



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 1844/2025

1. Lakshita D/o Navratan Patel, Aged About 23 Years, R/o 6G, 125, Kudi Bhagtasni, Housing Board, Jodhpur (Raj)
2. Laxmi D/o Bhola Prasad Ji, Aged About 22 Years, R/o 7G, 89, Kudi Bhagtasni, Housing Board, Jodhpur (Raj)
3. Soniya D/o Om Prakash, Aged About 27 Years, R/o Mama Achleshwar Nagar, Sangariya, Jodhpur (Raj)

----Petitioners

Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

S.B. Criminal Miscellaneous (Petition) No. 2034/2025

Priyanka Mewara D/o Gajendra Mewara, Aged About 21 Years, 2/1222, Kuri Bhagtasni, Housing Board, Kuri Bhagtasani, Distt.jodhpur, Raj.

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. The Commissioner Of Police, Jodhpur Raj
3. The Deputy Commissioner Of Police, Jodhpur City West, Distt. Jodhpur, Raj.
4. Shimla, At Present Working As Sub Inspector, Ps Kudi Bhagtasni, Jodhpur City West, Distt. Jodhpur, Raj.
5. Rajendra Choudhary, At Present Working As Inspector, Ps Kudi Bhagtasni, Jodhpur City West, Distt. Jodhpur, Raj.

----Respondents

For Petitioner(s)	: Mr. Sudhir Saruparia, Adv. with Mr. Ravindra Singh, Adv. (in CRLMP No.2034/2024) Mr. M.S. Sisodiya, Adv. with Mr. Naresh Charniya, Adv. & Mr. Ashok Kumar Prajapati, Adv. & Mr. Abdul Latif, Adv. (in CRLMP No.1844/2024)
For Respondent(s)	: Mr. Vikram Singh Rajpurohit, PP Mr. Anand Singh Rajpurohit, ACP, Boranada, Jodhpur Mr. Sahdev, SI, SHO, PS Kudi Bagtasni, Jodhpur



HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment

REPORTABLE

- | | |
|--|----------------------|
| 1. Date of conclusion of arguments : | 20.04.2026 |
| 2. Date on which the judgment was reserved : | 20.04.2026 |
| 3. Whether the full judgment or only the operative part is pronounced : | Full Judgment |
| 4. Date of pronouncement : | 08.05.2026 |

1. These Criminal Misc. Petitions under Section 528 of BNSS have been preferred on behalf of the accused petitioners with the prayer to quash the FIR No.27/2025, registered at Police Station Kudi Bhagtasani, District Jodhpur City West for offences punishable under Sections 319(2), 318(4) & 61(2)(b) of the Bharatiya Nyaya Sanhita, (in short 'BNS') 2023 and Section 66D of IT Act along with all consequential proceedings arising out of it.
2. Brief facts in nutshell are that on 16.01.2025, Sub-Inspector Ms. Shimla, posted at Police Station Kudi Bhagtasani, Jodhpur City West, received an information from Head Constable Mr. Prem Choudhary, who was then serving in the Cyber Crime unit, to the effect that, opposite Ranbanka Hotel, a fraudulent call centre operating under the name "Power Break Down Service India" and "Solution Breakdown Service to India" was being run, wherein young men and women were allegedly deceiving people through electronic means. The said information was gathered in the course of "Operation Cyber Shield". Acting upon this information, the police initiated appropriate action, and FIR No.27/2025 came to be registered against the petitioners and other accused persons for offences punishable under Sections 319(2), 318(4) & 61(2)(b) of



the BNS, 2023 and Section 66D of the IT Act. Pursuant thereto, investigation was duly commenced.

3. Learned counsel for the petitioners contends that a perusal of the impugned FIR would reveal that no prima facie case of cheating, fraud, or any offence under the IT Act is made out against the petitioners, and that they have been falsely implicated in the present case. The petitioners are students who were merely employed at the call centre where the police conducted the raid. It is further submitted that on 15.01.2025, during the evening hours, the petitioners were apprehended by police personnel and taken to the police station, where they were wrongfully and illegally confined overnight. It is also submitted that the police officials misused their authority and, with mala fide intent, registered the impugned FIR against the petitioners. It is further contended that the police officials conducted an illegal search and seizure without apprising or obtaining authorization from the competent superior officer, in contravention of the applicable legal provisions.

4. Per contra, learned State Counsel has vehemently and fervently opposed the submissions advanced on behalf of the petitioners and prayed for dismissal of the petitions. It is submitted that the allegations were found proved against the petitioners during the course of investigation and charge-sheet has already been submitted before the concerned Court.

