

BIMAL GURUNG

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v.

UNION OF INDIA & ORS.

(Writ Petition (Criminal) No. 182 of 2017)

MARCH 16, 2018

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Investigation: Transfer of investigation to independent agency – Exercise of power for transferring investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind or where investigation by the State police lacks credibility and it is necessary for having a fair, honest and complete investigation and when it is imperative to retain public confidence in the impartial working of the State agencies.

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Investigation: Transfer of investigation to central investigating agency – Writ petition seeking transfer of investigation of all FIRs lodged against the petitioner and other members of Gorkha Janmukti Morcha (GJM) to an independent investigation agency – FIRs relates to various offences under IPC, Prevention of Destruction of Property Act, Arms Act, Indian Explosives Act, WBMPO Act and National Highway Act – Petitioner’s case was that in the light of stand off between the State of West Bengal over the issue of separate State for Ghorkhaland, many prominent leaders and members of GJM were falsely implicated in frivolous cases and there was an imminent threat to their safety and life – Prayer for transfer was on the ground that there was bias and prejudice against petitioner and all members of GJM and the investigation carried out against the members of GJM was clearly politically motivated – Held: The records show that there was sufficient material to indicate the severe damage to life and property in the District of Darjeeling and Kalimpong and the protest was no longer peaceful and democratic – Deaths of several persons which included police personnel is admitted by both the parties – Names of petitioner and other members of GJM appeared in large number of cases – The State is obliged to maintain law and order and protect life and property of the citizens – The cases lodged in the FIR submitted at the instance of the Police or other complainants cannot be discarded on the specious plea that

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- A *they have been lodged due to bias of the State and with the intent to persecute the petitioner – No bias or mala fide has been pleaded against any individual State functionary or police officer nor any such person has been impleaded in the writ petition so as to consider the allegation of bias – In the facts of the case, it is not a fit case to exercise jurisdiction under Art.32 to transfer the cases en masse to an independent agency.*

- B *Public functionaries: Duties and powers – The “State” is a political unit vested with constitutional duties and obligations – The Governor of the State formally represent the State in whom the executive power of the State is vested and exercised by him either directly or through officers subordinate to him in accordance with the Constitution of India – Under List II, Entry I of Seventh Schedule of the Constitution, “public order” is a subject allocated to the State – All legislative and executive powers in reference to public order is thus vested in the State – The State functions through its various organs consisting of different personnels and authorities – State functionaries have their own rights and obligations entrusted to them under different Statutes governing the field.*

- C *Police Administration: Duties and powers – The authorities and police officers, who are entrusted different obligations and functions under the Code of Criminal Procedure, has to act as ordained by the Code – It is an obligation of the police officers to register a First Information Report when they receive any information regarding commission of a cognizable offence – For recording such offences, they are neither required to await any instructions from any authority or State nor they have to abdicate their obligation to register F.I.R. as required by Cr.P.C.*

- D *Constitution of India: Arts.19(1)(a) and (b) – Right to hold demonstration, limitation – Held: Arts.19(1)(a) and (b) gives constitutional right to all citizens freedom of speech and expression which includes carrying out public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people, it goes beyond fundamental rights guaranteed under Art.19(1) and becomes an offence punishable under law.*

Dismissing the writ petition, the Court

- H **HELD: 1. The law is well settled that power of transferring**

investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. [Para 26] [862-C] A

K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai (2013) 12 SCC 480 : [2013] 9 SCR 199 – relied on B

2. Article 19 protects important attributes of personal liberty. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights expression of which are reflected in carrying demonstration on several occasions. The word freedom of speech must be broadly construed to include right to circulate once view by word or mouth or through audio visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). Demonstrations whether political, religious or social or other demonstrations which create public disturbances or operate as nuisances, or create public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; “it may be noisy and disorderly”, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). [Para 28] [862-G-H; 863-A-D] C
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Anita Thakur and others v. Government of Jammu and Kashmir and others (2016) 15 SCC 525 – relied on. G

3.1 The order of Calcutta High Court indicates that situations in districts of Darjeeling and Kalimpong were deteriorating and insurgency and violent agitations were continuing unabated and the protest no longer remained peaceful and democratic. The allegations made in various FIRs cannot be rejected as false and concocted as contended by the petitioner. H

- A On the record there is sufficient material to indicate the severe damage to life and property. It cannot be imagined that State Police of West Bengal itself has destructed the property including Police vehicles only for the purpose of foisting cases against the petitioner and its supporters. Deaths of several persons which included Police personnel is admitted to by both the parties. The
- B offences alleged in the cases are serious offences including offences under Section 121, 121A, 153A and offences under Unlawful Act, 1967 as well as offences under Section 307, 302 IPC etc. Transfer of investigation of such large number of cases enmass is neither practicable nor justified. The jurisdiction under
- C Article 226 and Article 32 with regard to transfer of investigation of cases has to be exercised on facts of each and every case. [Paras 37-39] [868-G-H; 869-A, C-D]

- 3.2 The present case is a case where the petitioner as Leader of GJM is a spearheading an agitation against the State demanding a separate State-hood. The State is obliged to maintain
- D law and order and to protect life and property of the citizens. It has to take necessary steps to contain such agitation and restore the peace. The cases lodged in the FIR submitted at the instance of the Police or other complainants can not be discarded on the specious pleas that they have been lodged due to bias of the
- E State and with the intent to persecute the petitioner. The “State” is a political unit vested with constitutional duties and obligations. The Governor of the State formally represent the State in whom the executive Power of the State is vested and exercised by him either directly or through officers subordinate to him in
- F accordance with the Constitution of India. State functionaries have their own rights and obligations entrusted to them under different Statutes governing the field. The Code of Criminal Procedure is one of such Statutes, which govern the law relating to criminal procedure. The authorities and police officers, who are entrusted different obligations and functions under the Code of Criminal
- G Procedure, has to act as ordained by the Code of Criminal Procedure. It is an obligation of the police officers to register a First Information Report when they receive any information regarding commission of a cognizable offence. For recording such offences, they are neither required to await any instructions from
- H any authority or State nor they have to abdicate their obligation

to register F.I.R. as required by Cr.P.C. F.I.R. registered at the instance of police leading serious offences involving petitioner and supporters of GJM, cannot be discarded on the plea that it was police, who has roped in the petitioner and other supporters by lodging the F.I.R. It is very easy to make allegations of bias against a person but it is difficult to substantiate the same. In the present case, neither there are any pleading nor any material to come to a conclusion that State functionaries including police functionaries are biased against the petitioner. Thus, the allegations of the bias made against the State and police functionaries had to be rejected and petitioner cannot be permitted in saying that the FIRs lodged against him are result of a bias of the State or police personnels. [Para 41] [869-G-H; 870-A-E, G-H; 871-A-B]

Lalita Kumari v. Government of Uttar Pradesh & Ors.
(2014) 2 SCC 1 : [2013] 14 SCR 713 – followed.

