

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**R**

**DATED THIS THE 8<sup>TH</sup> DAY OF APRIL, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**WRIT PETITION NO. 1167 OF 2024 (GM-POLICE)**

**BETWEEN:**

SRI.VINAY RAJASHEKARAPPA KULKARNI,  
AGED ABOUT 54 YEARS,  
MEMBER, LEGISLATIVE ASSEMBLY

...PETITIONER

(BY SRI.C V NAGESH., SENIOR COUNSEL FOR  
SRI. K RAGHAVENDRA.,ADVOCATE)

**AND:**

CENTRAL BUREAU OF INVESTIGATION,  
BELLARY ROAD, BENGALURU - 560 032.  
REPRESENTED BY ITS DIRECTOR.

...RESPONDENT

(BY SRI. S V RAJU., ASG A/W  
SRI. P PRASANNA KUMAR AND  
SRI. RAHUL REDDY., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO I) CALL FOR RECORDS IN SPL.C.C.NO.565/2021 WHICH IS PRESENTLY PENDING ON THE FILE OF THE LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, (CCH.NO.82), BENGALURU AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

Petitioner, a former Cabinet Minister and a sitting Member of the State Legislative Assembly has been arrayed as Accused No.15 in a murder case in Spl.C.C.No.565/2021. Earlier it was investigated into by the State Police and charge sheet was filed. Charges too having been framed, trial was half way through. Later, matter having been entrusted to Central Bureau of Investigation with consent of the State Government, further investigation was undertaken and fresh charge sheets have been filed against as many as 21 persons in all, including the petitioner.

The learned LXXXI Addl. City Civil & Sessions Judge, Bengaluru, who also holds the charge of *Special Court exclusively for dealing with criminal cases related to former & elected MPs/MLAs in the State*, has framed charges against all the Accused vide order dated 6.12.2023. The charges *inter alia* against the petitioner are for the offences punishable u/ss 143, 147, 148, 120-B, 302, 201 read with Section 149 of Indian Penal Code,

1860 and also for the offences punishable u/s 25 read with sections 3, 5, 8 & 29 of the Arms Act, 1959 read with section 149 of IPC. In this petition filed u/a 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks to call in question the said order. After service of notice, the respondent-Central Bureau of Investigation has entered appearance through its Panel Counsel and resisted the petition.

(II) FOUNDATIONAL FACTS OF THE CASE (AS ALLEGED)

(a) Way back in 2016, petitioner was In-charge Minister of Dharwad district and the victim namely one Mr.Yogesh Goudar was an elected Member of Zilla Panchayat, Dharwad. They belonged to two different political parties. The victim was running a gym called 'M/s Uday Gym and Fitness Center' at Saptapur, a popular *mohalla* in Dharwad city. In the meetings of Zilla Panchayat, there used to be serious disputes and altercations between the petitioner and the victim. There obtained personal & political rivalry, too. Petitioner therefore hatched a conspiracy with some

of the Accused, particularly Accused No.1-Basavaraj Muttagi & Accused No.16-Chandrashekar Indi @ Chandumama to exterminate him. Accordingly, on 15.6.2016 at about 7 a.m., he was brutally killed whilst on job at the gym. Blood profusely flowed on the floor of the building and was sprinkled on its walls. In terror, people ran helter skelter. Metaphorically speaking, it was like a cinema of horror crime.

(b) Widow of the victim Smt.Mallavva Gowda filed the FIR on 15.06.2016 before the Sub-Urban Police Station, Dharwad. She had stated that, two days before the incident, her husband had received an anonymous letter threatening '*he would be murdered just like his elder brother late Sri.Udaygowd Gowdar*'. Crime No.135/2016 *inter alia* for the offence punishable u/s 302 of IPC came to be registered initially against Accused Nos.1 to 6; they were arrested and remanded to judicial custody. After completion of investigation, a Final Report u/s 173(2) of Cr.P.C., 1973 came to be filed. It was only against the Accused (petitioner, then, not being one of them) in the

court of learned JMFC, Dharwad and C.C.No.964/2016 came to be registered for the offences punishable under sections 143, 147, 148, 120-B, 302 & 201 read with section 149 of IPC.

(c) Pursuant to committal by the learned JMFC, the case was registered in S.C.No.50/2017 by the learned IV Addl. District and Sessions Judge, Dharwad and charges were framed initially against the aforesaid six Accused for the subject offences. All the Accused pleaded 'not guilty' and claimed to be tried. Accordingly, the trial was held by examining as many as 63 witnesses from the side of prosecution, some of them being eye witnesses. The prosecution closed its side; the Trial Court having recorded the statement of all the said Accused under section 313 of the Code, had posted the matter for *defence evidence*.

(d) At the aforementioned stage, there was W.P.Nos.58183-58184/2017, wherein, a direction for entrustment of the matter for investigation by the CBI was sought, although at a later point of time, it was dismissed on 1.3.2019 by a Co-ordinate Judge of this Court.

