

പതിനാലാം കേരള നിയമസഭ

പത്താം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ 4419 21.03.2018-ൽ മറുപടിക്ക്

ഷുഹൈബ് വധക്കേസ്

ചോദ്യം

മറുപടി

ശ്രീ. അബ്ദുൽ ഹമീദ് പി.

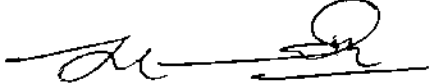
പിണറായി വിജയൻ
(മുഖ്യമന്ത്രി)

- (എ) ഷുഹൈബ് വധക്കേസ് അന്വേഷണം സംബന്ധിച്ച് ഹൈക്കോടതി സർക്കാരിനെതിരെ എന്തെങ്കിലും പരാമർശങ്ങൾ നടത്തിയതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ; വിശദമാക്കുമോ;
- (ബി) ഈ കേസിൽ ഹൈക്കോടതി സർക്കാരിനെതിരെ പരാമർശം നടത്തുവാനിടയായ സാഹചര്യമെന്തായിരുന്നു എന്ന് പരിശോധിക്കുമോ;
- (സി) കേസ് സി.ബി.ഐ.ക്ക് വിടണമെന്ന ആവശ്യത്തെ സർക്കാർ എതിർത്തതിന്റെ കാരണമെന്തായിരുന്നു എന്ന് വെളിപ്പെടുത്തുമോ;
- (ഡി) ഈ കേസിന്റെ അന്വേഷണം സി.ബി.ഐ.യെ ഏൽപ്പിക്കണമെന്ന് ഹൈക്കോടതി വിധി ഉണ്ടായിട്ടുണ്ടോ; വിശദാംശം വെളിപ്പെടുത്തുമോ;
- (ഇ) ഈ വിധിക്കെതിരെ അപ്പീൽ നൽകാൻ തീരുമാനിച്ചിട്ടുണ്ടോ;

- ഷുഹൈബിന്റെ കൊലപാതകം
- (എ) സി.ബി.ഐ ഏറ്റെടുത്ത് യും അന്വേഷിക്കുവാൻ ബഹു
- (ബി) ഹൈക്കോടതിയുടെ സിംഗിൾ ബഞ്ച് യും 07.03.2018 തീയതിയിൽ
- (സി) വിധിന്യായം പുറപ്പെടുവിച്ചിരുന്നു. യും പ്രസ്തുത വിധിന്യായത്തിനെതിരെ
- (ഡി) സർക്കാർ ഡിവിഷൻ ബഞ്ചിൽ യും അപ്പീൽ സമർപ്പിക്കുകയും ബഹു
- (ഇ) ഹൈക്കോടതിയുടെ ഡിവിഷൻ ബഞ്ച് യും സിംഗിൾ ബഞ്ച് വിധിന്യായം സ്റ്റേ ചെയ്തിട്ടുള്ളതുമാണ്. സിംഗിൾ ബഞ്ച് വിധിന്യായത്തിന്റെ പകർപ്പ് ഇതോടൊപ്പം ചേർക്കുന്നു.

(എഫ്) കേരളത്തിലെ രാഷ്ട്രീയ
കൊലപാതകങ്ങളെക്കുറിച്ച്
സമഗ്രമായി
അന്വേഷിക്കുന്നതിനും
പരിഹാരം തേടുന്നതിനുമായി
ഒരു ജൂഡീഷ്യൽ കമ്മീഷനെ
നിയമിക്കുന്നതിനെക്കുറിച്ച്
ആലോചിക്കുമോ?

പരിഗണനയിലില്ല.


