time, Rishi Raj and Rahul were taken in police custody

and were moved from the spot in official vehicle towards Mandi. It was in this background that the petitioner submitted another representation dated

6.4.2024 to Superintendent of Police, Mandi with copies to Director General of Police, Himachal Pradesh and Honâ€™ble Chief Minister.

10. It is also contended by the petitioner that on 19.4.2024, he had received a communication disclosing inter-alia that an FIR No. 69 of 2024 dated

3.4.2024 had been registered in Police Station, Sadar Mandi against Rahul and Rishi Raj for commission of offence under Sections 21 and 29 of the

NDPS Act. As per allegations, both Rahul and Rishi Raj were apprehended at about 10.00 p.m. by the police patrol party headed by Sub Inspector,

Manoj Kumar near Pulgharat with a â€™scootyâ€™. On search, 12.66 grams heroin/Chitta was recovered from the â€™scootyâ€™. The petitioner

was also informed through the aforesaid communication that FIR No. 70 of 2024 dated 3.4.2024 had also been lodged in Police Station, Mandi against

Rahul and Rishi Raj for commission of offence under Section 224 of IPC with the allegation that they had absconded from custody of the police.

11. The petitioner has further averred that on his complaint dated 4.4.2024, FIR No. 70 of 2024 dated 12.4.2024 was registered at Police Station, Balh

under Sections 385 and 120B of IPC. He has also raised questions about the delay in lodging such FIR.

12. In the aforesaid backdrop, the petitioner has asserted right to fair and impartial police investigation on the following grounds:-

a) Relying upon the information allegedly provided to the petitioner by some local resident, an allegation is made that Rishi Raj and Rahul had been apprehended by the police at about 6.00 p.m. at Pulgharat and for such reason, the version recorded in FIR No. 69 of 2024 dated 3.4.2024, registered at Police Station, Sadar Mandi was concocted.

b) The version coming out from the contents of FIR No. 69 of 2024 is also stated to be belied on the pretext that at 9.30 p.m. on 2.2.2024, Kapil had visited the house of

the petitioner and had informed that Rishi Raj had been caught by the police in a case under the NDPS Act.

c) Despite the fact that the petitioner had brought to the notice of the Superintendent of Police, Mandi, the incident of demand of ransom on 4.4.2024 in writing, no

cognizance was taken immediately and it was on 12.4.2024 that an FIR under Sections 385 and 120B of IPC was registered at Police Station, Balh.

d) The death of Rishi Raj had taken place in unnatural circumstance.

e) The investigation was not fair and independent due to involvement of police officers/officials.

13. The respondents have filed their reply through the Superintendent of Police, Mandi (respondent No.3). While narrating the facts culminating in

registration of FIR No. 69 of 2024 dated 3.4.2024 at Police Station, Sadar, Mandi, it has been averred that on the night of 2.4.2024 a police patrol

party from Police Post, Mandi, headed by Sub Inspector, Manoj Kumar was present near Old Petrol Pump between Pulgharat and Ramnagar, Mandi

in official vehicle on routine patrolling. At about 10.00 p.m. a "scooty" was noticed approaching from Pulgharat side and was signaled to stop.

Rahul was rider and Rishi Raj was on the pillion. Suspicion had arisen from the conduct of Rishi Raj and Rahul and the "scooty" was searched.

12.66 grams heroin/Chitta was recovered. It is further submitted that at about 11.15 p.m., when SI Manoj Kumar had already seized and sealed the

contraband and was in the process of further spot proceeding, both the accused i.e. Rishi Raj and Rahul pushed the police officials aside and ran away

from the spot. Both of them allegedly jumped from the edge of the road into "Suketi Khad". The police officials alongwith independent witness

followed and both the accused were found sitting on the river bed. On noticing the police, both jumped into the water. Rahul was apprehended by one

of the constables but Rishi Raj could not be traced. The search was conducted during the night and on the next day but Rishi Raj could not be traced.

In addition to police, a team of State Disaster Response Force (SDRF) had also been associated in search operation.