Government of Karnataka vide Notification dated 6.9.2019 granted consent for the CBI investigation u/s 6 of the Delhi Special Police Establishments Act, 1946. Accordingly, Crime No.135/2016 came to be re-registered by the CBI on 24.9.2019 as RC-17(S)/2019/CBI,ACB, Bangalore. This Consent Order was challenged *inter alia* by Accused No.1-Basavaraj Shivappa Muttagi in W.P.No.15012/2019 and by the petitioner herein in W.P.No.15828/2021. A Division Bench of this Court vide judgment dated 16.10.2021 dismissed the challenge as being devoid of merits vide *2021 SCC OnLine Kar 15910*. A direction was also issued for the expeditious trial & disposal of the case. This was questioned in SLP (Crl.) No.9649/2021, and a three Judge Bench of the Apex Court dismissed the same vide order dated 7.2.2022. Following this, a Review Petition (Crl) in Diary No.5820/2022 was moved and that too came to be dismissed as withdrawn vide order dated 28.08.2023.

(e) In the meanwhile, the investigation having been accomplished, the CBI moved three Charge Sheets. The Trial Court having taken cognizance of the offences *qua*

the freshly added accused, registered Spl.C.C.No.565/2021 in terms of Final Report dated 15.09.2021 filed u/s 173(8) of 1973 Code. Additional documents such as questioned documents, specimen handwritings, signatures, FSL Report, etc., were taken on record in terms of CBI's Application filed u/s 173(5) of the Code. Petitioner had also withdrawn his application moved u/s 227 of the Code seeking discharge. Learned Judge of the Trial Court having perused the record and after hearing the Accused, has framed the charges vide order dated 6.12.2023, as already mentioned. The validity of this order is being examined in the petition at hands.

(III) COUNSEL'S SUBMISSION ON BEHALF OF THE PETITIONER:

(a) There is absolutely no material on record to connect the petitioner to the commission of subject offences and therefore, no charge could have been framed *qua* him. The impugned order framing charges is not a reasoned decision/speaking order. Learned Judge of the Trial Court ought to have discussed, although in brief as to which material on record has weighed with him in framing the

charges. The impugned order does not reflect the due application of mind.

(b) Although sections 227 & 228 of the 1973 Code are kindred provisions, withdrawal of Application filed u/s 227 seeking discharge does not dispense with the obligation cast on the learned Trial Judge in framing the charges as provided under section 228. The charges have been mechanically framed in the present form & substance on the premise that the petitioner having withdrawn the Discharge Application, had stated that Court could proceed to frame charges.

(c) While framing charges as provided u/s 228 of the Code, the Accused has a valuable right to be heard; unless the entire Charge Sheet along with all the accompanying documents, physical & electronic, are furnished to the Accused, this right becomes illusory. Admittedly, certain documents having not been furnished to him, the Court below could not have proceeded to frame charge; therefore, the impugned order suffers from a legal infirmity of great magnitude.

(d) The learned Trial Judge could not have acted upon the statement of Accused No.17 inasmuch as the same was recorded u/s 164 of the Code on 28.10.2021, much before his application for becoming an *approver* was allowed by a Co-ordinate Bench of this Court in Crl.P.No.8369/2022 disposed off on 24.03.2023.

(e) The Court below grossly erred in framing charges against the Accused for the offences punishable u/s 25 read with secs. 3, 5, 8 & 29 of The Arms Act, 1959 read with secs. 120-B & 149 of IPC inasmuch as no sanction has been secured *qua* the petitioner for the prosecution in terms of section 39 of the Act, although such a sanction has been obtained at the hands of *District Magistrate qua* some of other accused.

(f) Petitioner has filed Application taking up additional grounds to substantiate his contentions that were not taken up in the original petition and therefore, the same should be permitted to be urged while hearing the main matter.

(IV) ASG's SUBMISSION ON BEHALF OF RESPONDENT-CBI:

(a) The CBI after completing investigation, has filed the charge sheets in question enlisting as many as 150 witnesses and producing 130 documents. This apart, 15 Material Objects happen to be a part of these charge sheets. Petitioner having withdrawn his application for discharge, asked the Trial Court to proceed to frame charge and accordingly, the charges have been framed after hearing him. The order framing charge need not be elaborately reasoned. The impugned order reflects due application of mind.

(b) The case *inter alia* against the petitioner is one of circumstantial evidence; the statement of several witnesses coupled with the documents lend enough credence to the case of prosecution. All that having been looked into by the learned Trial Judge, the impugned order has been passed framing charges. At the stage of secs. 227 & 228 of the Code, what is done is only a cursory consideration of charge sheet material to form an opinion as to there being a case to proceed against the Accused;

at this stage, it cannot hold a mini trial. This approach having animated the impugned order, challenge is liable to be rejected.