സെക്ഷൻ ഓഫീസർ

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 7TH DAY OF MARCH 2018 / 16TH PHALGUNA, 1939

WP(C).No. 6630 of 2018

PETITIONERS:

- 1 C.P. MOHAMMED,
AGED 52 YRS, S/O.ASSAINAR,
SELF EMPLOYED,
RESIDING AT SCHOOL PARAMBATH HOUSE,
POST EDAYANNOOR - 670595,
KANNUR, DIST., KERALA.
- 2 MRS. S.P.RAZIYA,
AGED 48 YRS, W/O.C.P.MOHAMMED,
HOUSEWIFE,
RESIDING AT SCHOOL PARAMBATH HOUSE,
POST EDAYANNOOR 670595,
KANNUR, DIST., KERALA.

BY ADVS.SRI.T.ASAFALI
SMT.LALIZA.T.Y.

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ADDL. CHIEF SECRETARY TO GOVT.,
DEPT. OF HOME AND VIGILANCE, GOVT. OF KERALA,
THIRUVANANTHAPURAM, PIN 692031.
2. THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, PIN 695001.
3. SHO,
MATTANNUR POLICE STATION,
MATTANNUR - 670702.
4. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI 110011.

R1,R2 & R3 BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY
R4 BY ADV. SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P. FOR C.B.I.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-03-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EL

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE FI STATEMENT DT. 13.02.2018 BY
THE INJURED RIYAZ K.
- EXHIBIT P1 A A TRUE COPY OF THE FIR NO.202/2018 DATED 13.02.2018
OF MATTANNUR P.S.
- EXHIBIT P2 A PHOTOGRAPH SHOWING HIS BODY PART WERE CUT
INTO PIECES
- EXHIBIT P2 A A PHOTOGRAPH SHOWING HIS BODY PART WERE CUT
INTO PIECES
- EXHIBIT P2 C A PHOTOGRAPH SHOWING HIS BODY PART WERE CUT
INTO PIECES
- EXHIBIT P2 D A PHOTOGRAPH SHOWING HIS BODY PART WERE CUT
INTO PIECES
- EXHIBIT P3 A TRUE COPY OF THE NEW PAPER CLIPPINGS DATED
14.02.2018 IN MALAYALA MANORAMA DAILY
- EXHIBIT P3 A A TRUE COPY OF THE NEWS PAPER CLIPPINGS DATED
19.02.2018 IN MALAYALA MANORAMA DAILY
- EXHIBIT P3 B A TRUE COPY OF THE NEWS PAPER CLIPPINGS DATED
19.02.2018 IN MALAYALA MANORAMA DAILY
- EXHIBIT P3 C A TRUE COPY OF THE NEWS PAPER CLIPPINGS DATED
20.02.2018 IN MATHRUBHUMI DAILY
- EXHIBIT P3 D NEWS PAPER CLIPPING OF DESHABHIMANI DAILY DT.
22ND FEB 2018
- EXHIBIT P4 A TRUE COPY OF THE JOINT REPRESENTATION DATED
21.02.2018 GIVEN BY THE PETITIONERS TO THE HON'BLE
CHIEF MINISTER

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

P.S. TO JUDGE

EL

8.3.2018

[CR]

B. KEMAL PASHA, J.

.....
W.P.(C) No. 6630 of 2018
.....

Dated this the 7th day of March, 2018

J U D G M E N T

Petitioners are the parents of deceased Shuhaib, who was hacked to death on a public road at 10.50 p.m. on 12.02.2018 by four or five persons, who were armed with lethal weapons appeared at the spot in a vehicle which exhibited a board, 'for registration'. The assailants rushed to the deceased, and among them indiscriminately hurled bombs at the spot by causing explosions with a view to avoiding interventions from the public. Swiftly, cuts were inflicted repeatedly on the deceased, and in fact he was butchered to death. Two persons, one Noushad and the first informant, who attempted to intervene for the rescue of the deceased, were also attacked and cuts were inflicted on

them.

2. Ext.P1 FIS was recorded by the Assistant Sub Inspector of Police at 3.15 a.m. on 13.2.2018, on the basis of which, Crime No.202/2018 of the Mattannoor Police Station was registered at 4.54 a.m. on 13.02.2018 through Ext.P1(a) FIR.