4. For a victim the investigation in a case is of much significance. In the event, a proper investigation is not carried out and relevant evidence which would have been collected by due care and caution, is not collected, the victim is sure not to get justice on such faulty investigation. In case of faulty investigation, where an accused has been wrongly roped in, he has right to seek all remedies before Court of Law for further investigation and a Court of Law is able to marshal all evidence and capable of discerning truth from evidence on record. Although as a principle, there is no fetter on an accused to move a Court of Law for transfer of investigation, but on the facts of this case it is not a fit case where this Court may exercise jurisdiction under Article 32 to transfer the cases enmass to an independent agency. The present case cannot be said to be a case of individual's persecution by the State authority. [Para 46] [874-C-F]

State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others
(2010) 3 SCC 571 : [2010] 2 SCR 979 – followed.

Dharam Pal v. State of Haryana and others (2016) 4 SCC 160 : [2016] 1 SCR 194 - partly held inapplicable.

Mithilesh Kumar Singh v. State of Rajasthan and others

- A **(2015) 9 SCC 795**; *Sanjiv Kumar v. Union of India and others* **(2005) 5 SCC 510 – distinguished.**
Bharat Kumar v. State of Kerala & Ors. **AIR 1997 Ker. 291**; *The Communist Party of India (M) v. Bharat Kumar & Ors.* **(1998) 1 SCC 201 : [1997] 5 Suppl. SCR 131**;
 B *James Martin v. State of Kerala* **(2004) 2 SCC 203 : [2003] 6 Suppl. SCR 910 – referred to.**

Case Law Reference

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|---|--------------------------------|---------------------------------|----------------|
| | [2010] 2 SCR 979 | followed | Para 17 |
| C | (2005) 5 SCC 510 | distinguished | Para 17 |
| | [2016] 1 SCR 194 | partly held inapplicable | Para 17 |
| | (2015) 9 SCC 795 | distinguished | Para 17 |
| | [2013] 9 SCR 199 | relied on | Para 26 |
| D | AIR 1997 Ker. 291 | referred to | Para 29 |
| | [1997] 5 Suppl. SCR 131 | referred to | Para 30 |
| | [2003] 6 Suppl. SCR 910 | referred to | Para 31 |
| | (2016) 15 SCC 525 | relied on | Para 32 |
| E | [2013] 14 SCR 713 | followed | Para 41 |

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 182 of 2017.

Under Article 32 of the Constitution of India.

- F P. S. Patwalia, Sr. Adv., Ms. Natasha Dalmia, Harshika Verma, Sakshi Kakkar, Somiran Sharma, Advs. for the Petitioner.

- G Ms. V. Mohana, Kapil Sibal, A. M. Singhvi, Rakesh Dwivedi, Kalyan Banerjee, Sr. Advs., S. Wasim A. Qadri, Ms. Madhavi Divan, Ms. Nidhi Khanna, Ayush Puri, Mukesh Kumar Maroria, Suhaan Mukherji, Kunal Chatterji, Raja Chatterjee, Ms. Nandani Mukherjee, Chanchal Kumar Ganguli, Piyush Sachdev, Adeel Ahmed, Ms. Runa Bhuyan, Ms. Nandini Sen Mukherjee, Advs. for the Respondents.

The Judgment of the Court was delivered by

- H **ASHOK BHUSHAN, J.** The petitioner, the President of Gorkha Janmukti Morcha (hereinafter referred to as “GJM”), has filed this Writ Petition under Article 32 of the Constitution of India praying for transfer

of investigation of all First Information Reports lodged against the petitioner and other members of GJM, to any independent investigation agency. In the Writ Petition, following prayers have been made by the petitioner:-

- A “A. Transfer the investigation of all the FIRs lodged against the present Petitioner and other members of the GJM, details of which are provided in **Annexure P-4**, from the West Bengal Police to any independent investigation agency like the NIA, CBI or any other independent investigation agency which is not under the control of the Government of West Bengal; and
- B B.
- C B. Transfer the investigation of all the current FIRs lodged against the present Petitioner and other members of the GJM, from the West Bengal Police to any independent investigation agency like the NIA, CBI or any other independent investigation agency which is not under the control of the Government of West Bengal; and
- D C. Issue a writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus, directing that any future FIRs/complaints filed against the present Petitioner and other members of the GJM, which pertains to the ongoing agitation in the State of West Bengal, be transferred to and investigated by the said independent investigation agency; and
- E E.
- F D. Grant anticipatory bail and protection against any coercive steps to the present Petitioner in the FIRs registered by the West Bengal Police, details of which are provided in **ANNEXURE P-4**, during the course of such investigation by the said independent investigation agency; and
- F E. Grant anticipatory bail and protection against any coercive steps to the present Petitioner in all FIRs registered by the West Bengal Police, during the course of such investigation by the said independent investigation agency, and
- G F. Grant police protection to the present Petitioner, provided by any independent police force which is not under the control of the State of West Bengal, at the expense of the present Petitioner; and
- G G. Pass such further or other orders as this Hon’ble Court may deem fit and proper.
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A AND FOR THIS ACT OF KINDNESS THE PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY”

2. The petitioner’s case in the writ petition is that GJM led by the petitioner, has been at the forefront of the Gorkhaland agitation since 2007. GJM is a registered political party, which has also participated in the municipal elections, elections of autonomous body of GTA (Gorkhaland Territorial Administration), Lok Sabha elections and West Bengal assembly elections. On 18.07.2011, A Tripartite accord was signed between the State of West Bengal, Ministry of Home Affairs, Government of India and Gorkha Janmukti Morcha for setting up an autonomous body (Gorkhaland Territorial Administration – “GTA”), empowered with administrative, financial and executive powers with regard to various subjects. The Gorkhaland Territorial Administration Act, 2011 was enacted to provide for the establishment of a Gorkhaland Territorial Administration for the region comprising the three sub-divisions, Darjeeling, Kalimpong, Kurseong and some mouzas of Siliguri sub-division in the district of Darjeeling and for certain matters incidental thereto. The petitioner’s case is that on 15.05.2017, Hon’ble Minister of Education, Government of West Bengal in a press conference stated that Bengali would be compulsory in all schools in West Bengal. The Gorkhas viewed this as an encroachment on their language, i.e. Nepali/Gorkhali. A Facebook post dated 16.05.2017 made by the Chief Minister of West Bengal has also been referred to, which mentions that one of the three languages would have to be Bengali. The above has been stated to be beginning of protest carried on by different associations of Gorkhas and the GJM.