(c) The version of the petitioner that he was not given the charge sheet & documents accompanying the same, is false; his counsel having received the same, has endorsed on the court record on 24.09.2021. It is not the case of petitioner in the original petition; such a contention is sought to be taken only as an after-thought by moving the subject application when hearing of the matter was half a through. Even otherwise, no grievance can be made on the said ground in the absence of demonstrable prejudice.

(d) The contention as to the statement of *approver* being acted upon by the Court below whilst framing charges pales into insignificance when there is a wealth of other material on record that *prima facie* implicates the petitioner in the commission of subject offences.

(e) The offences punishable under the subject sections of The Arms Act, 1959 for which the petitioner is charged, do

not require any sanction at the hands of the *District Magistrate* in view of decision of Co-ordinate Bench in Crl.P.No.6173/2020 between *KHADIR SAB @ KADEER MAGARE vs. STATE BY VIDHYA NAGAR POLICE STATION* which came to be dismissed on 16.12.2020, wherein the observations made come to the rescue of respondent.

(f) Petitioner has been making all out efforts to stifle the prosecution by launching case after case even up to the level of Apex Court, undeterred by failure of challenges. He is not a *bona fide* litigant and his conduct amounts to abuse of the process of the Court. Therefore, petition is liable to be rejected on the ground of culpable conduct.

(V) Having heard the learned counsel for the parties and having perused the Petition Papers and also having adverted to relevant of the Rulings cited at the Bar, this Court declines indulgence in the matter for the following reasons:

(A) AS TO THERE BEING NO MATERIAL ON RECORD TO CONNECT THE PETITIONER TO THE COMMISSION OF SUBJECT OFFENCES:

The vehement submission of learned Sr. Advocate Mr.C.V.Nagesh appearing for the petitioner that there is absolutely no material to connect his client to the commission of offences and therefore, no charge could have been framed against him, is difficult to countenance. The case of prosecution against the petitioner is one of circumstantial evidence that galores on record. Ordinarily, the court examining the order framing the charge in a challenge, does not much discuss about the evidentiary material as has been brought on record after investigation, *lest* a deeper discussion should prejudice the defence of accused. However, a bit in variance of this view, some analysis & discussion is undertaken since it was insisted upon from the side of petitioner. In fact, the arguments were advanced very elaborately on successive dates of hearing and therefore with some reluctance, a bit deeper examination is ventured.

(B) Learned ASG Mr.Raju appearing for the CBI is right in contending that the involvement of the accused and his role in the commission of crime can be ascertained from

his conduct anterior to the commission of crime for which he is charged and posterior thereof vide *BHAWANA BAI vs. GHANSHYAM (2020) 2 SCC 217*. Let me examine this aspect of the matter in a structured way as under:

*(1) AS TO ALTERCATIONS BETWEEN THE PETITIONER AND THE VICTIM DURING THE ZILLA PANCHAYAT MEETING:*

(a) The Zilla Panchayat meeting held on 23.04.2016 at Dharwad was chaired by the petitioner as the then District in-charge Minister. The victim happened to be an elected sitting Member of the said Panchayat. There were serious verbal altercations between the petitioner and the victim in the subject meeting. One Mr.Gurunath Goudar, a brother of the deceased/victim, who was examined as CW.21 on 28.09.2019, has specifically mentioned about this. CW.41-Shankar Matapathi, CW.42-Shivananda & CW.43-Gangappa have also vouched '*raised voice altercation*' having been seen between the two political rivals, in the said meeting. There is other evidentiary material on record, too.

(b) CW.127-Smt.Anjana Basavaraj Dollin mentions that the deceased/victim had discussed with her about the said incident of altercation, and of the escalating political rivalry between them. He had also told her about certain miscreants who were wearing helmets, having followed him on the bike and that he had suspected some foul play in the offing. She had advised him to be cautious. The victim had received a **life-threat-letter**, as mentioned by his widow-Mallavva who was examined as CW.20. The said letter had mentioned about the murder of victim's brother Udaygoud Goudar and that the victim would meet the same fate.

*(2) PETITIONER ARRANGING ACCOMMODATION FOR THE ASSAILANTS DURING THEIR FIRST ABORTIVE ATTEMPT:*

(a) Post Zilla Panchayat meeting in question, accused Nos.8 to 14 had stayed at a place arranged by the petitioner on the night of 7.6.2016. Mr.P.Rupendra Rao-CW.51, being the owner of the Hornbill River Resort, at the instance of the petitioner, had made this arrangement. His statement is recorded on 11.08.2020. These assailants

were taken to the Resort by accused No.1-Mr.Basavaraj Shivappa Muttagi. They were accommodated in two separate rooms and their stay was not scripted in the Registers which aspect is spoken of by Mr.Yogesh-CW.52 who was the Manager of the said Resort. This witness also confirms the CDR regarding the calls made between him and the accused No.1. His statement is recorded on 13.06.2020.