3. According to the first informant, the murder of the deceased and the attempt to murder the informant as well as Noushad, were out of political enmity from CPI(M) activists, as a result of a criminal conspiracy.

4. According to the petitioners, they are deeply aggrieved by the lack of proper investigation. They have no case that the local police, who is conducting the investigation are inefficient to conduct a proper investigation. According to them, their hands are fettered since the persons behind the murder and the alleged conspirators behind the murder are attached to the ruling party. Further according to them, the first accused in the

case, who was arrested on 18.02.2018 has close acquaintance with the top leaders of the Communist Marxist party of India. Some newspaper reports have also been produced with photographs.

5. It is the apprehension forwarded by the petitioners that in case the so-called investigation conducted by the local police is allowed to continue as such, day-by-day there is a chance of evidence is being destroyed, and in such case, the conspirators can take shelter without coming into light. Hence, they seek for an impartial investigation by the premium investigating agency of the country, the CBI. According to them, CBI alone can conduct an impartial investigation in the matter, as they are not amenable to the local police.

6. The learned State Attorney has vehemently opposed the writ petition on two grounds. The first ground is that a single Bench of this Court has no jurisdiction to entertain this writ petition, as the matter is covered by Article

226(2) of the Constitution of India, when the same has not been allocated to a Single Judge as per the Kerala High Court Act. The second argument is that on merits also, this writ petition will not lie.

7. According to the learned State Attorney, a proper and impartial investigation is being carried on by the local police by a Special Investigation Team constituted for the said purpose, under the direct supervision of the I.G. of Police, Kannur. It is argued that the members of the Special Investigation Team are efficient officers having unblemished service and they can conduct an impartial investigation. The learned State Attorney has made available before this Court the details of the investigation so far conducted, through the report prepared in a tabular form.

8. According to the learned counsel for the petitioners, even though the first accused was placed under arrest on 18.02.2018 along with the 2nd accused, and their custody was with the investigating team, they could not

effect recovery of the weapons used by A1 and A2, with the aid of Section 27 of the Indian Evidence Act. It has been argued that from the very inception, the person who registered the crime after recording the first information statement had cunningly wanted to aid a particular group.

9. One Baiju was arrested on 5.3.2018. According to the learned counsel for the petitioners, the police conducted a search and could trace out a person who had allegedly nurturing some enmity towards the deceased, and thereafter in order to report the matter before this Court the so-called drama of recovery allegedly made under Section 27 of the Indian Evidence Act, at the instance of the said Baiju, was played. It is the case of the learned counsel for the petitioners that day-by-day, the chance of collecting proper evidence in this case is being destroyed and therefore, at the earliest the investigation has to be handed over to the CBI.

10. Regarding the jurisdiction of Single Bench of this

Court in the matter, the learned counsel for the petitioners has pointed out that this matter is perfectly maintainable before this Court in view of the decision in ***State of West Bengal and others v. Committee for Protection of Democratic Rights West Bengal and others***[AIR 2010 SC 1476]. According to the learned counsel for the petitioners, this is a matter covered by Article 226(1) of the Constitution of India and it will not go to the category of matters covered by Article 226(2) of the Constitution.

11. In relation to the jurisdiction of a Single Judge of this Court to entertain this writ petition, the learned Standing Counsel for the CBI has pointed out that the CBI has offices all over India and offices abroad. It has been pointed out that even if the CBI is directed to take up the investigation, the direction is to the CBI and not to the Director who is sitting in Delhi and therefore, it cannot be stated that the seat of the investigating agency is only at New Delhi. In such case, according to him, Article 226(2) of the

Constitution has no application in this matter.

