

APHC010524542024

**IN THE HIGH COURT OF ANDHRA PRADESH****AT AMARAVATI****[3457]****(Special Original Jurisdiction)**

MONDAY ,THE FIFTH DAY OF MAY  
TWO THOUSAND AND TWENTY FIVE

**PRESENT****THE HONOURABLE SRI JUSTICE HARINATH.N****WRIT PETITION NO: 27032/2024****Between:**

B Narendra Kumar

**...PETITIONER****AND**

Union Of India and Others

**...RESPONDENT(S)****Counsel for the Petitioner:**

1.M R K CHAKRAVARTHY

**Counsel for the Respondent(S):**

1.P S P SURESH KUMAR, Spl. Public Prosecutor for CBI

2.SRIDHAR TUMMALAPUDI ( CENTRAL GOVT COUNSEL)

3.THE ADVOCATE GENERAL

4.ABDUS SALEEM

**The Court made the following:**

**THE HON'BLE SRI JUSTICE HARINATH. N****WRIT PETITION No.27032 OF 2024****ORDER :**

1. The Writ Petition is filed seeking a direction to entrust investigation in crime number 103 of 2024 dated 30.05.2024 on the file of I town Police Station Hindupur to CBI and to declare the investigation done by the police for offences under Sections 302, 201, 120-B, read with Section 149 of Indian Penal Code, as illegal, arbitrary, biased and with malice and also violation of principles of natural justice.
2. Mr K.S.Murthy, learned senior counsel appearing for the petitioner submits that the petitioner is a victim of circumstances and is framed as an accused in the crime to shield the real accused. It is submitted that the Sampath Kumar died while he was in police custody. The said Sampath Kumar was arraigned as accused No.4 in Crime No. 88 of 2024 for alleged offences under Section 448, 323, 354, 506 R/w Sec 34 of IPC. It is submitted that the Sampath Kumar (hereinafter be referred as "deceased") came to Hindupur town on 27.05.2024 from Kerala and on 28.05.2024 he was arrested and produced before the Magistrate Court, the learned Magistrate rejected the remand on the ground that the offences alleged against the deceased were punishable below 7 years and that no reasons are mentioned in remand report as to why Section 41-A Cr.P.C notice was not issued to the deceased. The learned Magistrate also observed that the SHO of I Town Police Station,

Hindupur had violated Section 41-A of Cr.P.C and also defied the guidelines of the Hon`ble Supreme Court in the matter of Arnesh Kumar V/s State of Bihar. A memo was also issued to the SHO calling for his explanation. The remand of the deceased was rejected and he was released on bail with self bond and on execution of solvent securities worth ₹10,000 with two sureties for like some each.

3. It is also submitted that the deceased was unable to produce the solvent securities as required for enlarging on bail as such his advocate filed a memo requesting the Court for extension of time for furnishing of securities. The said memo was filed 29.05.2024, it is the specific case of the petitioner that the deceased was again produced before the Magistrate again on 29.05.2024 by the police at 06.50 PM. It is the specific case of the petitioner, that as the deceased did not furnish solvent sureties, he was not released from the custody of police. Thus he was again produced before the court on 29.05.2024 at 6:50 PM by the police, thereafter the deceased was found dead on 30.05.2024 at Dharmavaram.
4. It is the specific case of the petitioner that, the deceased was arrested by the police in crime No.88 of 2024, however the focus of the police on the deceased was on the alleged social media posting which related to derogatory statements regarding the wives of officers in uniform. The hand of the Police in the death of the deceased is suspected. It is stated that the petitioner is falsely implicated in the case only to shield the real

culprits and the hand of the police of Hindupur is suspected in the death of Sampath Kumar. It is apprehended that the police of Hindupur will not be doing justice to the deceased family as such, the learned Senior Counsel is seeking a direction from this court to entrust the investigation to CBI or alternatively to CID for proper investigation.

