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

+ **W.P.(CRL) 1620/2016**

SHYAM SUNDER KAUSAL

..... Petitioner

Through: Mr. Akash Vajpai, Advocate.

versus

COMMISSIONER OF POLICE & ORS

..... Respondents

Through: Ms. Richa Kapoor, Ms. Mallika
Parmar & Ms. Seema Patnaha,
Advocates, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

14.07.2016

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1. The petitioner Shyam Sunder Kausal has filed the present petition under Article 226/ 227 of the Constitution of India to seek a writ, order or direction in the nature of mandamus directing respondent No.1, i.e. the Commissioner of Police to transfer investigation relating to FIR No.197/2016 registered under Section 302 IPC at Police Station – South Rohini to Crime Branch, or some other police station.

2. The petitioner is the unfortunate father of the deceased Anjali. Anjali died of a bullet wound sustained by her while she was watching the marriage procession from her balcony. The case of the petitioner is that he runs a tea-

stall, and on the fateful day, he was working at his tea-stall in the evening when he learnt that his daughter had been injured. He rushed to his residence and took his daughter to the hospital. She died subsequently while admitted in the hospital. The case of the petitioner is that he does not know as to who fired the shot from the marriage party. He was not present when the said incident took place and he is not a witness to the said firing. He states that the police has fabricated a complaint in his name. He claims that his signatures were taken on blank papers while he was in a state of grief on account of the aforesaid incident, and rather than investigating as to who is the culprit, the police has conveniently sought to fabricate the complaint, naming Vikrant @ Vicky as the accused in the FIR. It is in this background that the petitioner is seeking transfer of the investigation.

3. The respondents have filed a counter-affidavit of Sunjay Sharma, the SHO, Police Station – South Rohini, Delhi. In the counter-affidavit, the stand taken by the respondents is that on 16.04.2016, an information was received from Bhagwan Mahavir Hospital, Pitampura regarding admission of a girl in injured condition which was recorded vide D.D. No.34A, which was marked to SI Pawan Kumar, who along with Head Constable Sandeep reached the said hospital and obtained the M.L.C. No. 1247/2016 in respect of the victim Anjali, daughter of the petitioner.

4. The respondents further state that SI Pawan Kumar reached the hospital where the petitioner met him and got recorded his statement. In the said statement allegedly the petitioner stated that on 16.04.2016, he came to his house at about 7:00 p.m. He also stated that he along with his wife and three daughters were watching the marriage procession from the balcony of

their house. His neighbour Vikrant @ Vicky was dancing with a pistol like weapon in his hand. When the marriage procession reached under his house, the said Vikrant was firing from a pistol like weapon with some other persons were burning crackers. Suddenly something hit on the head of her daughter Anjali and blood started oozing out from her head. Consequently, she was taken to Bhagwan Mahavir Hospital.

5. The submission of Ms. Richa Kapoor is that the petitioner himself gave his signed statement to SI Pawan Kumar on 16.04.2016. Ms.Kapoor further submits that the petitioner now appears to have been influenced by the accused Vikrant @ Vicky and, therefore, he is resiling from his statement. She further submits that the presence of Vikrant in the marriage procession is established by other evidence, and this is not disputed by Vikrant. She further submits that the registration of FIR and taking of other steps were done punctually and there was no time for fabrication of the case. She also submits that on the same day, intimation with regard to registration of the FIR was communicated to the Magistrate concerned.

6. The statement attributed to the petitioner is not claimed to be in the handwriting of the petitioner. At this stage, it is not possible to ascertain as to whether, or not, the complainant made the complaint attributed to him. The petitioner, who is the father of the victim, does not dispute his signatures on the complaint. However, he states that his signatures were obtained on blank papers while he was in the state of shock and grief. Even though this statement is signed by the petitioner, one important aspect that cannot be lost sight of is that the petitioner – who is the father of the deceased, is not expected to side with the real culprit and to let him get

away. Therefore, the stand taken by the petitioner in the present petition also cannot be brushed aside and labelled as an afterthought or false on the face of it.

7. Since the petitioner has made allegations of fabrication of his statement by the police, and in particular, by SI Pawan Kumar, in the interest of justice and to maintain independence in the investigation process, I deem it appropriate that the investigation of the present case be transferred to another investigating officer. At the same time, I may observe that issuance of such a direction does not constitute reflection on the integrity of either the petitioner or the concerned police officers.

8. Consequently, the investigation of the FIR in question is directed to be transferred to the Crime Branch of Delhi Police within the next one week.

9. The petition stands disposed of.

10. Dasti.

JULY 14, 2016

B.S. Rohella

VIPIN SANGHI, J