12. Regarding the question of jurisdiction of a Single Judge of this Court to entertain the matter, the learned State Attorney has invited the attention of this Court to Section 3(10)(iii) of the Kerala High Court Act, 1958. As per the said provision the work allotted to a Single Judge is relating to "*Clause (1) of Article 226 of the Constitution of India except where such power relates to the issue of a writ of the nature of Habeas Corpus*". It is argued that this is not a matter covered by Article 226(1) of the Constitution; whereas it will squarely fall within the category of matters prescribed under Article 226(2) of the Constitution of India. Article 226(2) of the Constitution of India says:

"(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such

power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

13. Of course, the CBI can be considered as an authority who can conduct investigation, as the one mentioned under Article 226(2). Article 226(2) says that even if the seat of such authority is not within the territorial jurisdiction of the High Court, the power can be invoked by exercising the power under Article 226(2). At the same time, according to the learned State Attorney, when such a power has not been allocated to a Single Judge, a Division Bench alone can deal with the matter.

14. As rightly pointed out by the learned counsel for the petitioners, if the argument relied on by the learned State Attorney is taken as granted, a Single Judge of this Court cannot entertain any writ petition in which Union of India is a respondent, and no writ can be issued by a Single Judge against the Union of India. To that point, the learned

State Attorney has replied that Union of India has jurisdiction all over India. That proposition is not correct. We are falling under the federal structure and that matter has been dealt with by the Apex Court in ***State of West Bengal and others*** (*supra*). The Union of India has offices all over India. Therefore, the cases against the Union of India cannot be categorized as cases coming within the purview of Article 226(2) of the constitution. Similarly, the CBI has offices at Kochi and Thiruvananthapuram. A learned Single Judge of this Court had occasion to consider this question in ***Raveendran v. CBI***[1999 (3) KLT 68] wherein it was held:

"Section 6 of the D.S.P.E. Act contemplates consent of the State Government to exercise jurisdiction by the CBI to investigate the offences enumerated under S.3 of the Act in the areas specified by the Government of India by notification under S.5 of the Act. Therefore, if the State Government has consented under S.6 of the Act to the CBI to exercise their

jurisdiction as Station House Officers within the areas in the State notified under S.5 of the Act by the Government of India, no specific consent by the State Government with regard to the individual cases for investigation by the CBI within those areas is warranted and the general consent given by the State is sufficient to empower the CBI to exercise their jurisdiction within those areas. Therefore, the contention of the petitioner that the registration of the crime and investigation of the case by the CBI against him and the co-accused is illegal and ab inito void for want of specific consent given by the Government of Kerala to the CBI under S.6 of the Act in respect of this specific case is absolutely unsustainable.”

15. When the investigation of a case is handed over to the CBI, they should be treated as Station House Officers to exercise their jurisdiction within that area. The offices of the CBI in Kerala are manned by the Superintendent of Police of the CBI. When the investigation has been handed

over to the CBI in Kerala, the investigation is being conducted by the officers under the Superintendent of Police, CBI. In such case, it cannot be said that the seat of the investigating agency is at Delhi. The seat of the investigating agency in such case is in Kerala, which is well within the territorial jurisdiction of the Single Judge of this Court.

16. The CBI office shall be considered to be a Police Station for all practical purposes and the officers of CBI shall be treated as Station House Officers for all practical purposes, within the meaning of the Code of Criminal Procedure.

17. Regarding the merits of the matter, the learned State Attorney has made an attempt to convince this Court that what all things which could be done in the matter of investigation are being done by the Special Investigating Team. In order to bring those aspects to the notice of this Court, the learned State Attorney has invited the attention of

this Court to the dates and events in the report handed over to this Court. The report shows that the crime was registered at 4.54 a.m. on 13.02.2018 through Ext.P1(a) FIR of the Mattannur Police Station. Ext.P1 first information statement was recorded by the Assistant Sub Inspector of Police at 3.15 a.m. on 13.2.2018. The report shows that the inquest was conducted on 13.2.2018 itself, and the postmortem was conducted on that day. The investigating agency had examined the scene of occurrence and also collected CCTV footage on the said date. It is noted therein that the details of the WagonR car which was used by the accused were also collected. On 13.2.2018, a ten member Special Investigating Team to assist the investigation was constituted.