14. As per police, having failed to trace accused Rishi Raj, SI Manoj Kumar had sent "Rukka" to Police Station, Sadar and FIR No. 69 of 2024

was registered. It is also the case of the respondents that on the same day i.e. 3. 4.2024, another FIR No. 70 of 2024 was registered at Police Station,

Sadar Mandi under Section 224 of IPC with the allegation that Rishi Raj and Rahul had absconded from the police custody.

15. Respondents have also stated that on the complaints of the petitioner dated 4.4.2024 and 6.4.2024, an inquiry was conducted by an officer of the

rank of Deputy Superintendent of Police and on its basis, an FIR No. 70 of 2024 under Sections 385 and 120B of IPC was registered at Police Station,

Balh on 12.4.2024. The police is stated to have carried investigation in FIR No. 70 of 2024 at Police Station, Balh and had found the complicity of

Kapil along with two other named Raj Kumar and Deepak in making the demand of money from the petitioner on the pretext of saving Rishi Raj from

implication in a case under the NDPS Act.

16. According to the respondents all the aspects with respect to allegations of involvement of police officials have been examined/investigated and,

nothing wrong and illegal has been found. The allegation of the petitioner that Rishi Raj had been apprehended along with Rahul by the police at

Pulgharat on 2.4.2024 at about 6 PM has been categorically denied. Reliance has been placed on CCTV footage showing both the accused persons in

FIR No. 69 of 2024 in an ATM, outside Police Lines, Mandi at 7.50 p.m.

17. It has also been re-asserted that Rishi Raj and Rahul had absconded from police custody at 11.50 p.m. on 2. 4.2024 and had jumped into the

â€˜Suketi Khadâ€™. Rahul was allegedly apprehended with injuries but Rishi Raj had allegedly disappeared and finally his dead body was recovered

from the water of â€˜Suketi Khadâ€™ on 5.4.2024.

18. The submission of complaints dated 4.4.2024 and 6.4.2024 by the petitioner has been admitted. It has also been submitted that on 3.4.2024 at

around noon a police team had visited the house of the petitioner but none was found and, in such circumstances, the police officials had narrated the

incidence to the owner of a â€˜Dhabhaâ€™ located on the ground floor of the house of the petitioner.

19. It is also the specific contention of the respondents that on 5.4.2024, the police was informed by the elder brother of the deceased that a body was

floating in the water of â€˜Suketi Khadâ€™™. The police on reaching the spot had discovered the said body to be that of Rishi Raj.

20. A proceeding termed as judicial inquiry is also stated to have been conducted by the learned Chief Judicial Magistrate, Mandi into the case of death of Rishi Raj and as per the respondents, the said officer had also not found any foul play or complicity of the police officials.

21. The petitioner by way of rejoinder re-iterated the issues raised by him in the petition. Instead of 6.00 p.m. being the time of apprehension of Rishi Raj and Rahul by the police officials at Pulgharat, it has been mentioned that said apprehension was at about 7.30/8 p.m. The police has also been accused of not collecting any evidence as to where about of Rishi Raj and Rahul between 7.00-8.00 p.m. to 10.00 PM on 2.4.2024. It has been pointed out that though Rishi Raj and Rahul had allegedly absconded from the police custody at 11.15 p.m. but SI Manoj Kumar had scribed the Rukka at 4.30 p.m. and FIR No. 69/2024 was registered at 6.43 p.m. whereas, the distance between the spot and the Police Station is stated to be only about one kilometer. It has also been pointed out that the second FIR NO. 70/2024 was registered at P.S Sadar Mandi under section 224 IPC at much belated stage.

22. It is also the specific averments of the petitioner that neither he nor any of his family members were informed about the arrest of Rishi Raj or the incident of his absconding from custody of police.

23. It is also contended that when the police or SDRF team could not find the body in the water of â€˜Suketi Khadâ€™™ in such a long operation, how the body could appear on the same spot after two days?

24. The police has also been accused of not collecting the entire relevant evidence to rule out the possibility of foul play and complicity of police officials.