5. I have considered the submissions and perused the material available on record.



6. On 21.03.2025, when the matter was listed before this Court, counsel for the petitioners levelled serious allegations against Police Inspector Rajendra Choudhary, Police Station Kudi Bhagtasani, Sub-Inspector Shimla, and certain other police personnel of misusing their powers. It was alleged that on 15.01.2025, petitioners Priyanka Mewara and Lakshita were apprehended from their respective residences, which is evident from CCTV footage installed at their homes, and that at that time no complaint or FIR had been registered against them. It was further alleged that the petitioners were kept under wrongful and illegal confinement overnight on 15.01.2025. For ready reference order dated 21.03.2025 is being reproduced below:-

- "1. Serious aspersions have been made against Police Inspector- Rajendra Choudhary, Police Station Kudi Bhagtasani and Sub-Inspector Shimla and some of the police personnel with them. A very grim situation has arisen in this matter, however, this Court is of the view that before condemning any person, a liberty of being heard ought to have been given to them. Thus, the then SHO – Rajendra Choudhary and Sub-Inspector – Shimla to furnish affidavit to counter aspersions made in the affidavit submitted on behalf of the petitioner, Priyanka Mewara and others.
2. List the matter on 26.03.2025.
3. The Police Inspector -Rajendra Choudhary and Sub-Inspector - Shimla shall also remain present and audience shall be given to them before passing any order.
4. Learned counsel for the petitioner – Shri S. Saruparia shall keep available the pen drive, in which, the wrongdoings and maleficence of the Officers has been video graphed, the same shall be viewed in presence of the Officers. The Commissioner of Police, Jodhpur shall do all the needful for preservice of footages installed in the police station-Kudi Bhagtasani of 15 and 16 of January, 2025."

7. In compliance of the order dated 21.03.2025, SI Shimla and SHO Rajendra Choudhary appeared before this Court on



26.03.2025 and after hearing them, this Court passed the following order:-

"1. Inspector Rajendra Singh and Ms. Shimla Sub-Inspector given the audience. It is stated before this Court that on 15.01.2025 in the evening, Sub-Inspector Shimla brought all the girls to the police station and after making interrogation they were released at or around 9.00 to 9.30 pm. In the contrast, an affidavit has been filed and Shri Sudhir Sarupariya, learned counsel strenuously and vehemently urges that these ten girls were forcibly taken from their residences to the police station in the evening of 15.01.2025 and whereafter they were not allowed to go outside the police station. On the next date i.e. 16.01.2025, they were produced before a Judicial Magistrate in the evening at 7.30pm at his residence and order of keeping them in judicial custody was procured.

2. To verify the disputed fact that the girls were allowed to go outside the police station after their apprehension on 15.01.2025 in the evening, it would be in the interest of justice to view the CCTV cameras of the Police Station Kudi Bhagtasani and the house of the petitioners so as to reach on a correct factual situation. The footages of CCTV cameras installed in Police Station Kudi Bhagtasani dated 15.01.2025 since 5.00pm to 16.01.2025 since 5.00pm shall be made available to this Court. The CCTV cameras of the residences of the petitioners and of the nearby places shall also be made available to this Court in a pen-drive.

3. The Commissioner of Police, Jodhpur is directed to make necessary arrangement for procurement of the above. For this purpose he would depute an officer not below the rank of Additional S.P. as a nodal officer to observe the proceeding so that the truth can be elicited.

4. Shri Deepak Choudhary, GA-cum-AAG shall communicate the order to the Commissioner of Police by today itself and all the needful shall be done before the next date of hearing.

5. It is also apprise to this Court that a complaint was also filed to the Commissioner of Police with regard to issue involved in this matter and for which an inquiry had been initiated and ACP, Boranada is conducting further investigation in the matter.

6. The inquiry officer ACP, Boranada along with all material shall remain present before this Court. The original mal-khana register and Roznamcha Diary dated 15.01.2025 and 16.01.2025 shall also be kept available for perusal of this Court.

7. List the matters on 28.03.2025.





8. Police Officers Shri Rajendra Singh and Ms. Shimla shall remain present before this Court to counter the allegations.

9. Since charge-sheet has been submitted in the matter, therefore, learned trial Court is directed to hold the trial at this stage until further directions are passed by this Court."