5. The learned Advocate General appearing for the State submits that the writ petition is not maintainable and that the accused cannot choose the investigation agency and cannot seek transfer of investigation to an agency of his choice.
6. It is submitted that the accused was produced before the Magistrate on 28.05.2024 with the request for remanding the accused to judicial custody. The learned Magistrate had verified the case diary and came to a conclusion that the remand of the accused cannot be accepted as the police had failed to issue a notice under section 41-A Cr.P.C., which is also violative of the guidelines of the Hon'ble Supreme Court Judgment in Arnesh Kumar Vs State of Bihar. The Magistrate had released the accused on bail subject to compliance of bail conditions. It is submitted that the accused walked away from the police custody on 28.05.2024 soon after his release by the learned Magistrate.
7. It is further submitted that the accused appeared before the magistrate along with his advocate on 29.05.2024 and sought extension of time for furnishing of solvent securities. It is submitted that the accused was produced before the Magistrate by the learned advocate for the

deceased and not by the police. It is the specific stand of the state that the accused was not in custody of the police as on 29.05.2024 or on the date of his death.

8. It is submitted that the case was transferred from Dharmavaram police station to Hindupur as the accused in Crime. No.103 of 2024 were charged of committing offences under the SC ST (Prevention of Atrocities) act. It is submitted by the learned Advocate General that the police have no role in the death of the deceased and that the investigation has progressed in the right direction. The role of suspected persons is investigated by the police and they are arraigned as accused. It is submitted that the accused have filed the present writ petition by putting forth an imaginary scenario only to mislead this Court and also to de-rail the investigation. It is submitted that the investigation is stayed for the last 5 months on account of the stay granted by this Court and prays for vacation of stay granted by this Court and prays for dismissal of the writ petition.

9. The learned senior counsel appearing for petitioner places reliance on the following judgments

**(1) Babubhai vs. State of Gujarat and others**<sup>1</sup>, Hon'ble Supreme Court held at para 45 "Not only the 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

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<sup>1</sup> (2010) 12 SCC 254

the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in 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 in (2) **Mohan Lal Vs. State of Punjab**<sup>2</sup>, the Hon'ble Supreme Court held at para 17 and 30

*...17 "In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion".*

*...30 "In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and*

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<sup>2</sup> (2018) 17 SCC 627

*confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof”.*

**(3) Ankush Maruti Shinde and others Vs. State of Maharashtra**<sup>3</sup>, the

Hon’ble Supreme Court held at para 10 to 10.6 and 12

10. It has to be uppermost kept in mind that impartial and truthful investigation is imperative. It is judiciously acknowledged that fair trial includes fair investigation as envisaged by Articles 20 & 21 of the Constitution of India. The role of the police is to be one for protection of life, liberty and property of citizens, that investigation of offences being one of its foremost duties. That the aim of investigation is ultimately to search for truth and to bring the offender to book.

10.1 Apart from ensuring that the offences do not go unpunished, it is the duty of the prosecution to ensure fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the court for just determination of the truth so that due justice prevails. It is the responsibility of the investigating agency to ensure that every investigation is fair and does not erode the freedom of an individual, except in accordance with law. One of the established facets of a just, fair and transparent investigation is the right of an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Cr.PC.

10.2 Nothing is allowed by the law which is contrary to the truth. In Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudences of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human rights at a much higher pedestal and the accused is presumed to be innocent till proven guilty. The alleged accused is entitled to fair and true investigation and fair trial and the

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<sup>3</sup> (2019) 15 SCC 470

prosecution is expected to play a balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the Constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

10.3 As observed by this Court in the case of V.K. Sasikala v. State represented by Superintendent (2012) 9 SCC 771, though it is only such reports which support the prosecution case that are required to be forwarded to the Court under Section 173(5), in every situation where some of the seized papers and the documents do not support the prosecution case and, on the contrary, support the accused, a duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself.

10.4 Even in a case where the public prosecutor did not examine the witnesses who might have supported the accused, this Court in the case of Darya Singh v. State of Punjab AIR 1965 SC 328 has observed that the prosecution must act fairly and honestly and must never adopt the device of keeping back from the Court only because the evidence is likely to go against the prosecution case. It is further observed that it is the duty of the prosecution to assist the court in reaching to a proper conclusion in regard the case which is brought before it for trial. It is further observed that it is no doubt open to the prosecutor not to examine witnesses who, in his opinion, have not witnessed the incident, but, normally he ought to have examined all the eye-witnesses in support of his case. It is further observed that it may be that if a large number of persons have witnessed the incident, it would be open to the prosecutor to make a selection of those witnesses, but the selection must be made fairly and honestly and not with a view to suppress inconvenient witnesses from the witness box. It is further observed that if at the trial it is shown that the persons who had witnessed the incident have been deliberately kept back, the Court may draw an inference against the accused and may, in a proper case, record the failure of the prosecution to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case.