3. On 30.05.2017, GJM claimed to convene an indoor meeting of various intellectuals to assess their views. Petitioner claims that several persons have been wrongfully booked under Sections 120-B, 153A, 505 and 34 Indian Penal Code (hereinafter referred to as “I.P.C.”). Petitioner alleged that further FIRs have been lodged against the petitioner and other GJM members on 06.06.2017 and thereafter. Petitioner in the writ petition has pleaded that there are around 300 FIRs, which has been registered against the members and supporters of GJM. In **Annexure P-4**, the petitioner has given a list of available FIRs against Bimal Gurung and others detailing 112 FIRs, out of which in 31 FIRs, the petitioner- Bimal Gurung is named. The FIRs relates to various offences under I.P.C.; Prevention of Destruction of Public Property Act; Arms

Act; the Unlawful Activities (Prevention) Act, 1967; Indian Explosives Act; WBMPO Act and National Highways Act. In different FIRs, offences ranged from offences under Sections 121, 121A, 143, 148, 149, 153A, 186, 189, 323, 324, 325, 326, 307, 332, 333, 353 and 302 I.P.C. A

4. Petitioner's case further is that false FIRs have been lodged against the petitioner and his supporters. Petitioner further alleged that on 17.06.2017, the West Bengal police opened fire at GJM supporters and members, causing death of innocent GJM supporters. On 27.06.2017, GJM party members withdraw from the GTA Act. Petitioner and all the other members have unilaterally resigned from the GTA. On 03.07.2017, petitioner on behalf of GJM has written to the Home Minister, Government of India demanding a CBI inquiry into the death of three persons caused on 17.06.2017. The petitioner also wrote to National Human Rights Commission on 03.07.2017. The petitioner in the writ petition has referred to various FIRs lodged in June, July & August, 2017. Petitioner has further stated that on 18.08.2017, blast occurred in Darjeeling town, in which again the police arraigned the petitioner for this crime and filed an F.I.R. No. 182 of 2017 against petitioner and other GJM leaders. Petitioner's case is that different FIRs were lodged in identical wording to that of F.I.R. No. 182 of 2017. Petitioner further refers to death of one Dawa Bhutia, GJM supporter on 01.09.2017, who died in a shoot out. Petitioner's case is that Sikkim Police has registered a case against S.P. Kalimpong in the above respect. On 20.09.2017, the Chief Minister of West Bengal has reconstituted the Board of Administrators of the Gorkhaland Territorial Administration and nominated Shri Binoy Tamang as its Chairperson simply because he sided with the State Government. Binoy Tamang was a close associate of petitioner, who was also co-accused in several cases along with the petitioner. On 26.09.2017, Hon'ble Home Minister, Government of India appealed to withdraw the bandh. Consequently, the Bandh was called off. Reference to Writ Petition (Crl.) No. 148/2017 by Mr. Roshan Giri, General Secretary of GJM was also made, where intervention of this Court was asked for to investigate the extra judicial killings of 10 supporters of the movement by GJM by the State Police, where this Court has issued notice on 06.10.2017. B
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5. Petitioner also referred to raid dated 13.10.2017 by West Bengal Police accompanied by large number of Central Forces at Patleybas and Limbu busty areas of Darjeeling, where recovery of AK-47 rifles was falsely shown by the police. On the aforesaid facts, the H

A petitioner sought the transfer of investigation of all cases to an independent investigating agency. Petitioner's case is that in the light of recent stand off between the State of West Bengal and the members of GJM and agitation in West Bengal over the issue of a separate State for Gorkhaland, many prominent leaders and members of the GJM are being falsely implicated in frivolous cases and there is an imminent threat to their safety and life, thereby violating fundamental right guaranteed under Article 21 of the Constitution of India. The State Government and the State Police have dealt with absolute highhandedness to quell the democratic and peaceful agitation by illegally executing Gorkhaland members and activists and injuring over 200 supporters.

C 6. The petitioner is directly named in 31 FIRs. There is a genuine fear of bias and prejudice against petitioner and all members of GJM and the investigation being carried out against the members of GJM is clearly politically motivated and directed by the Government of West Bengal. The language in FIR No. 182 of 2017 dated 19.08.2017 and another FIR No. 8 of 2017 dated 24.08.2017 lodged at another police station, which is 44 Kms away narrated two different incidents of alleged blasts. However, the language used in both these FIRs is identical clearly indicating that a draft has been circulated to the police directing them to register FIRs relating to blasts. Writ petitioner pleads that 11 members and supporters of GJM have been killed. On the aforesaid facts and grounds, prayers as noted above have been made in the writ petition.

F 7. This Court issued notice in the Writ Petition on 20.11.2017 and directed that in the meantime no coercive steps shall be taken against the petitioner. The State of West Bengal filed an application to recall the order dated 20.11.2017 referring to 53 cases pending against Bimal Gurung and 24 under trial cases. The reply to the aforesaid I.A. has been filed by the petitioner dated 23.11.2017. Rejoinder Affidavit on behalf of respondent Nos. 2 to 9 in reply to the counter affidavit filed by the petitioner in I.A. No. 125288 of 2017 has also been filed. A detailed counter affidavit has been filed by the State of West Bengal to which a rejoinder affidavit has also been filed.

H 8. In the counter affidavit, the State has come up with the case that in several cases, warrant of arrests have been issued against the petitioner by the Courts of learned CJM, Darjeeling. A proclamation has also been issued under Section 82 Cr.P.C. against the petitioner. The petitioner is wanted in large number of cases and to avoid his arrest,

he has filed the writ petition under Article 32 and has not appeared. In the counter affidavit, it is stated that there are 56 criminal cases, in which petitioner is named. The cases relates to FIRs filed in May, 2017 to October, 2017. A detail of said cases have been mentioned at page Nos. 139 to 145 of the counter affidavit in Table 1. In Table 2, at Page 145 of the counter affidavit, there is mention of 22 under trial cases against the petitioner – Bimal Gurung, which relates to cases lodged against him from the year 2007 to 2013. In Para 7 of the counter affidavit, the State has further given details of 47 cases, which relates to the First Information Reports lodged against the petitioner in June to October, 2017. In 47 cases, charge sheets has also been filed against the petitioner after completing the investigation in which prima facie material is claimed to have been found against the petitioner. Charge Sheet in reference to Sadar P.S. Case No. 213/2017 dated 13.10.2017 under Sections 121/121A/153A/323/120B/ 307/302 I.P.C. read with Section 25(i)(a)/27/35 of Arms Act and Section 3/4, Explosives Act have been referred to in which charge sheet and supplementary charge sheet has been filed.