8. In compliance of the order passed by this Court on 26.03.2025, Mr. Anand Singh Rajpurohit, ACP, Boranada, Jodhpur, who has been deputed as the Nodal Officer in this case, appeared before this Court along with the relevant report and record.

9. Learned State Counsel has placed on record factual report dated 20.04.2026, received from the Police Station Kudi Bhagtasani, Jodhpur West. According to the said factual report, after investigation, the police filed a charge-sheet against the present petitioners and other accused persons for offences punishable under Sections 319(2), 318(4) & 61(2)(b) of the BNS, 2023, and Section 66D of the IT Act, and the investigation was kept pending against accused Sanjay Kumar and others under Section 193(9) of the BNSS, 2023. So far as the ornaments of the petitioners are concerned, it has been stated by Mr. Rajendra Choudhary, the then SHO of Police Station Kudi Bhagtasani, that nothing was taken from the petitioners, rather, at the time of judicial custody, the petitioners themselves handed over their ornaments to the police for safe custody, which were subsequently returned to them after obtaining their receipt. A copy of the receipt is also annexed with the report.

10. Upon perusal of the material available on record, this Court finds material inconsistency in the prosecution case. This Court



had placed great faith in the Nodal Officer by entrusting him with the responsibility of conducting an inquiry to unearth the truth in light of the grave allegations levelled against the police officials but the report submitted by him does not inspire confidence. It is deeply concerning that the Nodal officer has failed to act in a transparent and impartial manner. Instead, his conduct suggests an attempt to shield and protect the erring subordinate police officials, thereby undermining the very purpose of the inquiry. There is clear discrepancy between the affidavit submitted by the SI and SHO and the report filed by the ACP. The SI claims in her affidavit that the petitioners were brought to the Police Station at 09:55 PM and after conducting thorough inquiry they were released whereas the ACP's report states that the petitioners were released from the police station by 09:37 PM. It appears that the conclusion that the petitioners had been released was drawn solely on the basis of a video clip where the petitioners can be seen roaming in the hall/corridor of the police station, without the collection of any independent evidence or the examination of any witness to substantiate such a finding. It is further pertinent to note that while it has been stated by the SI Shimla in her affidavit that she apprehended the petitioners, a perusal of General diary entry No. 49 dated 15.01.2025 at 04:05 PM and General diary entry No. 72 dated 15.01.2025 at 09:55 PM reveals no record of the petitioners having been brought to the police station which assumes significance and casts serious doubt on the prosecution's version, indicating that the documents have been fabricated. For





ready reference both the General diaries are being reproduced as under:

General Diary No.49, dated 15.01.2025 at 04:05 PM:-

General Diary Details
(रोजनामचा का विवरण)



State (राज्य): RAJASTHAN District (जिला): JODHPUR CITY WEST
P.S. (थाना): KUDI BHAGTASNI
a) G.D. No. (दैनंदिनी सं.) :049
b) G.D.Date (दैनंदिनी दिनांक): 15/01/2025 16:05 PM
c) G.D. Type (दैनंदिनी प्रकार): प्रस्थान
d) G.D. Sub Type (दैनंदिनी उप प्रकार पीएस के बाहर ड्यूटी) :
e) Beat Area (बीट क्षेत्र):
f) FIR Number (प्र.सू.रि.स.) :
LIST OF STAFF (कर्मचारियों की सूची):

S.No.	Name	Rank	SSO ID
1	Shimla	उपनिरीक्षक /अवर निरीक्षक	200817040295
2	Dheeraj fc 1764	पुलिस सिपाही	RJJO201824045041
3	MAHIPAL	पुलिस सिपाही	RJJO201824050697
4	SUNIL 2348	पुलिस सिपाही	201524007982

g) Subject (रोजनामचा विषय): रवानगी उनि शिमला मय जाब्ता मय चालक
h) GD Brief (रोजनामचा संक्षिप्त):
इस समय उनि शिमला मय हैंड कानि प्रेम साईबर सैल पुलिस उपायुक्त पश्चिम कार्यालय मय कानि सुनिल 2348 मय कानि धीरज 1764 मय सरकारी बोलेरो मय चालक कानि महिपाल 1856 मय अनुसंधान बाक्स मय प्राइवेट लेपटोप के वास्ते मुख्यालय द्वारा चलाये जा रहे साईबर शील्ड अभियान के तहत कार्यवाही व वांछित की धरपकड व लोकल एवं स्पेशल एक्ट की कार्यवाही हेतु हल्का क्षेत्र की तरफ रवाना हुये रवानगी रपट दर्ज है रोजनामचा आम शिवराज सउनि के जिम्मे किया गया रपट दर्ज है।