25. The respondents have availed the opportunity to file sur-rejoinder. The malafide in the allegations of the petitioner have been sought to be pointed out by highlighting the change in time of alleged apprehending of Rishi Raj and Rahul by the police from 6.00 p.m. to 7.30-8. 00 PM. It has been submitted that Rishi Raj and Kapil were known to each other. As per respondents, during the investigation of FIR No. 70 of 2024, registered at Police

Station, Balh, it was revealed that the demand of money was made by accused persons in FIR No. 70/2024 of PS Balh; as Rishi Raj owed the money to them.

26. The delay in registration of FIR Nos. 69 of 2024 and 70 of 2024 at Police Station Sadar Mandi has been sought to be explained by contending that since the accused persons had absconded from police custody, therefore, the priority was to nab them.

27. As regards the allegation of not providing any information to the family members of Rishi Raj, it has been stated that since no formal arrest had been made, the family members were not formally intimated about the instance. It is admitted by the respondents that it was on 3. 4.2024 when Ajay

Raj Pathania, the elder brother of Rishi Raj was witnessing search was fully apprised about the incidence that had happened on the previous night.

28. Suspicion of petitioner regarding the surfacing of body of deceased at the same place where a thorough search was allegedly conducted by the police and SDRF have been sought to be brushed aside by alleging that the SDRF did not have the diving equipment and hence deep-water diving could not be carried out. The search inside the water had been conducted by using improvise method like use of long wooden poles.

29. We have heard learned counsel for petitioner and learned Advocate General for the respondents and have also perused the record produced before us

30. At the very outset we make it absolutely clear that we are not exercising extraordinary writ or inherent jurisdiction to deal with the charges faced by Rahul and deceased Rishi Raj in FIR No. 69/2024 dated 3.4.2024 registered at PS Sadar Mandi. The trial, if any, against said persons shall proceed

unabatedly. We are only and specifically dealing with certain specific aspects related with FIR No. 70/2024 dated 3.4.2004 registered under section

224 IPC at PS Sadar Mandi and FIR No. 70/2024 registered at PS Balh, District Mandi on 12.4.2024 under sections 385, 120-B IPC. Thus, any

observations made herein shall not in any manner prejudice the rights available to prosecution or defence in the said trial as per law.

31. Admittedly, two written complaints Prima facie disclosing commission of offence under section 385 IPC were submitted by the petitioner to the

Police on 4.4.2024 and 6.4.2024 respectively, but instead of registration of immediate FIR it came to be registered on 12.4.2024 vide FIR No. 70/2024

at PS Balh. The offence under section 385 IPC was a cognizable offence. In such circumstances we find a clear violation of the following mandate of

a Constitutional Bench in *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1:

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police

must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the

information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited

purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable

offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the

information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the

investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a

cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to

ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the

complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for

closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. 120.7 [Ed.: This correction is based on para

120.7 as corrected vide order in *Lalita Kumari v. State of U.P.*, (2023) 9 SCC 695.] . While ensuring and protecting the rights of the accused and the complainant,

a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate

reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry. 120.8. Since the General Diary/Station

Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in

registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry

must also be reflected, as mentioned above.â€

32. In the teeth of above mandate of law, it is not understandable why the Police resorted to holding of an enquiry in the first instance. This conduct of the Police is not only deprecable but also is a possible reason to suspect lack of fairness and impartiality in their dealings.

33. In addition to above we have noticed and gathered from the stand of respondents that they enigmatically have chosen to contest the claim of petitioner in adversarial form.

34. The right of a victim under Article 21 of the Constitution, has been recognised even in the mandate of Constitutional Bench in *State of W.B. v.*

Committee for Protection of Democratic Rights, (2010) 3 SCC 571 as under:

â€œArticle 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim.

The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

35. Hence, the right of a victim as enshrined under article 21 of the Constitution cannot be offered less value than that of the accused; for that will be antithetic to the provision.