18. Searches were conducted on 17.02.2018 at almost all the probable hideouts and houses. Massive search was conducted on 18.02.2018 and consequently, two of the prime accused could be arrested on 18.02.2018.

They were questioned and DNA samples and nail clippings were collected.

19. On 19.02.2018, a special investigation team was constituted through Document No.3 produced along with the report and it was allegedly based on a representation submitted by the KPCC President before the Chief Minister. On 23.02.2018, Test Identification Parade was conducted in respect of the two accused, namely Akash M.V. and Rijil Raj. On 24.02.2018, police custody of both the said accused was obtained for five days. On 24.02.2018, three more accused were arrested and the WagonR car used for committing the offence was recovered based on the confession of one of the accused. On 25.02.2018, one more accused was arrested. The investigating officer filed report for incorporating the offences under Sections 120B and 109 IPC in the crime.

20. On 01.03.2018, three more accused were arrested. On 27.02.2018, one Alto car, which was also used

by the accused, was seized. On 28.02.2018, some bloodstained swords were found in a cashew estate, which is about 2.5 Kilometres away from the scene of occurrence and those swords were taken into custody under Section 102 Cr.P.C. as suspected weapons. The said weapons were forwarded for scientific analysis.

21. On 01.03.2018, one motorbike used by the accused for gathering information about the whereabouts of the deceased was seized. On the same day, one unused bomb was recovered at Palayode based on the confession of one of the accused. The police obtained the custody of A1 and A2 and custodial interrogation was conducted, which according to the police, led to the recovery of the dress. Custody applications of the other accused are pending. On 02.03.2018, one more motorbike was seized.

22. On 05.03.2018, one Byju K., an accused aged 36 years, was arrested. Another accused named Deep Chand was also arrested. It has been reported that, based on the

confession of Byju K., on the very same day, two swords and one axe like weapon were recovered from a place known as Vellapparambu near Paliyode.

23. Based on the said report and the documents produced along with it, the learned State Attorney has argued that the investigation so far conducted is up to the mark and there was no laches on the part of the investigating agency.

24. A1 and A2 were admittedly placed under arrest on 18.02.2018. Their custody was obtained. At the same time, the investigating agency recovered their dress alone, that too, on 01.03.2018. It is evident from the First Information Statement that the said accused persons were also armed with lethal weapons like swords. Even then, the investigating agency could not recover the weapons with the aid of Section 27 of the Indian Evidence Act, through A1 and A2.

25. It is idle to contend that there was no laches on

the part of the investigating agency. The inability or deliberate latches in effecting such a recovery will certainly speak volumes against the present investigating agency. Either they could not do it out of inefficiency, or their hands were fettered as pointed out by the learned counsel for the petitioners. It cannot be believed that the investigating agency could not gather any information regarding the weapons from A1 and A2 even though for days and days they were in their custody. It cannot be believed that they could gather information regarding their dress alone during that period.

26. The learned counsel for the petitioners has pointed out that the petitioners are entertaining a reasonable apprehension that they would not get justice from the present investigating agency. Justice should be done not only through the trial of the case; justice should be imparted through a proper investigation also. The investigation also is a part of criminal justice dispensing

system. It cannot be said that the apprehension forwarded by the petitioners is not reasonable. According to them, the 1st accused, who was arrested on 18.02.2018, has close acquaintance with the topmost leaders of the political party to which fingers are pointed. Of course, the genuineness of those news paper reports are not being considered by this Court at this stage. But, it is a fact that it will instill a reasonable apprehension in the mind of the parents of the deceased that they will not get justice from the hands of the local police.