Report Printed On (रिपोर्ट मुद्रण की): 25/02/2025 10:01 बजे
Report Printed by (जिस के द्वारा रिपोर्ट): HAMEER SINGH
(Inspector)
Signature (हस्ताक्षर):
Name Shimla
Rank उपनिरीक्षक /अवर निरीक्षक
No. (सं.):

General Diary No.72 dated 15.01.2025 at 09:55 PM:-

General Diary Details
(रोजनामचा का विवरण)

State (राज्य): RAJASTHAN District (जिला): JODHPUR CITY WEST
P.S. (थाना): KUDI BHAGTASNI
a) G.D. No. (दैनंदिनी सं.) :072
b)G.D.Date (दैनंदिनी दिनांक): 15/01/2025 21:55 PM
c) G.D. Type (दैनंदिनी प्रकार): आगमन
d) G.D. Sub Type (दैनंदिनी उप प्रकार पीएस के बाहर ड्यूटी) :
e) Beat Area (बीट क्षेत्र):
f) FIR Number (प्र.सू.रि.स.) :



LIST OF STAFF (कर्मचारियों की सूची):

S.No.	Name	Rank	SSO ID
1	Shimla	<u>उपनिरीक्षक / अवर</u> निरीक्षक	200817040295
2	Dheeraj fc 1764	पुलिस सिपाही	Rjjo201824045041
3	MAHIPAL	पुलिस सिपाही	RJJO201824050697
4	SUNIL 2348	पुलिस सिपाही	201524007982

g) Subject (रोजनामचा विषय): आमद सुश्री शिमला उनि मय जाब्ता

h) GD Brief (रोजनामचा संक्षिप्त):

इस समय उनि शिमला मय हैंड कानि प्रेम साईबर सैल पुलिस उपायुक्त पश्चिम कार्यालय मय कानि सुनिल 2348 मय कानि धीरज 1764 मय सरकारी बोलेरो मय चालक कानि महिपाल 1586 मय अनुसंधान बाक्स मय प्राइवेट लेपटोप के बहवाले रपट संख्या 49 के गये दर्ज रहे कि पुलिस मुख्यालय द्वारा चलाये जा रहे साईबर शील्ड अभियान के तहत कार्यवाही व वांछित की धरपकड मे थाना हल्का क्षेत्र में गश्त कर हाजर थाना आये। रोज आम स्वयं के जिम्मे लिया। आमद रपट दर्ज है।

Report Printed On (रिपोर्ट मुद्रण की): 25/02/2025 10:02 बजे

Report Printed by (जिस के द्वारा रिपोर्ट): HAMEER SINGH
(Inspector)

Signature (हस्ताक्षर):

Name Shiv Raj
Rank सहायकउप-निरीक्षक
No. (सं.):

11. Further, petitioner, Ms. Priyanka Mewara, has placed on record her duly sworn affidavit, wherein she has unequivocally averred that she was taken to the Police Station on 15.01.2025 at approximately 06:30 PM and was wrongfully confined in police custody overnight, despite the absence of any complaint or registration of an FIR against her. In order to substantiate the aforesaid averments, reliance has been placed upon CCTV footage dated 15.01.2025, recorded between 05:41 PM and 05:43 PM at the petitioner's residence, which prima facie shows SI Shimla taking the petitioners, namely Lakshita and Priyanka, from their residence in a government vehicle.

12. It has further come on record that no CCTV footage of the Police Station is available after 09:00 PM on 15.01.2025. The absence of such crucial evidence, which was within the exclusive control of the respondents, gives rise to an adverse inference against them and casts serious doubt on their assertion that the



petitioners were released during the said night. In these circumstances, the version put forth by the respondents is unreliable and untenable.

13. As per the general diary entry no. 18, dated 16.01.2025, SI Shimla departed from the police station at 09:31 AM on the basis of information received from Head Constable, Prem Choudhary and returned at 02:55 PM along with the petitioners and other accused persons before registration of the FIR. On the basis of report submitted by her impugned FIR No.27/2025 was registered at 03:37 PM on 16.01.2025 for offences punishable under Sections 319(2), 318(4) & 61(2)(b) of the BNS, 2023 and Section 66D of IT Act. However, the arrest memo placed on record indicates that the arrest of the petitioners was effected prior to 02:55 PM and bears the signature of the Investigating Officer, Rajendra Choudhary, despite the fact that, at the relevant time, the investigation had not been entrusted to him. Notably, the memo also mentions the FIR number. This assumes significance and gives rise to a serious inconsistency, as it remains unexplained how the arrest memos could have been prepared and signed, with the FIR number mentioned therein, before the raiding party had officially returned to the police station. Such circumstances cast doubt on the genuineness of the documents and suggest possible fabrication. The inconsistency goes to the root of the matter and casts a serious doubt on the genuineness and reliability of the arrest proceedings. It gives rise to a reasonable apprehension that the documents were not prepared contemporaneously, thereby affecting the credibility of the prosecution version.



