

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.669 OF 2016

Mrs. Rabia A. Khan	]	
A British Citizen,	]	
Presently R/at 102, Sagar Sangeet,	]	
A.B. Nair Road, Juhu, Mumbai-400049.	]	 Petitioner

Versus

1. State of Maharashtra,	]	
Through Public Prosecutor,	]	
High Court, Mumbai.	]	
	]	
2. Senior Inspector of Police,	]	
Juhu Police Station, Mumbai.	]	
	]	
3. The Joint Director, Western Region,	]	
Central Bureau of Investigation,	]	
Belapur, New Bombay.	]	 Respondents

ALONG WITH

CRIMINAL APPLICATION NO.459 OF 2016
IN
CRIMINAL WRIT PETITION NO.669 OF 2016

Mr. Sooraj Aditya Pancholi,	]	
Age : 26 Years, Occupation : Artist,	]	
R/at Flat No.103, B-Wing,	]	
Opp. Nana-Nani Park, 7 Bungalows,	]	 Applicant /
Versova, Andheri (West), Mumbai-400061.	]	(Intervenor)

In the matter between

Mrs. Rabia A. Khan	]	
A British Citizen,	]	
Presently R/at 102, Sagar Sangeet,	]	
A.B. Nair Road, Juhu, Mumbai-400049.	]	 Petitioner

Versus

1. State of Maharashtra,	]
Through Public Prosecutor,	]
High Court, Mumbai.	]

2. Senior Inspector of Police,	]	
Juhu Police Station, Mumbai.	]	
	]	
3. The Joint Director, Western Region,	]	
Central Bureau of Investigation,	]	
Belapur, New Bombay.	]	 Respondents

Mr. Dhairyasheel Patil, a/w. Mr. Swapnil Ambure and Mr. Raghavendra Mehrotra, for the Petitioner.

Mr. Harshad Ponda, i/by Mr. P.P. Patil and Mr. Mangesh Deshmukh, for the Applicant-Intervenor.

Mr. Anil Singh, Additional Solicitor General, a/w. Mr. H.S. Venegavkar, Special P.P., and Ms. Gutika Gandhi, for the Respondent-CBI.

Ms. S.D. Shinde, A.P.P., for the Respondent-State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

RESERVED ON : 1ST FEBRUARY 2017.

PRONOUNCED ON : 9TH FEBRUARY 2017.

JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule made returnable forthwith. With consent, heard finally at the stage of admission itself.

2. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner is seeking an appropriate writ, order or direction for formation of the Special Investigation Team for conducting further / fresh investigation in respect of death of her daughter Nafisa Ali Rizvi @ Jiah Khan.

3. The grievance of the Petitioner is that the investigation in the present case, as conducted by the Juhu Police Station, Mumbai, proceeded only on the hypothesis that it was a case of suicide. The Police did not consider at all the possibility of murder of her daughter, despite there being several glaring features inviting the possibility of death of her daughter being a case of homicidal one. Hence, being aggrieved by the fact that Police had filed Charge-Sheet against the accused, namely, Sooraj Pancholi, only for the offence punishable under Section 306 of IPC, earlier also she was constrained to file Criminal Writ Petition No.919 of 2014, seeking a direction for further investigation by an independent agency, such as 'Special Investigation Team' or 'Federal Bureau of Investigation, USA', with a specific direction, to re-investigate the matter or to carry out further investigation and to probe into the matter from the point of view of the homicidal death, rather than suicidal death. It is

submitted that this Court has, vide its detailed order dated 3rd July 2014 passed in aforesaid Criminal Writ Petition No.919 of 2014, transferred investigation of this case to the 'Central Bureau of Investigation', (*for short, "the CBI"*), with a specific direction to consider whether this is a case of suicidal or homicidal death. A further direction was also given to the effect that, if CBI comes to the conclusion, on the basis of its own further investigation, that it is a case of homicidal death, then, CBI should make further investigation to find out who is perpetrator of the crime and take action accordingly.

