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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 129/2016**

MOHF SHARIF

..... Petitioner

Through :Mr. Sarfaraz Husain and Mr.
Shokatali, Advs. with petitioner in
person.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through :Ms. Richa Kapoor, ASC with
Inspector Prabhu Dayal, P.S. Vasant
Kunj

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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02.08.2016

1. By this writ petition under Article 226 of the Constitution of India, petitioner has prayed for transfer of investigation of FIR No.1304/2014, under Section 337 IPC, registered at Police Station Jamia Nagar to Central Bureau of Investigation (CBI) or Crime Branch.
2. It is contended that the deceased Shahrukh Khan was murdered and it was an honour killing. However, investigation is not done properly and guilty have not been arrested. Dissatisfied by the investigation conducted

by the local police, petitioner filed W.P. (Crl.) No. 347/2015 for the same reliefs. Learned Standing Counsel made a statement in the said writ petition that investigation would be transferred to DIU (District South East) for the satisfaction of the petitioner. Accordingly, said writ petition was disposed of with the directions to respondent to transfer the investigation to DIU (District South East). It is pointed out that investigation was thereafter conducted by the DIU and no foul play was found in the death of deceased Shahrukh, inasmuch as, he had entered the house of one Tarannum and misbehaved with her and took her to roof, got disbalanced and fell down along with Tarannum, sustained injuries and died in the hospital; whereas Tarannum remained hospitalised for long.

3. Petitioner has now again approached this court for transfer of investigation.

4. In the earlier status report filed by the SHO, it is stated that on 23rd December, 2014 an information was received that one boy and girl had fallen from the roof of House no. 340/22, Zakir Nagar, New Delhi and pursuant thereof DD No. 3A was registered at Police Station Jamia Nagar and assigned to SI Varun Kumar, who reached at the spot and came to know that injured were taken to Holy Family Hospital; no eye witness was found

at the spot. Ct. Bhim Singh remained at the spot while SI Varun Kumar and HC Farukh went to Holy Family Hospital and collected MLCs of Taranum, daughter of Shri Abdul Sattar and Shahrukh, son of Shri Sharif Ahmed. Both of them were declared 'unfit for statement'. On 23rd December, 2014 itself statement of Md. Rashid, son of Samsuddin, resident of House No. 73, Azim Dairy, Jamia Nagar, New Delhi was recorded. He claimed himself to be the eye witness of the whole incident. He stated that Shahrukh was in relation with Tarranum. In the night intervening 22nd/23rd December, 2014 he and Shahrukh went to Tarranum's house in Zakir Nagar on a motorcycle. Shahrukh went to second floor while Rashid remained on the ground outside the house. Shahrukh lifted the Tarranum in his hands took her to 2nd floor and asked Rashid to come up. Rashid went to second floor. In the meanwhile, Shahrukh and Tarranum fell down from the second floor. He took Shahrukh to Holy Family Hospital in an ambulance.

5. Statement of Sanno, daughter of Habib, resident of Zakir Nagar was also recorded. In the status report filed by the SHO, P.S. Jamia Nagar (before transfer of the case to DIU), it is pointed out that Sanno, in her statement, stated that Tarranum was her bhabhi's sister. In the night intervening 22nd/23rd December, 2014 she was sleeping with Tarranum on

the second floor. In the meanwhile, at about 12-12:30 am, she heard a sound of fall and saw from the second floor that Shahrukh and Tarranum were lying on the ground in injured condition. Shahrukh was taken to the hospital by Rashid. Statement of Tarranum was also recorded on 2nd February, 2015, wherein she stated that she was sleeping in the house on 22nd/23rd December, 2014 when at about 12-12:30 am Shahrukh came to her in alcoholic state and lifted her in his hands and had fallen along with her from the second floor as he lost balance. She does not remember as to what happened thereafter. Statement of one Ms. Sanjeeda, wife of Alamgir, resident of Zakir Nagar was also recorded on 2nd February, 2015. She is bhabhi of Tarranum. She also stated that in the night intervening 22nd/23rd December, 2014 at about 12-12:30 am, she heard her mother-in-law saying that Shahrukh and Tarranum were lying on the ground. She took Tarranum to Holy Family Hospital in an ambulance. It is further stated that, as per the post-mortem, Shahrukh died due to cranio-cerebral damage consequent upon blunt force impact to his head.

6. After the matter was transferred to DIU, two status reports have been filed. It is stated that opinion about the injuries of deceased was again sought and Dr. Amit Kumar, who conducted the post mortem opined as

under:-

“1. The injuries mentioned in PM report from point No. 1 to point no. 5 in external examination could be possible due to fall from 2nd floor of a building.

2. Head injury is sufficient to cause death in ordinary course of nature.

3. No other information can be provided.”

7. It is further stated that statement of Tarranum, Shanno, Sanjeeda, Alam Shah, Alamgir and Abida Begum were again recorded. Inspection of the site and the building in question, that is, House no. 340/22, Zakir Nagar was done and it was found to be incomplete. CDR records were also obtained regarding mobile phone of Tarranum. Statement of Tarranum was also got recorded under Section 164 Cr.P.C. from the court of learned Metropolitan Magistrate, Saket. In her statement, Tarranum stated that she was resident of Village near Sikohabad, Uttar Pradesh. She came to her elder sister's house Sanjeeda in Delhi in the month of June, 2014 for studies. She stated that house of her sister was under construction. On 22nd December, 2014 she was sleeping along with her sister's daughter and her sister-in-law Shanno in a room on second floor and there was only curtain and no door in the room. At about 1 am, one unknown person entered the

room and started touching her in indecent manner and misbehaved. After that he picked her up and took to the balcony and called his friend to come up, who was standing down stairs. That man was in inebriated state, he lost his balance and fell down from the second floor to the road along with her. She sustained injuries and remained in the hospital. She stated that the said boy was not known to her but later on, his name was revealed as Shahrukh.

8. In view of the facts narrated hereinabove, I am of the view that petitioner has failed to make out a case for transfer of the investigation to CBI which course, otherwise, has to be adopted in exceptional cases. Investigations cannot be transferred to CBI in a routine manner only to satisfy the complainant. In this case statements of witnesses have been recorded, opinion of the doctor, who conducted the post-mortem, has again been taken after the investigation was transferred to DIU. Dummy exercise also been done, in as much as, statement of Trannum was got recorded under Section 164 Cr.P.C.

9. For the foregoing reasons, writ petition is dismissed.

A.K. PATHAK, J.

AUGUST 02, 2016

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