14. It becomes abundantly clear from the foregoing sequence of events that on January 15, 2025, in the absence of any FIR and without any information regarding the commission of a cognizable offence, the police picked up as many as ten girls from their homes and brought them to the police station. Not only that, they were also illegally detained at the police station throughout the night. Even more striking is the fact that the FIR was registered only on the following day, i.e., January 16, 2025, at 03:37 PM. As per the FIR, the ten girls were purportedly arrested during a "raid". Furthermore, the events of January 15 namely, the picking up of the girls and their overnight detention finds no mention whatsoever in the FIR. The omission of such a crucial fact casts serious doubt on the veracity of the prosecution's case.

15. The actions of the police authorities are in direct contravention of Section 43(5) of the BNSS (Corresponding to Section 46(4) of the Cr.P.C). The said provision categorically prohibits the arrest of women after sunset and before sunrise, except in exceptional circumstances. Even in such exceptional cases, the law mandates that a woman police officer shall record the reasons in writing and obtain prior permission from a Judicial Magistrate. Further, as per Section 179 of the BNSS (Corresponding to Section 160 of the Cr.P.C), women cannot be compelled to appear at a police station for the purpose of interrogation. Instead, their statements are required to be recorded at their place of residence, in the presence of a female police officer. The police authorities have acted in blatant disregard of this statutory provision. The manner in which the petitioners



were detained overnight without registration of FIR, and the subsequent registration of FIR and filing of charge-sheet, casts serious doubt on the fairness, impartiality, and integrity of the investigation conducted by the state police.

16. It is a settled position of law that the police are duty-bound to act strictly in accordance with procedure established by law and cannot deprive any person of their liberty except in compliance with statutory safeguards. The obligations of the police in matters of arrest and detention have been clearly laid down by the Hon'ble Supreme Court in ***D.K. Basu v. State of West Bengal***, reported in **(1997) 1 SCC 416**, wherein it has been mandated that no person shall be detained without proper documentation, including the registration of an FIR or entry in the general diary, and that the rights of the detained person must be scrupulously protected.

17. Any deviation from these established procedures, including unauthorized detention without formal registration or failure to maintain proper records such as CCTV footage, amounts to a gross violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The conduct of the police, therefore, must be transparent, accountable, and in strict adherence to constitutional and legal safeguards.

18. In the present case, the actions of the police authorities clearly demonstrate a flagrant non-compliance with the mandatory legal safeguards governing arrest and detention. Despite the settled legal position, no FIR or complaint was registered before detaining the petitioners, nor were the requisite entries made in



the general diary to justify the detention of the petitioners. The continued custody of the petitioners, particularly overnight, without adherence to due process, constitutes a gross abuse of police powers.

19. Further, the absence of CCTV footage of the Police Station after 9:00 PM on 15.01.2025, which was within the exclusive domain and control of the respondents, reflects a deliberate lapse and suppression of material evidence. Such conduct not only vitiates the version put forth by the respondents but also reinforces the inference of illegal detention and renders their actions arbitrary and unlawful.

20. In such circumstances, the Court must ensure that the integrity and fairness of the investigation are not compromised. It is a settled principle of law that where allegations of misconduct, bias, or procedural irregularities are made against the local police, the transfer of investigation to an independent agency, such as the State CID, CBI, or a Special Investigation Team (SIT) is a recognized legal remedy. Such transfers are judicially evolved measures, invoked in exceptional cases to preserve the credibility and impartiality of the investigative process. It is equally well settled that transfer of investigation to an independent agency is an extraordinary power, to be exercised sparingly and in exceptional circumstances, where the Court is satisfied that such transfer is necessary to ensure a fair, impartial, and credible investigation.

21. The present case warrants transfer of investigation to an independent agency as the allegations are directly against the



police officials who are themselves conducting the investigation. The Investigating Agency cannot be expected to act fairly where its own officers are under a cloud of serious allegations, including illegal detention, violation of statutory safeguards relating to arrest of women, and procedural improprieties.