9. The respondent's case in the writ petition is that in the year 2007, Gorkha Janmukti Morcha (GJM) led by Shri Bimal Gurung started the agitation for Gorkhaland State, which ended in year 2011 after constitution of Gorkhaland Territorial Administration Act. Agitation has been launched by GJM led by Bimal Gurung, since the month of May/ June, 2017 by stoking the passion of common public on the alleged language issue. In the counter affidavit, it has been claimed that GJM protested against the alleged imposition of Bengali language on the hill by the State Government, though, there was no notification by the Government to that effect. The GJM led by the petitioner continued with their agitational program which took the shape of violent agitation on 08.06.2017 when GJM party, led by petitioner-Bimal Gurung staged violent demonstrations in front of Bhanu Bhawan, Darjeeling, where State Cabinet, led by Chief Minister was holding a meeting. The mob breached the first barricade and proceeded towards the second. They threw stones and bombs. A few supporters of GJM also fired upon the police. To disperse the unlawful assembly the police had to resort to various measures. 7 police vehicles, a police assistant booth, private vehicles and NBSTC bus was burnt and many police personnel including PSO to the ADG, North Bengal were injured. On 15.06.2017, on receipt of specific information, Police party raided party office of GJM at Patleybash, Darjeeling, where two improvised fire arms, gun powder

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A and other incriminating articles were seized. Police parties were attacked by supporters of GJM on several occasions, reports of which instances were lodged to control the rampant mob. The District Magistrate, Darjeeling had requisitioned Army on 08.06.2017 for aid to civil authority in view of local disturbances in order to prevent loss of life and property of residents and visitors. Army aid in that phase continued till 24.06.2017.

B Again Army was requisitioned on 08.07.2017 in Darjeeling and Jorbunglow PS areas for the same purpose. Further Army Aid was requisitioned again on 18.07.2017 in Darjeeling, Jorbunglow, Kurseong and Mirik Police Station. Further, during this period, additional contingent of 11 companies of CAPF were deployed in the hills in addition to 4

C companies of CAPF already deployed in the area to bring the law and order situation under control.

10. On 13.10.2017, the police, on receipt of specific information, raided a place situated in the forest on the banks of Choti Rangit River, where during the raid the petitioner-Bimal Gurung and his team opened

D fire at the police team by reason of such attack on police, S.I. Amitava Mallick sustained bullet injuries and died. During the raid, police seized 09 AK-47 rifles, Gelatin Sticks, detonators and 1800 live ammunitions. The details of articles which were seized on such raid have been detailed in para 24(hh) at Page Nos. 50 to 56 of counter-affidavit. During

E investigation, it could be learnt that this place in the midst of forest, was used as arm training camp for the henchmen of Bimal Gurung. The GJM has declared complete bandh in June, 2017 and during the entire period, which bandh continued for 104 days, the police, CAPF and Army had acted with utmost restraint and have used force only in order to protect lives and properties of public and Government. Due to the violent

F attack by the GJM supporters two police personnel have died and 119 police personnel sustained injuries. During this period, violent agitators burnt 76 vehicles including 25 police vehicles and vandalized 37 vehicles including 17 police vehicles. Apart from that they committed arson in 168 buildings/properties including 20 police buildings/properties. In

G addition, they vandalized 31 buildings/properties including 05 police properties. During the entire period of bandh, all schools and colleges were closed for 104 days. Tea Gardens in the hills were also closed leading to the loss of livelihood of thousands of tea estate labourers. Bandh adversely affected the world famous tea industry of Darjeeling. The band also adversely affected the thriving tourism industry of

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Darjeeling. A total of 371 No. of cases of attack on police, unlawful assembly, arson, rioting, bomb explosion, use of firearms etc. has been registered in Darjeeling, Kalimpong and Alipurduar districts. Out of 371 cases, petitioner is named as accused in 56 cases. Out of 371 cases, 145 number of cases, have been started on suo moto action by the police whereas other cases have been started on the complaints of other victims.

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11. Series of bomb blast have also been alleged in the counter affidavit, accusing petitioner and other supporters of GJM, with regard to which, several FIRs have been lodged. The GJM supporters have indulged in large scale violence causing damage to private and public property. Cases have been registered against the petitioner, supporters and other miscreants of attack on police, arson, rioting etc. The petitioner is not entitled for the relief as claimed in the writ petition. Allegation that police has registered cases falsely on the petitioner and his supporters is denied. Allegations that recovery of arms and ammunitions were recovery of those arms, which were planted by the police is also vehemently denied. The State has also referred to orders passed by Calcutta High Court in Writ Petition No. 15306 of 2017 where the High Court has issued various directions on 16.06.2017, 07.07.2017, 11.07.2017 and 14.07.2017.

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12. The State case is that even the High Court in its order has noted that situation in Darjeeling and Kalimpong districts is deteriorating rapidly day by day. Insurgency and the violent agitations are continuing unabated. The High Court itself has directed the Central Government to deploy four more companies of CRPF, which was deployed by the Central Government as was noticed by the High Court subsequently on 19.07.2017. The State consistently denied any extra judicial killings of supporters requiring any investigation. It is further denied that any perverse steps have been taken by the State Agencies in order to quell the so called democratic and alleged peaceful movement. It is pleaded that present petition being based on incorrect fact, full of suppression of material facts, no relief should be granted. It is the petitioner who has been for a long time evading process of law by not cooperating with any investigation by police authorities and not appearing before the trial court. In the counter affidavit, the respondents have annexed various photographs capturing damage to public and private properties, photographs referring to particular cases have also been brought on record along with the counter affidavit.