(b) The petitioner had conspired with his close associates Mr.Basavaraj Muttagi-A1 and Mr.Chandrashekara Indi-A16 @ Chandumama (his maternal uncle) along with others for the murder of the victim Yogesh Goudar following the altercation in Panchayat Meeting that was held on 23.04.2016. Accused No.1 agreed to execute the nefarious design hatched by the petitioner and these accused persons and had also planned to set the non-assailants in the place of actual assailants. They had also planned to ensure a defective investigation by fabricating evidence, destroying material and generating false records. In

furtherance of this, the land deal was designed for creating a false motive. This aspect is discussed *infra*.

(c) Petitioner had given money in a hefty sum of Rs.6 lakh to accused No.1 after the first attempt that proved abortive. This he did through one Mr.Srivasta Dattatreya Patil (CW.53) whose statement was recorded on 29.09.2020 & 20.11.2020. What he stated on 29.09.2020 to the CBI Inspector of Police reads as under:

*"I am to say that one day in the month of June 2016, Shri. Vinay Kulkarni told me over phone that Shri. Basavraj Muttagi would come at Diary. He further told that I had to hand over Rs. 6 lakh to Shri, Muttagi. It was perhaps in the start of the month or may be in the beginning of the second week only. Muttagi came at Diary and accordingly on the directions of Shri. Vinay Kulkarni, I handed over Rs. 6 lac to Shri. Muttagi."*

**(3) MISLEADING MOTIVE BY CREATING A FALSE LAND DISPUTE AND THEREBY TRYING TO SECURE EXCALPATION OF PETITIONER:**

(a) A particular land admeasuring 25 acres adjoins that of the deceased. It was shown to have been shamly transacted and that eventually, the transaction was projected to have been not materialized into an accomplished sale, as was nefariously designed.

Statement of CW.7-Mr.Veeresh Amrutheshwar Behatti was recorded u/s 161 of the Code on 5.5.2020. Similarly, CW.8-Nataraj Makhigoudar had made the statement on 28.9.2020 about the subject land being adjacent to deceased's and about the agreement dated 24.05.2016, concerning the said land.

(b) CW.8-Nataraj Makhigoudar also mentions about forfeiture clause in the agreement *qua* the advance of Rs.6 lakh mentioned in the preceding paragraphs, which was already paid by the petitioner. Strangely, this forfeiture happens within one month of the failure of the '*intended transaction*'. The period being too short to be little lends credence to the case of prosecution. The design of erection gates was meticulously done for creating a false motive by projecting some land dispute in this regard so that the same would facilitate the screening of petitioner. That is how the ingredients of the offence punishable u/s 201 read with section 120B of IPC are *prima facie* demonstrated, warranting the framing of charge in this regard.

*(4) MEETING OF MINDS BETWEEN PETITIONER AND ACCUSED NO.1 FOR ENGINEERING THE EXTERMINATION OF VICTIM:*

(a) Learned ASG appearing for the CBI rightly submits that there was a set of phone calls between the petitioner and accused No.1, with the earlier phone number during the period between 26.1.2016 & 2.6.2016. The phone number of accused No.1 was 98451 23456 and that of the petitioner was 98765 43210. There were as many as 57 phone calls during the said period. Accused No.1 was in continuous conversation with petitioner's wife, with phone number 98765 43210. Significantly, 54 calls were made during a short period of 16.4.2016 and 31.5.2016. Thus, in all, there were 94 phone calls, which raise a thick presumption as to the complicity of the petitioner and other accused in the commission of subject offences.

(b) One Mr.Nataraj Sirdesai was examined as CW.54 and his statement was recorded on 15.12.2020. He states that the petitioner happens to be his close relative i.e., cousin; he was looking after petitioner's Dairy Farm; petitioner and Mr.Basavaraj Shivappa Muttagi-Accused No.1 used to

visit the Dairy Farm often. Such visits cannot be termed 'casual' or 'innocuous', in the light of other abundant material on record which will be discussed in due course.

*(5) INFLUENCING, INTIMIDATING AND TUTORING THE PROSECUTION WITNESSES:*

(a) Gurunath Goudar-CW.21 who is none other than victim's brother has stated about victim's widow-Mallavva siding with the petitioner and opposing entrustment of investigation to the CBI. He also mentions about the offer of Rs.3 Crore for compromising the dispute and this parley was organized by the leader of Local Bar Association namely Mr. Mahesh Shetty. He states about eyewitnesses being threatened by the petitioner by misusing his political power. This indicates alleged conduct of the petitioner and his active role in conspiring the commission of crime and also to screen himself from it.

(b) Mr.Srivasta Dattatreya Patil was examined as CW.53 and his statement was recorded on 29.09.2020 & 20.11.2020. He was looking after the civil works of petitioner's Dairy Farm at Dharwad. He had handed **Rs.6 lakh** (supaari) to Accused No.1-Mr.Basavaraj Muttagi

on the instruction of petitioner, in June 2016 at the Dairy Farm itself.