27. This Court has noted down a suspicious circumstance in the matter of investigation when the police placed under arrest one Byju K. on 05.03.2018 only. The learned counsel for the petitioners has pointed out that the police made a research to trace out a person, who had occasion to nurture an enmity towards the deceased, and ultimately, they could trace out the said Byju K. as a person, who was once allegedly attacked by the deceased along

with his associates, for which Crime No.67/2018 of Mattannur Police Station was registered. It is strange to note that on the very same day itself, the investigating agency could recover all the weapons allegedly made use of by the accused in the case through the statement allegedly obtained from the said Byju K. The said suspicious circumstance pointed out by the learned counsel for the petitioners cannot easily be brushed aside. There are materials to suspect that it was a so-called recovery simply made as an eyewash for attempting to convince this Court that all possible steps have been taken by the investigating officers in the matter.

28. The learned counsel for the petitioners has pointed out that there was a procession staged some days back to the murder of the deceased, through the road in front of the house of the deceased under the leadership of a prominent leader of the Communist Party of India(Marxist) and slogans were shouted. Through slogans threats were

openly exerted that Shuhaib would be done away with. Therefore, the argument forwarded by the learned counsel for the petitioners that a large scale conspiracy was there behind the murder, cannot be brushed aside at this stage.

29. Apart from the fact that Byju K., who was the de facto complainant in Crime No.67/2018 of Mattannur Police Station, could be traced out, there is absolutely nothing to show that any of the other actual participants in the murder had entertained any personal vendetta towards the deceased. When they had no such personal vendetta towards the deceased, they could only be treated as mere pawns in the hands of some others, who are still in the shells. A large scale conspiracy behind the murder can genuinely be suspected. The said conspiracy behind the so-called "political murder" has to be unearthed. Persons, who can make use of such pawns for exterminating their political opponents, should not be permitted to continue such dramas any more. Only if an investigation is conducted

regarding the conspiracy also, these continued murders can be stopped at least to a certain extent.

30. Apart from all the above, this is a clear case which comes within the category of terrorism as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967 (for short, UAPA). The second limb of Section 15 of the UAPA says that "*or with intent to strike terror or likely to strike terror in the people or any section of the people in India, was by using bombs, lethal weapons, etc.*", it will come under the category of 'terrorist act'. Even the Remand Reports filed by the police reveal that indiscriminately bombs were hurled by a person among the persons who conducted the mission and terrorised everyone who were present there. They wanted to terrorise the public in order to restrict any public entry to the spot. In such case also, the matter has to be investigated by incorporating the offences under the UAPA also.

31. The learned counsel for the petitioners has

produced the Remand Report also in the matter, which also depicts terrorist acts created by one of the assailants at the spot by hurling bombs. Others were armed with swords. Therefore, none of the public could intervene in the matter. Two persons, who had attempted to intervene for the rescue of the deceased, were also brutally attacked and they were attempted to be murdered.

32. The facts of the case pointed out by the learned counsel for the petitioners and the facts of the case from the Remand Reports *prima facie* reveal that there are possibilities to invite various offences enumerated in Chapter IV of UAPA. In such case Section 43 of the UAPA clearly necessitates and justifies an investigation to be conducted in the matter by SPE/CBI.

33. The learned counsel for the petitioners has invited the attention of this Court to the decision in **George Muthoot M.G. v. State of Kerala and others**[2010(1) KHC 329] wherein it was held:

"Court examined the manner in which the investigation process was carried out and whether the investigation was proceeding in the right direction. On careful perusal of the investigation process and the documents produced in Court, Court was of the view that the investigation is not being proceeded in the right direction. Even though the charge sheet was filed, there were many missing links that were noticed by the High Court and the chain of events that led to the murder was not complete. Hence High Court felt it necessary to direct the CBI to take over the investigation."

34. In ***Gudalure M.J. Cherian and others v. Union of India and others***[(1992) 1 SCC 397] the Apex Court held that in a given situation, to do justice between the parties and to instill confidence in the public mind it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency.