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- A 13. Petitioner has filed a rejoinder affidavit again reiterating the prayer for independent investigation. Petitioner's case is that petitioner is a well known political leader and he is being persecuted by the State and its agencies. The petitioner was provided police protection prior to June, 2017. The petitioner further pleads that cases against the petitioner originating prior to 2017 should be withdrawn as per GTA Act, 2011. He has also referred to clause 29 of Tripartite agreement entered in the year 2011. Petitioner's case is that all cases registered post May, 2017 are lodged with an intention to pressurize and threaten the members of GJM and to quell the legitimate political movement of the Gorkha people, who are seeking a separate State to protect their identity, existence and interests. The Government of West Bengal has dealt with absolute high handedness to quell the democratic and peaceful agitation. Almost all cases are registered by the State Police, by taking suo-moto cognizance of fabricated instances, simply to bring the petitioner in custody and quell the legitimate political movement. The investigations are over and some of the FIRs and charge sheets have been filed, which have been also annexed in the counter affidavit, which clearly shows that conspiracy to charge the petitioner in all those cases are present since from beginning and no real investigation has actually taken place. The weapons recovered are sealed and stamped packets, which weapons were merely planted by the police from some malkhana. Cases registered of bomb blasts under the Unlawful Activities (Prevention) Act are all false and were registered when the petitioner was discharged from the trial court from the murder of one Mr. Madan Tamang on 17.08.2017. Execution of Dawa Bhutia, by illegally entering into the State of Sikkim. On 01.09.2017, the West Bengal Police, led by Superintendent of Police, Mr. Yadav, Kalimpong went deep inside at Namchi, Sikkim and shot one person named Dawa Bhutia, without any provocation, against which a FIR has been registered by Namchi Police Station against police personnel headed by S.P., Kalimpong. Death of certain supporters of GJM has also been mentioned in the rejoinder affidavit and name of 11 persons have been given, who died allegedly by various police actions. Petitioner further stated that respondents have continued to commit atrocities on innocent supporters of GJM. It is further alleged that police officials are picking and choosing the supporters of the petitioner and threatening them to surrender and change their allegiance to a leader sponsored by the State Government.
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14. We have heard Shri P.S. Patwalia, learned senior counsel for the petitioner, Shri Kapil Sibal, learned senior counsel, Dr. A.M. Singhvi, learned senior counsel, Shri Rakesh Dwivedi, learned senior counsel and Shri Kalyan Banerjee, learned senior counsel have been heard for the respondents. Learned Attorney General has appeared for the Union of India.

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15. Shri P.S. Patwalia, learned senior counsel appearing for the petitioner submits that the petitioner who is President and Leader of GJM Party has been carrying out only democratic and peaceful agitation in support of the long standing demand of separate State of Gorkhaland. It is submitted that Education Minister and Chief Minister of State of West Bengal announced that Bengali shall be a compulsory language in the entire State of West Bengal. He submits that meeting was convened on 30.05.2017 by the intellectual and literary persons for exchange of ideas with regard to which FIR was lodged without any provocation. He further submits that demonstration and agitation with regard to which FIRs have been lodged against the petitioner and other members of GJM which were false and without any reason and only to persecute the petitioner and other members of the party. He submits that in the Police firing several members of the GJM have been killed whereas FIRs have been lodged against the petitioner and other members of the Party for killing of their own supporters which is unbelievable and false. He submits that FIR No.182 of 2017 pertaining to bomb blast and several other subsequent FIRs were lodged with word to word similarity which indicates that FIRs have been lodged in mechanical manner with only intent to rope in petitioner and other members. The West Bengal Police at the instance of the Government was lodging different FIRs alleging commission of different offences only to quell the democratic and peaceful demonstration of the petitioner and his Party. It is submitted that alleged recovery of huge arms and ammunitions are false and bogus. It was well planted recovery of AK-47, arms and ammunitions and for which blame has been made on petitioner and other Party members. The petitioner submits that neither fair investigation is being conducted by the Police of West Bengal nor the petitioner has any hope of any fair investigation in large number of cases. The reports have been hurriedly filed which also indicates the shoddy manner in which investigation was conducted. It is submitted that the cases where Police personnel have been made accused on killing of a person, investigation by CID has not yet been completed. It is submitted that mere fact that charge-sheet has

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A been filed in some cases and the trial has commenced is no ground for denying to transfer the investigation. He submits that this Court has already held that mere filing of charge-sheet and commencing of trial is no ground to refuse in entrusting the investigation to an independent agency.

B 16. Learned counsel for the petitioner submits that the investigation of all the FIRs be transferred to any independent agency including NIA, CBI on which West Bengal Government has no control for a fair and correct investigation. He submits that peaceful and democratic demonstration cannot be curbed in the manner in which State of West Bengal is doing.

C 17. Learned counsel for the petitioner in support of his submission has placed reliance on the judgments of this Court in *State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571, Sanjiv Kumar vs. Union of India and others, (2005) 5 SCC 510, Dharam Pal vs. State of Haryana and others, (2016) 4 SCC 160 and Mithilesh Kumar Singh vs. State of Rajasthan and others, (2015) 9 SCC 795.*

D 18. Shri Kapil Sibal and Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the State of West Bengal refuting the submission of learned counsel appearing for the petitioner contend that present is not a case where this Court may exercise jurisdiction under Article 32 for granting relief as claimed in the writ petition. It is submitted that the petitioner has sought for transfer of investigation of FIRs lodged against him and other members of GJM as well. This petition is neither a representative nor a PIL so that the petitioner can espouse the cause of all members of the GJM who are culpable or liable to be prosecuted.

E The petitioner's prayer that any future FIRs/complaints may also be transferred, is also a prayer which cannot be considered. It is incumbent upon the petitioner to identify the cases which need to be transferred and make out grounds for transfer of each of such cases. The prayer seeking transfer of all the FIRs *enmass* including future FIRs is not maintainable.

F The primary contention of the petitioner is that the allegations against him are false and that he is not culpable in any of the cases registered against him. For such allegations, the petitioner has full opportunity to raise all legal and factual defences and has remedies available under the Criminal Procedure Code. The petitioner cannot be allowed to bypass the provisions of the Cr.P.C. and entire procedure.

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19. It is further submitted that the most of the cases where investigation has been transferred by this Court are the cases which were filed at the instance of the victims and not by the accused. The reason for such indulgence is that the accused has sufficient opportunity of representation, whereas the victim does not have any, hence, it is to safeguard the victim's cause that courts have to step in to ensure fair investigation and trial. Further, the petitioner cannot seek transfer of investigation in cases where charge-sheet has already been filed and trial has commenced. The allegations of bias against the entire State machinery are unfounded and unsubstantiated. The petitioner has not made out any allegation against the judicial machinery available in the State. The cases against the petitioner are serious in nature and the instant writ petition has been filed solely to scuttle investigation against the petitioner. The submission of the petitioner that certain FIRs are identical in word by word, in no manner, is to dilute the seriousness of the allegations for which FIR has been registered.