(c) Mr.P.Rupendra Rao-CW.51 is the husband of a partner of **Hornbill River Resort**. He was also looking after the civil works of petitioner's Dairy Farm. He stated about Accused No.1-Mr.Basavaraj Muttagi meeting the petitioner regularly in the Dairy Farm. He mentions about the real assailants namely Accused Nos.8 to 14 having been accommodated in the said Resort on the very instructions of petitioner himself. He also says about a number of phone calls between himself & Mr.Muttagi. He expressed **shock & dismay** on being told about the murder of Mr.Yogesh Goudar.

(d) Mr.Yogesh Kumar-CW.52 who happens to be the Manager of this Resort also vouches the above version of CW.51. He identified Sandeep Saudatti-Accused No.4 because of his peculiar hairstyle i.e., pony tail and this Accused had brought 7 to 8 persons including the assailants to stay in the Resort. They were not charged

any money for the accommodation, food & liquor. He also explains that no entry about their visit & stay was made in the Guest Register, since no payment was received from them.

(e) Mr.Anand Irappa Uddnanavar, an eye witness to the incident was examined as CW.1 on 16.10.2019, 11.05.2020 & 20.11.2020. He had identified three of the accused namely Amit Reddy, Vikas Kalaburgi and Santosh Saudatti, on their photographs being shown. He says about they too having stayed in the Resort namely **M/s Rashi Farms**. He mentions about the delinquent State Police exhorting him not to take unnecessary interest in the matter when victim's widow Smt.Mallavva herself was not helping the prosecution. This witness along with others, was unwillingly taken to Goa for the purpose of tutoring, and was administered veiled threats. He has also mentioned about an advocate *instructing* him (when Basavaraj Muttagi-Accused No.1 was around) that the **Public Prosecutor Madam was very harsh** and that whatever she would suggest during the trial, should be

answered in the negative. He specifically mentions about the threats & veiled threats administered to him & others.

(f) One Mr.Anand Gouda Badiwar, an advocate of widow of the victim Smt.Mallavva and of victim's elder brother Mr.Udaygoud Goudar in legal matters, was examined as CW.62 on 19.06.2020. He too mentions about petitioner threatening him over phone when it was on auto record mode. The auto record is also produced along with the Charge Sheet. There is Forensic Examination Report as well.

(g) Similarly, one Mr.Janmatti Shivananda Bhimappa who was examined as CW.65 on 11.08.2020 mentions about his credentials. He, as the lawyer attending to the civil cases of petitioner, mentions about the eye witnesses of the incident having visited the Dairy Farm of petitioner when he was there. He was asked to tutor them. He adds about petitioner instructing him to meet them all.

*(6) SUSPECTIBLE & CULPABLE CONDUCT OF THE PETITIONER POST INCIDENT:*

(a) During the period from 1.6.2016 and 16.6.2016, petitioner had absolutely no work at Delhi and still he was shuttling between Bangalore and Delhi during the said period with intent to generate material in support of the clandestine plea of alibi. The Tour Program was generated by one Mr.Somashekar Nyamagouda-Accused No.21, who happened to be the Personal Secretary to the petitioner. The copy of tour program was not shared with the office of the Central Minister in Delhi, which is highly unusual. Copies of Tour Program and details of flight tickets that were secured by the CBI during investigation are made a part of the Charge Sheet vide D.38.

(b) The statement of Mr.Vijay Kulkarni-CW.55, a brother of petitioner was recorded u/s 161 on 7.11.2020 and his statement u/s 164 was recorded on 17.12.2020. He has stated that the petitioner along with Mr.Chandrashekar Indi (A-16) @ Chandumama and Mr.Kempegowda were staying at Hotel Maurya, Race Course Road, Bangalore, in the night of 15.06.2016 i.e., a day following the murder of victim. He also mentions about meeting of Muttagi (A-1)

with the petitioner at around 1 a.m. on 16.06.2016 whilst travelling from the said hotel in a car to Sadashivanagar at Bangalore; this car was driven by Accused No.16. He admits having made two phone calls from (mobile Ph. No. [REDACTED]) to the then Hubli-Dharwad Commissioner of Police Mr.P.H.Rane (mobile Ph. No. [REDACTED]) to consider surrender of Mr.Basavaraj Muttagi (A1) as per law and not to ill treat him. He further states that Mr.Rane was a family friend and that he had informed Rane about Muttagi having committed murder of Yogesh Goudar. Nodal Officer of Vodafone Mr.Prakash Gangadharaiah who was examined u/s 161 of the Code as CW.46 on 27.01.2021 vouches the phone call record.

(c) CW.21-Gurunath Goudar, who is none other than a brother of victim, has mentioned about petitioner's wife parleying with widow of the deceased Smt.Mallavva and of offering a hefty amount in crores with intent to screen the petitioner. Obviously, such parleying and of clandestine efforts to win over the complainant (CW.20) would not

have happened in the absence of instruction from the petitioner.

