

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP No.382 of 2016 (O&M)

Date of decision: 9th May, 2016

Tahir Hasan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gurnam Singh, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for respondents No.1 to 3.

None for respondents No.4 to 6.

Mr. Sumeet Goel, Advocate for the CBI.

FATEH DEEP SINGH, J.

CRM-W Nos.140-41 of 2016

Notice of the applications given.

Heard.

The applicants are dispensed with from filing certified copies of documents (Annexures P4 to P7).

Keeping in view as to what has been pleaded and canvassed in CRM-W No.141 of 2016 and it is subsequent to the orders dated 18.03.2016 of this Court which too is highlighted in the application, it was on 02.04.2016 the Kurukshetra Police had called the petitioner and shown him the dead-body which has been identified to be of deceased Mustain son of the petitioner regarding which the

applicants have placed on record photographs of the dead-body (Annexures P4-P7) to assist the Court in judicious adjudication of the matter. Since these are vital pieces of evidence for unraveling the truth and would greatly assist the Court and are thus allowed to be placed on record.

Both the applications stand allowed and the documents (Annexure P4-P7) are allowed to be taken on record.

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At this juncture, State has not placed on record their stand in this matter by way of reply/rejoinder to the averments in CRM-W No.141 of 2016.

Heard.

It is consequent upon orders of this Court dated 18.03.2016 as is highlighted in the submissions by the counsel for the petitioner, it was subsequent on 02.04.2016 the official respondents have intimated the petitioner's family of the recovery of a dead-body. It was on the asking of the police who got the same identified from the family members, is in itself reflective of the subsequent turn of events and how on the intervention of this Court has propelled the police in invariably admitting the murder and initiation of these subsequent steps. Apparently a contrivance to save the police and the higher functionaries of the local administration from the ignominy of this murder whereby a fresh FIR bearing No.157 dated 02.04.2016 has

been registered under Sections 302/34 IPC against a few individuals certainly speaks volumes of the apathy of the police in coming to the aid and rescue of an ordinary citizen of this country, a victim of brutality propagated with the connivance of the police.

Thus the conduct of the official respondents to this turn of events reinforces the opinion of this Court that there has been unleashing of terror by certain vigilante groups so claiming to be repository of social order with the backing of local administration whereby they are not only circumventing the law but putting the State into anarchy and thus obliterating the rule of law. Since the State police and the administration has woken-up by this shock of judicial order from their self & intentionally imposed slumber, is all the more striking at the conscience of the Court, that the initial stand of the State was a pure facade deceptively set-up to sweep under the carpet these wrongdoings. It would not be out of place to refer here that the State police has lost its credibility even by its self-contradictory stand that it had earlier set-up in the Murthal incidents whereby this Court has taken a suo-motu cognizance of such state of treatment meted out to helpless women by such goons under political patronage under the very nose of the high ranking officials of the State, which is another feature which impels this Court to hold that since the authorities have failed to perform their duties and there is every likelihood that even now they may not come up with the truth. There are still reasons that

the petitioner may not be meted out full justice and mere registration of an FIR of murder against a few individuals is not a guarantee that subsequent investigations would go in pursuit of unraveling the truth and ultimate justice.

It needs to be reiterated that the top officers of the police and the administration cannot hide their deeds and acts under the garb of ignorance. A public officer deputed to govern needs to ensure not only good governance but also must uphold the constitutional rights of a citizen more zealously. Their silence and inaction is in itself reflective of their culpability may be active or passive which needs to be denounced outrightly. Article 226 of the Constitution of India is a great and salutary safeguard for preservation of fundamental rights of the citizens. Thus where the executive action is totally arbitrary or there is dereliction of duty by the authorities it is under this writ jurisdiction the High Court is supposed to step in. Article 21 provides that *“No person shall be deprived of his life or personal liberty except according to the procedure established by law”* which is reminiscent of the clause of Magna Carta. Thus, it flows from it that neither the State nor its agents can deprive an individual of his life in such an arbitrary and totally barbaric manner. Thus it casts upon the High Court an onerous duty to ensure that no one is deprived of his life and personal liberty in the manner not provided by law. Thus, by the exercise of such an obligation this Court as has already expressed its views in the

previous orders dated 18.03.2016 which are reiterated here as well to prevent repetition. Thus, holding that to instill confidence in the people in the law of the land and the absolute reticence shown by the local administration and this Court being fully satisfied that there is every likelihood that local police to save its officers and on account of political overtones is not likely to investigate this ugly incident in its entirety. Thus, it would meet the ends of justice if investigations are handed over to an outside and independent agency as greater threat exists as to denial of justice to the family of the victim.

Thus, in the totality of what has been already detailed in the previous orders, the instant writ petition is allowed. The matter regarding this incident pertaining to the circumstances leading to disappearance and subsequent recovery of dead-body is ordered to be handed over to the Central Bureau of Investigation. The State police is directed to hand over the entire records of this case pertaining to both the FIRs so registered to the CBI within ten days from today and the CBI would be at liberty to investigate both these FIRs. The Director General of Police, Haryana is directed to ensure that the CBI is provided with requisite infrastructural support so desired by the new Investigating Agency which is at liberty to register a fresh FIR if so necessitated and to look into the roles of local police including Superintendent of Police as well as District Magistrate and their subordinates including higher officials who are responsible for

administration of the district of Kurukshetra and who dubiously have looked the other way round throughout. To ensure fair investigation and to ward-off any such apprehension as has been expressed by learned counsel for the petitioner, the State is directed to immediately transfer Superintendent of Police, Kurukshetra; District Magistrate, Kurukshetra; Deputy Superintendent of Police, Kurukshetra and Station House Officer, Police Station Shahbad, District Kurukshetra to a far-off place at inconsequential posting within 15 days of this order and ensure that they are not given postings where they could wield influence in the investigations and intimidate the witnesses and shall not be posted in this area till the conclusion of the trial. In case the investigating agency of CBI feels that it is essential, they may after adopting due recourse and process of law and after obtaining appropriate sanction and permission in the light of wishes of the family of the deceased, if so otherwise necessitated, exhume the dead-body and get the post-mortem conducted afresh.

It would be in the fitness of things that with a view to stop such incidents in future, necessary directions are issued to the DGP, Haryana as well as Chief Secretary, Haryana to ensure that such so called vigilante groups working under the garb of 'Gau Raksha Dal' are not allowed to take the law in their own hands and to initiate immediately appropriate steps in this direction. They are further directed to ensure protection of life and personal liberty of the family of

the petitioner during the investigations and trial as well as to initiate appropriate administrative action immediately against all those found responsible and to intimate this Court of the action so taken.

The petition is disposed off on those terms. Compliance report of this order be sent to this Court.

A copy of this order, duly attested by the Reader of this Court, be handed over to the CBI through their Standing Counsel, Mr.Sumeet Goel, Advocate.

(FATEH DEEP SINGH)
JUDGE

May 9, 2016

rps

Whether to be referred to the reporters or not? Yes