20. It is submitted that whenever the power has been exercised by this Court or by the High Court for the transfer of investigation to a Central Agency it was based on the facts of each case. Looking into the facts of the present case, where not only there is serious threat to law and order and the public order by violent acts life and property has also been damaged. Distrust on whole State machinery and judicial system cannot be accepted. It is the responsibility of the State to maintain the law and order and to protect the lives and properties of the citizens. A State cannot abdicate its obligation to quell the violent agitation and to take appropriate action permitted under law.

21. Shri Rakesh Dwivedi, learned senior counsel, appearing for the Director General of Police, adopts the submission raised by Shri Kapil Sibal and Dr. A.M. Singhvi, and he submits that Police officers and authorities are taking action as per law and the allegation that there is any bias on the part of the Police authorities towards the petitioner is unfounded. There have been cases registered against the petitioner even before starting of the agitation from May, 2017. The petitioner and his supporters by violent agitation had made the entire area stand still causing loss of lives and properties of the residents.

22. Learned Attorney General appearing for the Union of India submits that Union of India has rendered all necessary help as per the request of the State for providing Central Forces to the State for

A maintaining peace. Learned Attorney General submits that Union Government is always ready to comply with any direction issued by this Court in this regard.

23. We have considered the submissions of the learned counsel for the parties and perused the records.

B 24. Before we advert to the facts of the present case and prayers made in the writ petition, it is useful to recall necessary principles as enumerated by this Court while exercising jurisdiction by this Court under Article 32 or the High Court under Article 226 for transferring investigation of a criminal case to a Central Agency. The Constitution
C Bench of this Court in *State of West Bengal (supra)* has authoritatively laid down that the High Court under Article 226 and this Court under Article 32 can issue direction to CBI to investigate a cognizable offence within the State without consent of that State. The Constitution Bench also in the above context has held that although this Court has implied
D power and jurisdiction to direct for the transfer to CBI to investigate a cognizable offence but also has obligation to exercise the said power with great caution which must be exercised sparingly, cautiously and in exceptional situations. In paragraph 70 with regard to exercise of such power following has been laid down by the Constitution Bench:

E *“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for*
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doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.” A

25. The two-Judge Bench of this Court in ***Dharam Pal vs. State of Haryana and others (supra)*** while referring to the principles for transferring investigation has laid down following in paragraphs 18, 19 and 24: B

“18. *A three-Judge Bench in K.V. Rajendran v. Supt. of Police reiterating the said principle stated that: (SCC p. 485, para 13)* C

“13. ... the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having ‘a fair, honest and complete investigation’, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.” D

19. *The Court, after referring to earlier decisions, has laid down as follows: (K.V. Rajendran case, SCC p. 487, para 17)* E

“17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.” F G

24. *Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely* H

A *conscious that direction for further investigation by another*
agency has to be very sparingly issued but the facts depicted
in this case compel us to exercise the said power. We are
disposed to think that purpose of justice commands that the
cause of the victim, the husband of the deceased, deserves
B *to be answered so that miscarriage of justice is avoided.*
Therefore, in this case the stage of the case cannot be the
governing factor.”

26. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In ***K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Of Police, (2013) 12 SCC 480***, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation *prima facie* is found to be tainted/ biased.

E 27. Before we apply the above principles laid down by this Court to find out whether the facts of the present case are rare and exceptional where this Court has to exercise power under Article 32 to transfer enmass cases to other agency, we need to advert what is the nature and extent of democratic and peaceful demonstration as protected by our Constitution violation of which may raise violation of fundamental rights of a person.

F 28. Article 19 of the Constitution of India guarantees some of most important fundamental rights to the citizens. Article 19 protects important attributes of personal liberty. Right to freedom of speech and expression as guaranteed under Article 19(1)(a) and the right to assemble peaceably and without arms as protected by Article 19(1)(b) are the rights which in reference to the present case have importance. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights expression of which are reflected in carrying demonstration on several occasions. Freedom to air once

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view is the life line of any democratic institution. The word freedom of speech must be broadly construed to include right to circulate once view by word or mouth or through audio visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). Demonstrations whether political, religious or social or other demonstrations which create public, disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; “it may be noisy and disorderly”, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). We in the present case are concerned with the demonstrations and the bandh call given by GJM.

29. A full Bench of the Kerala High Court in ***Bharat Kumar Vs. State of Kerala & Ors., AIR 1997 Ker. 291*** had occasion to consider fundamental rights and bandh given by political parties. The Kerala High Court while describing call for bandh held that call for a bandh is distinct and different from call for a general strike or the call for hartal. The intention of the callers of the bandh is to ensure that no activity either public or private is carried on that day. The full Bench considered different aspects of bandh in reference to fundamental rights of other persons under Article 19(1). In paragraph 17 full Bench of Kerala High Court laid down following:

“No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these original petitions will have to be considered in this background.”

A 30. An appeal was filed against the said judgment before this Court. A three-Judge Bench of this Court in ***The Communist Party of India (M) vs. Bharat Kumar & Ors., (1998) 1 SCC 201***, affirmed the judgment of the Kerala High Court. While affirming the judgment following was laid down in paragraph 3:

B *“3. On a perusal of the impugned judgment of the High Court[†], referring to which learned counsel for the appellant pointed out certain portions, particularly in paras 13 and 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by*
C *the High Court between a “Bandh” and a call for general strike or “Hartal” is well made out with reference to the effect of a “Bandh” on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the*
D *claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a “Bandh” which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the*
E *reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a “Bandh” on the one*
F *hand and a call for general strike or “Hartal” on the other. We are in agreement with the view taken by the High Court.”*

G 31. The two-Judge Bench of this Court in ***James Martin vs. State of Kerala, (2004) 2 SCC 203***, which was a case where in reference to Bharat bandh call sponsored by political parties, appellant was prosecuted for the offence under Section 304 Part I, 326 and 324 read with Section 34 IPC and 25-B(1) of Arms Act, 1959 and was convicted. While dealing with the case this Court made the following pertinent observations:

H *“24. Before we part with the case, it needs to be noted that in the name of hartal or bandh or strike no person has any*

right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty and property of any citizen or destruction of life and property, and the least to any government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not lose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all-around destruction with counterproductive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike.”