10.5 Murder and rape is indeed a reprehensible act and every perpetrator should be punished expeditiously, severely and strictly. However, this is only possible when guilt has been proved beyond reasonable doubt.

10.6 The prosecution/investigating agency is expected to act in an honest and fair manner without hiding anything from the accused as well as the Courts, which may go against the prosecution. Their ultimate aim should not be to get conviction by hook or crook.

12. Even the conduct on the part of the investigating officer in suppressing the aforesaid fact from the court is required to be condemned. .... "Therefore, there is a serious lapse on the part of the investigating agency, which has affected the fair investigation and fair trial, and therefore, we are of the opinion that the same is violative of fundamental rights of the accused guaranteed under Articles 20 & 21 of the Constitution of India".

**(4) State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and others<sup>4</sup>**, the Hon'ble Supreme Court of India held at para 70

...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. In so far as the question of issuing a direction to the 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 doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it

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<sup>4</sup> (2010) 3 SCC 571

difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

**(5) Pooja Pal Vs. Union of India and others<sup>5</sup>**, the Hon'ble Supreme Court held at para 87, 88

.... 87. Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude and content thereof can neither be enervated nor moderated by any legislation.

.... 88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in Vinay Tyagi vs Irshad Ali @ Deepak and others (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

10. The learned Advocate General appearing for the state places reliance on the following judgments

**(1) Central Bureau of Investigation and another Vs. Rajesh Gandhi and another<sup>6</sup>**, the Hon'ble Supreme Court held at para No.8

*There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2.6.1994 is issued b y the Government of Bihar (Police*

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<sup>5</sup> (2016) 3 SCC 135

<sup>6</sup> (1996) 11 SCC 253

*Department) by which in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to consent and extend the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station, on case No.159 of 9.3.1993 in the District of Dhanbad, under Sections 457, 436, 427, 201 and 120-B, Indian Penal Code and conspiracy arising out of the same and any other offence committed in course of the same. The notification of 26.10.1994 is issued by the Government of India, Ministry of Personnel in exercise of the powers conferred by sub-section (l) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State Government of Bihar in their notification dated 2.6.1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Section 457, 436, 427/120-8 and 201 I.P.C., and Section 4 of the Prevention Of Damages to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No.159 dated 9.3.1933 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police had not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result. the C.B.I. has been directed to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law. Under Section 173 (8) of the Cr.P.C. 1973 also, there is an analogous provision for further*

*investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.*

**(2) Sakiri Vasu Vs. State of Uttar Pradesh and others**<sup>7</sup>, the Hon'ble Supreme Court held at para 10

*It has been held by this Court in CBI & another vs. Rajesh Gandhi and another 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.*

**(3) Romila Thapar and others Vs. Union of India and others**<sup>8</sup>, the Hon'ble Supreme Court held at para 23, 24, 26, 27.

23. After having given our anxious consideration to the rival submission and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:-

23.1 (i) Should the Investigating Agency be changed at the behest of the named five accused?

23.2 (ii) If the answer to point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?

23.3 (iii) If the answer to question Nos.(i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the Court monitored investigation by an independent Investigating Agency?

23.4 (iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?

24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai Vs. State of Gujarat and Ors.1, in paragraph 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of Investigating

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<sup>7</sup> (2008) 2 SCC 409,

<sup>8</sup> (2018) 10 SCC 753

1 (2011) 5 SCC 79 Agency. Further, the accused persons cannot choose as to which Investigating Agency must investigate the offence committed by them. Paragraph 64 of this decision reads thus:-

“64. .... It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them.”  
(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in E. Sivakumar Vs. Union of India and Ors.<sup>9</sup>, while dealing with the appeal preferred by the “accused” challenging the order of the High Court directing investigation by CBI, in paragraph 10 observed:

“10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki Vs. State of Gujarat<sup>10</sup>, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in Narender G. Goel Vs. State of Maharashtra<sup>11</sup>, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.”