(d) Petitioner had addressed a letter dated 28.11.2017 to the Addl. Chief Secretary and another letter dated 3.12.2018 to Sri.Siddaramaiah, copy marked to the then Chief Minister Sri.H.D.Kumaraswamy, seeking transfer of Public Prosecutor Smt.Shaila Angadi, who was vigorously conducting the trial undeterred & uninfluenced. CW.1- Mr.Anand Irappa Uddnanavar who was threatened to depose against the prosecution, has spoken about the toughness of this lady prosecutor. These letters in turn had sought for posting of Smt.Sumithra M Hanchatageri at IV Addl. District and Sessions Court, Dharwad as Public Prosecutor in the place of Smt.Shaila. Both these letters are at D.36 accompanying the Charge Sheet. One Mr.Shyama Holla, Under Secretary, Home Department, was examined as CW.84, has vouched the same in his statement recorded on 28.01.2021. These transfers were accordingly effected.

(C) AS TO CHARGE FOR THE OFFENCES PUNISHABLE UNDER THE ARMS ACT, 1959 BEING UNSUSTAINABLE:

(a) Mr.C.V.Nagesh drew attention of the Court to the statements given by several witnesses examined by the Police and to other material in support of his contention that there is absolutely no material for implicating the Petitioner for the offences punishable under sections 25 r/w section 3, 5, 8 & section 29 of the 1959 Act r/w section 149 of IPC. Learned ASG Mr. Raju per contra contended that there is abundant material on record that *prima facie* establishes the conspiracy between the Petitioner with Accused No.1–Basavaraj Muttagi & Accused No.16–Chandrashekara Indi with a common object to exterminate Mr. Yogesh Goudar due to personal and political reason; in furtherance of the said object, Accused No.16 had arranged three country made pistols through Accused No.17–Shivanand Srishail Biradar and thereby, all they have committed the offences punishable under the provisions of 1959 Act.

(b) The statement of Shivananda Srishail Biradar-Accused No.17 was recorded u/s 164 of the Code on

28.10.2021. Petitioner had contacted one Mr.Dharmaraj, a notorious gangster of Bijapur who was in jail at the relevant point of time. Said Dharmaraj had called accused No.17 from jail and informed him about the requirement of pistols for the petitioner and to hand over the same to Mr.Chandrashekar Indi-Accused No.16 @ Chandumama who is maternal uncle of petitioner. How these pistols were handed over is mentioned by Nagappa Byrigonde-CW.56, Suresh Jadhav-CW.57. These two witnesses had carried the weapons in the car driven by accused No.16 to Dharwad bus stand. These pistols were handed over to Basavaraj Muttagi-Accused No.1. The interaction between accused No.1 and the petitioner is demonstrated from CDR prior to the commission of murder. The statement of CW.56 & CW.57 was recorded u/s 161 of the Code on 12.12.2020. It is in the light of this that the petitioner has been charged for the offences punishable under secs.3, 5, 8 & 29 read with section 25 of the Arms Act, 1959 along with sections 120B & 149 of IPC. The vehement submission of Mr.C.V.Nagesh that there is absolutely no

material to link the petitioner to any offence punishable under the Arms Act, therefore cannot be accepted.

(c) The other submission of Mr.Nagesh that the statutory sanction of District Magistrate is a *sine qua non* for prosecuting a person for the offences punishable under Secs. 3, 5, 8 & 29 read with section 25 of the Arms Act, 1959, is bit difficult to accept as a thumb rule. Section 39 has the following text:

*"Previous sanction of the district magistrate necessary in certain cases.— No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate"*

Obviously, the above provision is section 3-specific and therefore, the question of obtaining prior sanction for prosecuting contravention of other provisions such as Secs.5, 8 & 29 would not arise.

(d) The above apart, sanction for prosecution is needed u/s 39 only in a case of direct involvement and not when the offence of conspiracy u/s 120B of IPC is alleged. There is a marked difference between these two. The argument of learned Sr. Counsel Mr.Nagesh blurs this

difference maintained by the statutory scheme. Petitioner along with others in this case has been charged with several offences that are not connected with section 3 of the 1959 Act.

(e) What has been stated above, gains support from a Co-ordinate Bench decision of this court in Criminal Petition No.6173 of 2020 between *KHADIR SAB @ KADEER MAGARE vs. STATE BY VIDHYA NAGAR POLICE STATION*, disposed off on 16.12.2020. Significantly at para 9.9 of the judgment it is observed as under:

*"I am of the considered opinion therefore that only in the event of offences charged under Section 25(1B)(a) which refers to Section 39 of the Arms Act prior sanction of the District Magistrate is required. Such sanction is not required for other offences charged under Section 25. Hence, I answer Point No.1 by holding that in all CRL.P. NO.6173 OF 2020 cases where the accused is charged under Section 25 of the Arms Act, 1959, sanction is not required prior to initiation of prosecution."*

(f) Even otherwise the requirement of sanction for prosecution arises at the stage of commencement of the trial, going by the text of Section 39 of 1959 Act. The trial *qua* the petitioner is yet to commence. Framing of charge

*per se* does not amount to commencement of trial vide **HARDEEP SINGH vs. STATE OF PUNJAB, (2014) 3 SCC 92**, although it is an essential component thereof, as rightly contented by Mr. Prasanna Kumar, learned Panel Advocate appearing for the CBI on record.