32. A two-Judge Bench of this Court in *Anita Thakur and others vs. Government of Jammu and Kashmir and others, (2016) 15 SCC 525* in which one of us Dr. A.K. Sikri was a member had occasion to consider Article 19 in reference to a protest march organised by a group of people. While dealing with the demonstration under Article 19(1)(a) and (b) following was laid down in paragraph 12:

“12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given

A *under Article 19(1)(d), again, ensures that the petitioners*
could take out peaceful march. The “right to assemble” is
beautifully captured in an eloquent statement that “an
unarmed, peaceful protest procession in the land of “salt
satyagraha”, fast-unto-death and “do or die” is no jural
B *anathema”. It hardly needs elaboration that a distinguishing*
feature of any democracy is the space offered for legitimate
dissent. One cherished and valuable aspect of political life
in India is a tradition to express grievances through direct
action or peaceful protest. Organised, non-violent protest
C *marches were a key weapon in the struggle for*
Independence, and the right to peaceful protest is now
recognised as a fundamental right in the Constitution.”

33. This Court, however, noticed that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. Following observations have been made in paragraph 16:

D *“16. Before advertng to the issue at hand, we would like to*
make some general remarks about the manner in which these
demonstrations are taking shape. Recent happenings show
an unfortunate trend where such demonstrations and protests
are on increase. There are all kinds of protests: on social
E *issues, on political issues and on demands of various sections*
of the society of varied kinds. It is also becoming a common
ground that religious, ethnic, regional language, caste and
class divisions are frequently exploited to foment violence
whenever mass demonstrations or dharnas, etc. take place.
F *It is unfortunate that more often than not, such protestors*
take to hooliganism, vandalism and even destroy public/
private property. In the process, when police tries to control,
the protestors/mob violently target policemen as well. Unruly
groups and violent demonstrations are so common that
people have come to see them as an appendage of Indian
G *democracy. All these situations frequently result in police*
using force. This in turn exacerbates public anger against
the police. In Kashmir itself there have been numerous
instances where separatist groups have provoked violence.
In this scenario, task of the police and law-enforcing
H *agencies becomes more difficult and delicate. In curbing such*

violence or dispersing unlawful assemblies, police has to accomplish its task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary. Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.”

34. From the above, it is clear that Article 19(1)(a) and (b) gives constitutional right to all citizens freedom of speech and expression which includes carrying out public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people it goes beyond fundamental rights guaranteed under Article 19(1) and becomes an offence punishable under law.

35. Before any further discussion we record a note of caution. In the present case we are not called upon to express any opinion as to whether allegations made in FIRs which have been lodged against the petitioner and other supporters of GJM are true or false. The issue is as to whether, as prayed by the petitioner, investigation in such cases are required to be transferred to a central investigate agency. Thus our observations are only in reference to answer the prayer made in the writ petition. Our observation is not to be treated as any expression of opinion on the allegations made in FIRs. We do not express any opinion either in favour or against the petitioner with regard to the allegations made in various FIRs. Our observations shall not influence any investigating agency or any Court which happen to deal with the criminal cases which are referred to in the writ petition.

36. Reference has been made to the various orders of the High Court which were passed by the Calcutta High Court in Writ Petition No.15306(W) of 2017. The grievance raised in the said writ petition

A was that Gorkha Janmukti Morcha (GJM) has organised a bandh since 9th June, 2017 which has paralysed the working in the hill area, more specially in Darjeeling. Referring to the order dated 07.08.2017, the High Court has made directions to the State to take necessary action similar to earlier directions in respect of the functioning of essential services due to the illegal and disruption measures adopted by the GJM. It is sufficient to refer to order dated 14.07.2017 where the Calcutta High Court noticed the following:

C *“The State Government and the Central Government have filed their respective affidavits. The affidavit on behalf of the Central Bureau of Investigation (in short, the C.B.I.) has not been filed as yet.*

D *The situation in Darjeeling and Kalimpong districts is deteriorating rapidly day by day. Insurgency and the violent agitations are continuing unabated. The life and properties of the general public are in danger.*

xxx xxx xxx

E *The situation in Darjeeling and Kalimpong districts has escalated since the agitation started on 8th June, 2017. Despite our earlier orders directing both the State and the Central Governments to ensure that peace and normalcy are restored in the aforesaid two districts, it is apparent that the endeavour on the part of the State Government and the Central Government is wanting. Otherwise had the Governments worked together, by now the situation could have been brought under control. This one-upmanship of the Central Government and the State Government is causing harm to the people of the two districts of Darjeeling and Kalimpong. Public property, power installations have become casualties in the large-scale arson and agitation.”*

G 37. The above order indicates that situations in districts of Darjeeling and Kalimpong were deteriorating and insurgency and violent agitations were continuing unabated. The protest no longer remained peaceful and democratic. The allegations made of the offences with regard to which various FIRs have been lodged can not be rejected as false and concocted as contended by the petitioner. On the record there is sufficient material to indicate the severe damage to live and property.

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38. Learned counsel for the respondent has rightly contended that it cannot be imagined that State Police of West Bengal itself has destroyed the property including Police vehicles only for the purpose of foisting cases against the petitioner and its supporters. Deaths of several persons which included Police personnel is admitted to by both the parties. More than 300 cases have been filed with regard to which FIRs have been lodged after May, 2017.

39. As noted above, the petitioner's prayer is to transfer the investigation of all the FIRs lodged against the petitioner and other members of GJM as per Annexure P4. Annexure P4 contains details of 112 cases in which petitioner is named in 31 cases. The offences alleged in the cases are serious offences including offences under Section 121, 121A, 153A and offences under Unlawful Act, 1967 as well as offences under Section 307, 302 IPC etc. Transfer of investigation of such large number of cases enmass is neither practicable nor justified. The jurisdiction under Article 226 and Article 32 with regard to transfer of investigation of cases has to be exercised on facts of each and every case. There are no grounds available in the aforesaid 112 cases so as this Court may exercise jurisdiction under Article 32 for transfer of investigation in all cases.

40. The petitioner is named only in 31 cases but a large number of accused are involved in all the cases in Annexure P4. From the counter-affidavit further details have been brought on record which indicate that in 56 cases petitioner is accused and there are total 371 cases which have been registered after May, 2017 regarding various subversive activities. We, however, clarify that in principle when transfer of one case is permissible, number of cases may not be an impediment in transfer of more than one case. Even if only those cases are to be taken into consideration where petitioner is named accused, there are no such special grounds made out in the writ petition on which even those cases be considered for transferring the investigation.