27. This Court in the case of Divine Retreat Centre Vs. State of Kerala and Ors.<sup>12</sup>, has enunciated that the High 9 (2018) 7 SCC 365 10 Supra @ Footnote 5 11 (2009) 6 SCC 65 12 (2008) 3 SCC 542 Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own Investigating Agency to investigate the crime in which they are interested. The Court then went on to clarify that the

High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

11. Heard the learned Senior Counsel for the petitioner and the learned Advocate General for the State and the learned Standing Counsel for CBI, and the learned counsel for the respondent No.11. Perused the material on record.
12. The petitioner filed IA.No.1 of 2025 seeking a direction to respondents to allow the petitioner or his counsel to inspect record in crime No.103 of 2024 and also for furnishing of the certified copies of documents referred to in the legal notice dated 11.12.2024. The learned senior counsel submits that these documents are referred to in the counter filed by the State. The learned Advocate General submits that the petitioner is an accused and cannot seek documents which form part of investigation and that the State is relying on the documents filed along with counter and nothing beyond. In order to put a quietus to the issue, this Court on 24.04.2025 sought for submission of the case diary and general diary maintained at Hindupur I Town Police Station from 10.05.2024 to 30.04.2024 for perusal of the Court. The same are submitted and they are also perused. The statements of listed witnesses are also perused. The Police Constables Nos.2424 and 3279 attached to Hindupur Police Station have informed the SHO of Hindupur about rejection of remand by the learned Magistrate on 28.05.2024. The

bail bond for attendance before the Magistrate Court was also executed on 28.05.2024 by the deceased. The LW.6 statement clears the air on whether the deceased was in police custody as on 29.05.2024 or out on bail. It is stated by the listed witness No.6 that the deceased attended function at his house at around 08.00PM and also had dinner along with one Clinton Moses and left.

13. The judgments cited by the learned Senior Counsel seeking transfer of investigation to either CBI or alternative to CID can be considered if there is a material irregularity committed by the police with an ulterior motive of framing innocent. The accused in a crime can point out the deviation of procedures adopted by the investigating agency if any to substantiate his plea for seeking investigation either by CBI or any other agency. In the event, the accused is able to prima facie establish that the manner in which the investigation is being conducted with a ulterior motive of shielding the real culprits inspite of ample evidence, then this Court can certainly transfer the investigation to CBI or any other investigating agency.
14. On the facts of this case, the judgments cited by the leaned Senior Counsel for the petitioner cannot be made applicable. This Court after perusing the case diary and the general diary is of the considered opinion that the investigation is being progressed in the direction as per the evidence collected by the Police during the course of their investigation. It is premature to conclude that the investigation done by

the Hindupur I Town Police Station so far is biased, motivated and only for shielding the real culprits. At this stage, it would be premature to doubt the intentions of the investigating agency. The police would have to complete investigation in a free and fair manner and file the final report/charge sheet after completion of investigation.

15. This Court is not inclined to interfere in the investigation on the primary ground that this Court has not found any major deviation(s) of the established procedure of law in so far as the investigation is concerned. The learned senior counsel appearing for petitioner is relying upon the docket order dated 29.05.2024 and emphasized that the deceased was produced by the Police on 29.05.2024 at 06.50PM. On careful examination of said docket order, it makes it clear that the accused was present in the Court and produced before the Court by his learned counsel and it was his counsel who sought further time for complying with the bail condition. It is amply clear that the deceased was set at liberty on 28.05.2024 itself. On these grounds, this Court is not inclined to interfere. Accordingly, the writ petition deserves to be dismissed.

16. In the result, writ petition is dismissed without costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

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**JUSTICE HARINATH.N**

Dated 05.05.2025  
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**THE HON'BLE SRI JUSTICE HARINATH. N**

**WRIT PETITION No.27032 OF 2024**  
**Dated 05.05.2025**

KGM