(D) AS TO NON-SUPPLY OF DOCUMENTS ACCOMPANYING THE CHARGE SHEET AND ITS EFFECT ON THE FRAMING OF CHARGE:

(a) The vehement submission of learned Sr. Counsel Mr. Nagesh that the petitioner was not supplied certain documents that had accompanied the Charge Sheet, despite demand and therefore, the charges as framed now are liable to be set at naught and matter be remanded for consideration afresh after ensuring the supply of documents, does not merit acceptance. Learned ASG rightly contended that firstly, the assertion of petitioner is false inasmuch as the Charge Sheet was supplied to his counsel before the framing of charge and an endorsement of acknowledgement appears on record. The order sheet maintained by the Trial Court reflects the manuscript of petitioner's counsel on record, which is as under:

*"Charge-sheet Copy Received on 24/9/21.  
C.H.Hanumantharaya Advocate A-15."*

There is a very strong presumption that what is recorded in the judicial proceedings is true & correct. Added, the very lawyer Mr.C.H.Hanumantharaya had appeared in the court below and has made the above endorsement; further, the same has not been disputed by the petitioner. In the petition as originally crafted which was argued extensively, there was no such ground. However, when the hearing was half a through, such a contention is sought to be taken by filing an Amendment Application on 23.01.2024. Therefore, learned ASG Mr.Raju is right in saying that it is only a convenient after-thought.

(b) At the stage of section 228 of the Code, it is not mere allegation which will enable the Magistrate to frame charge. He has also to see that there is *prima facie* material to sustain the allegation. The sifting of evidence at this stage is permissible only for a limited purpose of finding out a *prima facie* case; but the court cannot decide at this stage that such & such witnesses are not reliable. Sifting and scanning of the evidence in details is

impermissible. In other words, a court framing the charge does not hold a mini trial. The Apex Court in STATE OF BIHAR vs. RAMESH SINGH, (1977) 4 SCC 39 has observed as under:

*“Under Section 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If “the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”, as enjoined by Section 227. If, on the other hand, “the Judge is of opinion that there is ground for presuming that the accused as committed an offence which-... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused”*

A perusal of the impugned order whereby charges have been framed *inter alia* against the petitioner shows that due process was undertaken by the learned Trial Judge while framing the charge. Ideally speaking, the impugned order could have been scripted bit elaborately and in a reasoned way. There is scope for improvement even in

heaven, said Oscar Wilde, an Irish Writer (16 October 1854 – 30 November 1900).

(c) AS TO NON-FURNISHING OF ELECTRONIC RECORDS AND THE PREJUDICE CAUSED TO PETITIOENR THEREBY:

(i) At the stage of section 227, true it is that the accused has a valuable right of being heard and to make this right meaningful, the Charge Sheet and the papers accompanying it have to be handed to the accused, in terms of mandate enacted in section 207 of the Code unless the Magistrate in his discretion vested under the Provisos thereto directs otherwise. It is the duty of the Magistrate himself to supply copies of relevant documents to the accused. Even at the stage of framing charge u/s 228 of the Code, he has a right to be heard, as acceptably submitted by learned Sr. Advocate Mr.Nagesh. It is not in dispute that the accused was heard in the matter, arguably howsoever little it may be. However, the right to be heard at the stage of section 228 is not as wide as it is at the stage of section 227 of the Code. The former diminishes when the court transcends the stage of Discharge u/s 227, the Application of the accused for

discharge having been dismissed '*as not pressed*' reaches the precincts of section 228. This broad view is supported from the following observations in *MR. DINESH TIWARI vs. STATE OF UTTAR PRADESH, (2014) 13 SCC 137*:

*"From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227."*

However, this is not to say that the charges can be framed in a mechanical way *sans* due application of mind. If the material on record which has been produced before this court by both the sides in abundance, is examined, it cannot be argued that the charges as framed against the petitioner herein are unfounded. For invoking the constitutional jurisdiction under Articles 226 & 227 or the one u/s 482 of 1973 Code, what the petitioner has to demonstrate is not just the impugned order being wrong, but it is unsustainable. A mere wrong order does not give a right to seek its invalidation.