36. The police have to act dispassionately in a fair manner. Its conclusions have to be based on the evidence collected. In the system governed by rule of law, no one is above law. It is also trite that there is no exception to the fundamental right of life and liberty of a citizen of India except by adoption of due procedure of law.

37. We are of the view that the reluctance shown by police to carry investigation to rule out all possible hypothesis more particularly the angle pointed out, rather alleged by petitioner is sufficient to infer absence of un biased investigations. The delay in lodging the FIR can also not be seen without suspicion.

38. In our considered view this amounts to clear violation of fundamental right of victim under article 21 of the Constitution of India. It cannot be forgotten that beyond the legal ramifications, Section 385 IPC casts a long shadow on the psychological and emotional well-being of victims. The fear instilled by the threat of injury can leave lasting scars, necessitating a holistic approach to victim support and rehabilitation more particularly when it relates to alleged involvement of the son of victim in serious offence(s) under NDPS Act and more importantly in the instant case where the young son of the petitioner was found dead in unnatural circumstances.

39. It was a case where the young son of the petitioner had died in unnatural circumstances. The anxiety and curiousness of petitioner to have known the truth was not unjustified especially when he had received ransom calls alleging involvement of his son in some case under NDPS Act. In such circumstances, the Police was duty bound to instill confidence in him and his family members as it was the duty of police to unravel the truth and further it was the Police only who had the powers and mechanism to do so.

40. Importantly, the police had found substance in the allegations of ransom calls received by the petitioner. In fact, Police has already booked three persons for offences under sections 385, 120-B IPC in FIR 70/2024 registered at PS Balh on the complaint of petitioner.

41. The ransom calls to petitioner had preceded the time of alleged apprehension of Rahul and Rishi Raj or at least were made simultaneously. There is no material to suggest the link, if any, between the two. Thus, there was prima facie material to suspect the involvement of some other persons or officials of respondents, otherwise it could not have been a mere co-incidence that ransom calls were received by petitioner almost at the same time when his son was allegedly apprehended by police with the contraband. Evidently, this perspective has not been examined or investigated.

41.1 The Police of the same district contemporaneously faced similar allegations at the hands of father whose son was allegedly found transporting commercial quantity of heroin/Chitta during the intervening night between 31.3.2024 and 1.4.2024 and against whom and co-accused FIR No. 60/2024 under sections 21 and 29 of NDPS Act was registered at PS Balh. There also the ransom calls were received by the father of accused preceding the

time of alleged recovery. Such allegation prima facie has been found to be correct by the Police and two of the three accused persons in FIR No.

70/2024 PS Balh have been found involved in case of extortion and FIR No. 106/2024 PS Balh has been lodged. This court has already passed

directions to CBI to carry investigations in FIR 106/2024 of PS Balh in another case being Cr.W.P No. 19 of 2024 titled Gurdev Singh Verma vs.

State of Himachal Pradesh. In that case serious allegations were against Police Officers.

41.2 We feel that the timings of extortion calls made to persons on the pretext of getting their sons absolved from the cases under NDPS Act

immediately preceding the eventual apprehension of their sons in more than one case, could not be a mere co-incidence.

42. It is also beyond comprehension that why the petitioner or any other member of the family of Rishi Raj were not informed about the registration of

cases vide FIR Nos. 69/2024 and 70/2024 at PS Sadar Mandi. The claim of respondents is that the police officials had visited the house of petitioner

on 3.4.2024 but none was found there and hence the information was left with some â€˜Dhabaâ€™ owner. On the contrary petitioner has alleged that

some police officials had visited a â€˜Dhabaâ€™ in the vicinity of his house on 3.4.2024 and had made enquiries whether Rishi Raj had returned

home? It has also come on record that the Police official has narrated the incident to elder brother of deceased Rishi Raj in the afternoon of 3.4.2024

at about 5 PM.