22. The legal position governing the transfer of investigation is well-settled. In ***State of West Bengal & Ors. v. Committee for Protection of Democratic Rights & Ors.***, reported in **(2010) 3 SCC 571**, the Hon'ble Supreme Court has categorically held that constitutional Courts possess the power to direct transfer of investigation to an independent agency such as the CBI in order to ensure a fair and impartial investigation, particularly in cases where the local police may be biased or influenced.

23. In ***Babubhai v. State of Gujarat & Ors.***, reported in **(2010) 12 SCC 254**, the Hon'ble Supreme Court emphasized that not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of 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.

24. In ***Narmada Bai v. State of Gujarat & Ors.***, reported in **(2011) 5 SCC 79**, the Hon'ble Supreme Court held that where



allegations are made against police officials themselves, and there exists a reasonable apprehension that the investigation will not be fair, it is appropriate to transfer the investigation to an independent agency to maintain public confidence in the justice delivery system.

25. In ***Pooja Pal v. Union of India & Ors.***, reported in **(2016)**

3 SCC 135, the Hon'ble Supreme Court held as under:-

"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

....101. Judged in these perspectives, we are of the firm opinion that notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative





necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding far-seeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance."

26. In ***Rubabbudin Sheikh v. State of Gujarat & Ors.***, reported in **(2010) 2 SCC 200**, the Hon'ble Supreme Court held as under:-

"53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned



including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case.

....60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI."



27. In ***R.S. Sodhi v. State of Uttar Pradesh & Ors.***, reported in **1994 Supp. (1) SCC 143**, the Hon'ble Supreme Court held as under:-



"2.We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order."

28. The present case is not merely one of procedural impropriety but prima facie discloses a grave abuse of authority. The material on record indicates that ten young girls were unlawfully detained for an entire night, and it appears that a fabricated FIR was subsequently registered to lend legitimacy to such detention.



Thereafter, judicial remand was sought on the basis of evidence so procured, ultimately culminating in the filing of a hurried charge sheet. To aggravate the matter further, false documents were created and the CCTV footage from the police station was deleted, thereby obstructing the due course of justice.

29. In the social context of our country, where the honour and dignity of women are held in the highest regard, such actions not only constitute a violation of their fundamental rights but are also likely to cause irreparable harm to their reputation and future prospects. The act of forcibly taking the victims to the police station, without any lawful justification, and detaining them overnight is one that carries the potential to cast a lasting stigma upon their lives.

30. Considering the aforesaid principles laid down by the Hon'ble Supreme Court in a catena of judgments, the facts of the present case do raise a reasonable apprehension regarding the fairness of the investigation. The manner in which the petitioners were allegedly detained overnight without registration of FIR, followed by registration of the case on the next day, prima facie indicates deviation from established legal safeguards. The fact that the allegations are directed against the very agency conducting the investigation further compounds the apprehension of bias. It is trite that justice must not only be done but must also be seen to be done. An investigation carried out by an agency against whom serious allegations have been levelled is unlikely to inspire public confidence.



31. In such circumstances, further investigation by the same police machinery would defeat the ends of justice and erode public confidence in the rule of law. Thus, looking to the seriousness of the allegations levelled against the officers of the State Police, coupled with the apparent likelihood of tampering with evidence, this Court is of the considered opinion that the matter warrants investigation by an independent, impartial, and competent authority, so as to ensure that justice is duly served.

32. In view of the above discussion, this Court is of the considered view that further investigation in this case must be conducted by Central Bureau of Investigation (CBI).

33. Consequently, the Station House Officer of Police Station Kudi Bhagtasani, District Jodhpur City West, is hereby directed to immediately provide all the records relating to the above case to the CBI within a period of one week from the date of this order. On receipt of the record by the CBI, it will take charge of the investigation, carry out an independent investigation of the case in all its aspects and shall make all endeavour to complete the investigation as soon as possible, preferably within a period of six months from the date of receipt of the record. The CBI shall, upon completion of the investigation, submit its report before the competent Court in accordance with law. The State authorities are directed to extend full cooperation and assistance to the officers of the CBI to ensure an effective and unhindered investigation. Considering that a charge sheet has already been filed by the State police, the trial Court is directed to defer further proceedings in the matter until the report of the CBI is submitted.



34. Accordingly, these Criminal Misc. Petitions stand disposed of.

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



228 & 229-Manoj Solanki/-

(ANIL KUMAR UPMAN),J