(ii) It is true that a part of electronic records was undertaken to be given to the petitioner as is reflected in

the Trial Court's order sheet itself. Accordingly, those documents were furnished albeit post framing of charge, is not disputed. However, how the non-supply of said documents has prejudiced case of the petitioner has not been pleaded, much less substantiated. Omission to supply copies of documents to the accused *per se* does not vitiate the proceedings unless prejudice to the accused on account of such non-supply is shown vide **NOOR KHAN vs. STATE OF RAJASTHAN, 1964 (1) SCWR 194**. What the Apex Court observed about six decades ago as under should be a complete answer to the contention of the kind:

*"...Counsel for the appellant relying upon the two judgments of the Nagpur High Court in Baliram v. Emperor and Maganlal v. Emperor submitted that omission to supply copies of the statements recorded under s.161 is repugnant to the fundamental rules of practice necessary for the due protection of prisoners and the safe administration of justice, and where the accused was deprived of his statutory rights of cross-examination and thereby denied the opportunity of effectively destroying the testimony of prosecution witnesses the evidence of such witnesses whose statements have not been supplied to the accused is inadmissible at the trial. We are unable to accept this contention for in our view the law stated by the Nagpur High Court does not correctly interpret ss.*

*161 and 162 Code of Criminal Procedure. In a later case, the Nagpur High Court in Maroti Mahagoo v. Emperor held that though the right which is given to the accused under s. 162 Code of Criminal Procedure to use the previous statements made to the police for the purpose of contradicting a witness is a valuable right, and where the omission to give copies to the accused is proved to have caused prejudice to the accused, the testimony of such witness must be received with extreme caution and the Court would be entitled in a suitable case even to ignore altogether such evidence, but the evidence is not inadmissible and every case must be decided on its own facts..."*

(iii) Furnishing of prosecution papers to the accused is an imperative of the principles of natural justice, is true. However, in the absence of demonstrable prejudice because of non-supply, the breach of natural justice cannot be chanted as a mantra. Our system has graduated from the ritualistic requirement of compliance with the principles of natural justice to the rule of demonstration of prejudice allegedly occasioned by their breach, subject to certain exceptions into which argued case of the petitioner does not fit. This view gains support from a Constitution Bench decision in *S.L.KAPOOR vs. JAGMOHAN, AIR 1981 SC 136*. The same is substantially reiterated in *SBI vs. M.J. JAMES, (2022) 2 SCC 301*.

(E) AS TO THE STATEMENT OF APPROVER COULD NOT HAVE BEEN ACTED UPON:

(a) This court need not deliberate this aspect of the matter much. It is true that accused No.17-Mr. Shivanand Srishail Biradar had applied for becoming an approver. The said Application was rejected by the Trial Court vide order dated 14.07.2022. However, the order rejecting the same was put in challenge before this court in CrI.P.No.8369/2022. A Co-ordinate Bench of this Court vide order dated 24.03.2023, having allowed the petition quashed the subject order. Thus, the said accused became approver pursuant to said order and not before that. This aspect of the matter can be subject matter of consideration when the court below after accomplishing trial takes up the case for hearing.

(b) A perusal of the impugned order framing the charge does not reflect that the statement of the approver recorded u/s 164 of the Code prior to he becoming one has been made the basis. There is other abundant material which sustains the said order even if the statement of the approver is excluded from consideration,

as rightly contended by Mr.P.Prasanna Kumar, learned Panel Counsel appearing for the CBI. Therefore, the legal aspect in respect of which an elaborate argument was made on the basis of certain Rulings, does not merit consideration at this stage.

(F) AS TO THE NEED FOR THE EXPEDITIOUS TRIAL OF THE CRIMINAL CASE IN THE COURT BELOW:

(a) The incident happened way back in the year 2016; petitioner & other accused persons have moved this court and Apex Court several times. It is true that in some cases, they have got some reprieve. A Division Bench of this court whilst disposing off petitioner's W.P.No.15828/2021 and co-accused's W.P.No.15012/2019 vide order dated 16.10.2021 had directed expeditious trial of the case. Challenge to this order in SLP (CrI) No.9629/2021 came to be dismissed as withdrawn on 7.2.2022. Since then, years have rolled, not even a leaf being turned. A long drawn criminal case would dis-serve the interest of administration of criminal justice. Every case, more particularly, a case of this kind should be tried & disposed off '*Before the Memory Fades*', at least as a

concession to the shortness of human life. Therefore, I am of the considered view that the trial of this case should be conducted on a war footing.

(b) The above being said, this court is not impressed by the submission of learned ASG that the petitioner has abused the process of court by instituting case after case, especially in a few, reprieve having been granted to him, arguably howsoever little it may be. A citizen is entitled to have recourse to judicial process any number of times if grounds do exist therefor. Merely because no substantial relief has been granted to him in his repeated recourse, one cannot hastily jump to the conclusion that he has committed an act of abuse of the process of the court or of the law, subject to all just exceptions into which argued case of the respondent does not fit.

In the above circumstances, this Petition being thoroughly devoid of merits, is liable to be dismissed & accordingly it is, costs having been reluctantly made easy.

Learned Judge of the court below is requested to accomplish the trial & disposal of the subject criminal case, preferably within a period of three months.

All observations herein above made being confined to disposal of the petition, shall not cast their light or shadow on the trial of the subject case in any way whatsoever.

**Sd/-  
JUDGE**

Snb, cbc, bsv