42.1 It is clear that Police did not inform the petitioner or any other family member of Rishi Raj about his alleged involvement in case registered vide

FIR Nos. 69/2024 and 70/2024 at PS Sadar Mandi till the afternoon of 3.4.2024. Even if the version of respondents that none was found in the house

of petitioner in the forenoon of 3.4.2024 is taken into account, it cannot be believed that the Police officials did not have any other means to inform the

petitioner or any other family member. The easiest way was to establish contact through mobile phone(s). It also cannot be said that the Police

officials could not have found the mobile number of petitioner or any other member of his family.

43. The Police cannot claim to absolve itself from fair and unbiased investigation under the shield of proceedings undertaken by learned Judicial

Magistrate under section 176 of the Code of Criminal Procedure. The proceeding under section 176 CrPC has its limited scope for ascertaining the

cause of death. In the facts of the case at hand the cause of death has been suggested as "asphyxia due to ante-mortem wet drowning". Since,

the very genesis of Police version had come into question, the relevant issue was as to in what manner the drowning had taken place.

43.1 There are different versions on record as to the site where Rishi Raj and Rahul had allegedly jumped into the "Suketi Khad". As per one

version the height from where the above persons had jumped was about 200 feet and the other version mentions such height to be about 150 feet. The

Police version also maintains that the said persons had jumped into dry river bed. To jump from a vertical height of about 150 feet cannot be

considered as a normal task more particularly on a hilly terrain. No site plan or photographs of the spot have been placed on record. It is not the case

of respondents that there was no vegetation or any other obstruction in the entire stretch of vertical cliff of about 150 feet. Neither learned Magistrate

while holding proceedings under section 176 CrPC nor the Police has ventured to look into such a vital aspect. This is being observed keeping in view

the nature of injuries found on the body of deceased. There were only two grazed abrasions on the forehead and nose of the deceased. It is near

impossible that after jumping from a cliff having height of 150 feet that too into the river bed a person will have no injury on his feet, legs, hands or

other parts of the body.

43.2 Some suspicion also arises when one notices the conduct of Police in not registering the FIR under section 224 IPC against Rishi Raj and Rahul

simultaneously with FIR No. 69/2024 under sections 21 and 29 of NDPS Act. There is a gap of about more than 4 hours between the timing of

registration of both the cases; whereas the information regarding alleged absconding of accused persons from Police Custody had been made

available to the Police Station simultaneously with the information about their apprehension with contraband.

44. We are not at all oblivious to the repeated cautions sounded with respect to limited and restrictive powers of constitutional courts to direct transfer

of investigation to another investigating agency. Reference can be made to a few of the precedents.

(a) *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571

“This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.”

(b) *Mithilesh Kumar Singh v. State of Rajasthan*, (2015) 9 SCC 795.

12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer

directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. 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 demand such an order. No hard-and-fast rule has been or can possibly be

prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its

jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given

conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may

step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all

transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of

the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are

commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself

rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer,

the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

45. We have already highlighted the strong evidence indicating gross portrayal of inadequacy by the state Police. The conduct displayed by the Police

prima facie can also not be said to be un-biased. There are allegations against the police official(s). Having held violation of fundamental right of the

victim at the hands of state law enforcing agency and also to uphold right of discovery of truth, we find it to be a fit case to direct Director General of

Police Himachal Pradesh to get further investigations in FIR No. 70/2024 dated 3.4.2024 registered under section 224 at PS Sadar Mandi and FIR No.

70/2024 under sections 385, 120-B IPC at PS Balh, District Mandi to be conducted by an officer not below the rank of Superintendent of Police and

under supervision of an officer not below the rank of Inspector General of Police. Needless to say that the investigating officer shall not be from

District Police Force Mandi.

46. The investigating officer shall take into consideration all the allegations levelled by petitioner by way of his complaints made to the State Police

from time to time and also averments made in this petition besides any other information as may be required by him/her.

47. We also direct Principal Secretary Home to conduct an enquiry into the conduct of all concerned Police Officials particularly with respect to

violation of mandate in Lalita Kumari supra and report the compliance to this Court on 10.3.2025.

48. The instant petition is disposed of with directions as above.