41. The present case is a case where the petitioner as Leader of GJM is a spare heading an agitation against the State demanding a separate State-hood. The State is obliged to maintain law and order and to protect live and property of the citizens. It has to take necessary steps to contain such agitation and restore the peace. The cases lodged in the FIR submitted at the instance of the Police or other complainants can not be discarded on the specious pleas that they have been lodged due to bias

A of the State and with the intent to persecute the petitioner. The “State” is a political unit vested with constitutional duties and obligations. The Governor of the State formally represent the State in whom the executive Power of the State is vested and exercised by him either directly or through officers subordinate to him in accordance with the Constitution of India. Under List II, Entry I of Seventh Schedule of the Constitution, B “Public order” is a subject allocated to the State. All legislative and executive powers in reference to Public order is thus vested in the State. There is a Council Of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions C or any of them in his discretion. The State functions through its various organs consisting of different personnels and authorities. State functionaries have their own rights and obligations entrusted to them under different Statutes governing the field. The Code of Criminal Procedure is one of such Statutes, which govern the law relating to D criminal procedure. The authorities and police officers, who are entrusted different obligations and functions under the Code of Criminal Procedure, has to act as ordained by the Code of Criminal Procedure. It is an obligation of the police officers to register a First Information Report when they receive any information regarding commission of a cognizable offence. For recording such offences, they are neither required to await E any instructions from any authority or State nor they have to abdicate their obligation to register F.I.R. as required by Cr.P.C. The Constitution Bench of this Court in *Lalita Kumari Vs. Government of Uttar Pradesh & Ors., (2014) 2 SCC 1* has elaborately considered the obligation to register an F.I.R. when information of cognizable offence is received by a police personnel. Following are the relevant observations made by the F Constitution Bench speaking through Justice P. Sathasivam that “When a cognizable offence takes place before the eyes of police personnel, he is not to await any information or any other source for registering a F.I.R., it is his obligation and duty to register a F.I.R.”. Thus, F.I.R. registered at the instance of police leading serious offences involving G petitioner and supporters of GJM, cannot be discarded on the plea that it was police, who has roped in the petitioner and other supporters by lodging the F.I.R. No bias or mala fide has been pleaded against any individual State functionary or police officer nor any such person has been impleaded in the writ petition so as to consider the allegation of bias. It is very easy to make allegations of bias against a person but it is H

difficult to substantiate the same. In the present case, neither there are any pleading nor any material to come to a conclusion that State functionaries including police functionaries are biased against the petitioner. Thus, the allegations of the bias made against the State and police functionaries had to be rejected and petitioner cannot be permitted in saying that the FIRs lodged against him are result of a bias of the State or police personnels. In Para 83 of the Constitution Bench Judgment in *Lalita Kumari Vs. Government of Uttar Pradesh & Ors. (supra)*, following observations were made:-

“83. In terms of the language used in Section 154 of the Code, the police is duty-bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear i.e. to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.”

42. One of the submissions raised by the petitioner is that the mere fact that in certain cases the charge-sheet has been submitted and no investigation pending can also be transferred. Petitioner has relied on the judgment of *Dharam Pal vs. State of Haryana (supra)* where this Court had held that the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the constitutional power vested in the High Court and this Court to ensure a fair and just investigation. In paragraph 25 of the judgment following has been stated:

“25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional

A *courts, the commencement of a trial and examination of some*
witnesses cannot be an absolute impediment for exercising
the said constitutional power which is meant to ensure a fair
and just investigation. I can never be forgotten that as the
B *great ocean has only one test, the test of salt, so does justice*
has one flavour, the flavour of answering to the distress of
the people without any discrimination....”

43. As per law laid down by this Court in the above case when
the power can be exercised even after the commencement of the trial
there cannot be any fetter to the power of this Court in transferring the
C investigation even after the filing of the charge-sheet but in view of the
facts and reasons as stated above present is not a case where this Court
may exercise jurisdiction under Article 32 to transfer the investigation in
large number of cases enmass registered against the petitioner and other
members of the GJM. A judgment on which reliance has been placed by
the petitioner is judgment of *Mithilesh Kumar Singh vs. State of*
D *Rajasthan (supra)*. The above case was a case where daughter of the
petitioner died by falling from four storied College Hostel. Petitioner
came with the case that investigation conducted by the local police was
not fair and the version put up by the police that the girl committed
suicide is not correct. In the above context this Court held that a trial
E based on a partisan, motivated, one-sided, or biased investigation can
hardly be fair. In paragraphs 11 and 12 following has been laid down:

“11. *Such being the importance of fair and proper*
investigation, this Court has in numerous cases arising out
of several distinctly different fact situations exercised its
power of transferring investigation from the State/
F *jurisdictional police to the Central Bureau of Investigation*
under the Delhi Police Establishment Act. There was
mercifully no challenge to the power of this Court to direct
such a transfer and in my opinion rightly so as the question
whether this Court has the jurisdiction to direct transfer
G *stands authoritatively settled by the Constitution Bench of*
this Court in State of W.B v. Committee for Protection of
Democratic Rights (2010 3 SCC 571).

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

to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent."

44. The above was a case where writ petition was filed under Article 32 by the victim who is the father of the deceased and the Court was satisfied that circumstances as pleaded by the petitioner required investigation by the independent agency like CBI. The said case was on its own facts and does not help the petitioner in the present case.

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A 45. Judgment of *Sanjiv Kumar vs. Om Prakash Chautala*
(*supra*) was again a case filed by Sanjiv Kumar who was a whistle-
blower alleging large-scale corruption and tampering of records in filling
up of about 4000 posts of JBT teachers in State of Haryana. The writ
petition filed by Sanjiv Kumar being W.P.(Crl.)No.93 of 2003 was
B disposed of by this Court directing the complaint to be investigated by
CBI. There were certain cases which were under the investigation against
the petitioner himself which were also entrusted to the CBI. The said
case was on its own facts one does not lend support to the petitioner.

46. Most of the cases which were cited before us by the parties
are the cases where this Court exercised jurisdiction under Article 32 in
C transferring the investigation at the instance of the victims. For a victim
the investigation in a case is of much significance. In the event, a proper
investigation is not carried out and relevant evidence which would have
been collected by due care and caution, is not collected, the victim is
sure not to get justice on such faulty investigation. In case of faulty
D investigation, where an accused has been wrongly roped in, he has right
to seek all remedies before Court of Law for further investigation and a
Court of Law is able to marshal all evidence and capable of discerning
truth from evidence on record. Although as a principle, there is no fetter
on an accused to move a Court of Law for transfer of investigation, but
E on the facts of this case as noted above, we do not think it to be a fit
case where this Court may exercise jurisdiction under Article 32 to
transfer the cases enmass to an independent agency. The present case
cannot be said to be a case of individual's persecution by the State
authority.

F 47. In view of the foregoing discussion, we are of the view that
the petitioner is not entitled for any relief. The writ petition is dismissed.