35. In ***Mithilesh Kumar Singh v. State of Rajasthan***

and others[(2015) 9 SCC 795], it was held:

"Importance of a fair and proper investigation cannot be understated. In an adversarial system of administration of justice, fairness of investigation is the very first requirement for the fairness of a trial. A trial based on a partisan, motivated, one - sided, or biased investigation can hardly be fair. That is because while the trial itself may be procedurally correct, the essence and the purpose thereof may be vitiated by an unfair or ineffective investigation. This court has in several pronouncements, emphasized the importance of the fairness of the investigation".

36. The Apex Court considered in detail the requirement of fairness of the investigation. It was held that the investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the

constitutional mandate contained in Article 20 and 21 of the Constitution of India.

37. It cannot be said that in this particular case when there was inordinate delay even in making to appear that weapons allegedly made use of by the accused were recovered, it cannot be said that the investigation of this was expeditious or fair. It lacks transparency. Requirement for the fairness of the investigation was recognized as an important facet of the rule of law by the Apex Court in **Sasi Thomas v. State**[(2006) 12 SCC 421].

38. In **Nirmal Singh Kahlon v. State of Punjab**[(2009) 1 SCC 441], the Apex Court held that fairness of investigation is important not only for the accused but even for the victim. It was held that a victim of a crime is equally entitled to a fair investigation.

39. It was further held in **Mithilesh Kumar Singh**(supra):

"Not only the fair trial but fair investigation

is also part of constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation”.

40. The learned State Attorney has placed reliance on paragraph 9 of the decision in **Sujatha Ravi Kiran alias Sujatasahu v. State of Kerala and others**[(2016) 7 SCC 597] wherein it was held:

“It is well settled that the extraordinary power of the Constitutional Courts in directing C.B.I. to conduct investigation in a

case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter."

41. Innumerable murders have been taken place in the locality and all such murders have been styled as 'political murders'. But, it is a fact that political parties are not dying whereas; individuals are being put to death and their family members are virtually being thrown to the street.

42. It is a open secret that, at the leadership levels of politicians, all the parties have a harmonious relationship among them. At the same time, such a relationship unfortunately does not percolate to the lower strata. It is also an open secret that the workers of such political parties at the lower strata, who have been suffering a brain wash, are being used as pawns in the hands of political leaders for exterminating their political opponents. There must be an end to it. Let this case be an eye opener for such persons.

43. This Court expresses its deep appreciation in the fair submission made by the learned Standing Counsel for the CBI that in spite of heavy workload on the CBI, and when the CBI has been overburdened with cases of serious nature, the CBI will take up the investigation in this case, if this Court feels that the investigation has to be conducted by the CBI. This Court is of the view that CBI alone can conduct a fruitful investigation in the matter.

44. In the result, this Writ Petition is allowed, and the investigation in Crime No.202/2018 of the Mattannoor Police Station is handed over to the SPE/CBI. In case the CBI feels that a fresh investigation from the beginning has to be conducted, it is open to them to approach this Court, with such a request. The CBI shall take up the investigation expeditiously and conduct a fruitful investigation into all the offences involved.

45. The State Government is directed to ensure necessary assistance to the CBI for conducting a fruitful

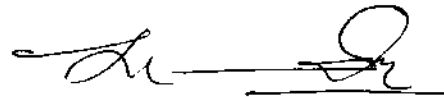
investigation in the matter. The State Government shall render every assistance to the CBI and shall make available the entire records of the case. The officers of the Special Team shall provide the CBI with all the records regarding the investigation so far conducted by them. The entire CD shall immediately be handed over to the SPE/CBI, Thiruvananthapuram Unit.

Sd/- B. KEMAL PASHA, JUDGE.

ul/aks/-

[True copy]

P.S. to Judge.


B. Kemal Pasha