4. The submission of learned counsel for the Petitioner is that, despite these specific directions to carry out investigation to find out whether it is a case of homicidal death rather than suicidal death, the CBI has, in its investigation, not probed into or considered properly this angle of investigation and has again arrived at the same conclusion that the death of the Petitioner's daughter was merely of a suicidal nature. It is submitted that there are several discrepancies and lacunae in the investigation conducted by the CBI, which has made it necessary for the Petitioner to again come to the Court with a specific prayer for directing constitution of the Special

Investigation Team for conducting further / fresh investigation in the matter, keeping in view a possibility of homicidal death / murder.

5. To advance this submission, learned counsel for the Petitioner has taken this Court through the entire investigation conducted, both, by Police and by the CBI. According to him, there are several crucial aspects, which have not been taken into consideration either by the Police when the initial Charge-Sheet was filed, or, by the CBI when Supplementary Report / Charge-Sheet of the investigation was filed in the Court for the same offence punishable under Section 306 of IPC. Learned counsel for the Petitioner has then tried to bring to our notice, with the assistance of a chart, photographs and various documents, the vital points from which, according to him, the investigation in the matter needs to be conducted further to ascertain or to verify the possibility of homicidal death.

6. The main focus of his argument is on the 'ligature marks' found on the dead-body of the Petitioner's daughter. According to him, the photographs of the dead-body and the findings in the Postmortem Report are categorical to the effect that, the ligature marks were

running parallel to each other horizontally and they were encircling the entire neck indicating that it is a case of strangulation, rather than suicide by hanging. It is submitted that in the case of suicide by hanging, the ligature mark is incomplete and prominently appears on the front side of the neck, as on account of the body weight, the pressure is on the front side, resulting into 'V' shaped ligature mark. It is urged that in this case it is conspicuously contrary.

7. Learned counsel for the Petitioner has further submitted that the oval injury found near the chin of the deceased, along with the abrasion mark on the left side below the chin, bruise mark on the left upper arm and injury marks on the lips, were also not explained satisfactorily either by the team of Doctors, which had conducted postmortem examination or even by the Doctors from 'Postgraduate Institute of Medical Education & Research, Chandigarh', (*for short, "PGI, Chandigarh"*). It is urged that the ligature, namely, *the dupatta*, which, according to the prosecution case, was used for the purpose of hanging, was also not shown either to the Doctors, who conducted the postmortem examination, or not sent to the Doctors at PGI, Chandigarh, from whom the CBI has called for further report. It is urged that the injury marks referred above and found on the

dead-body are clearly the indication of marks of struggle or of defence and, hence, probablises the possibility of homicidal death.

8. In continuation of this line of argument, it is submitted that, no efforts were made in order to ascertain the presence of a person other than the deceased at the time of incident, by sending the articles found at the scene of the offence to the Forensic Science Laboratory for DNA analysis. According to learned counsel for the Petitioner, even the tissues under the ligature marks were not sent for histopathological examination, in order to distinguish or to ascertain whether the death was on account of strangulation or on account of hanging. It is submitted that the relevant material was not provided to the Doctors, who conducted postmortem examination at J.J. Hospital, Mumbai, or even to the PGI, Chandigarh. In the investigation by CBI, no attempt was made to examine the authenticity of the cassette of postmortem videography. As a result, the report submitted by PGI, Chandigarh, is neither here nor there. It is submitted that, according to PGI, Chandigarh, in the absence of ligature material supplied to it, *the dupatta*, it cannot be positively and conclusively opined as to whether it was a case of homicidal death. It is urged that CBI has not made any efforts in that direction also.

9. Further it is submitted that, as per admitted position, deceased and the accused were in constant communication, prior to the incident, on their Blackberry mobile phones. It is also a matter of record that accused had deliberately, with a view to destroy the evidence, deleted the entire chat on his BBM. Neither the Police, nor CBI had made any attempt to procure that chat by retrieving the same with the help of the Blackberry phone network provider company. It is submitted that the BBM communication exchanged between the deceased and accused being the most crucial part of evidence, it would have thrown light as to what actually transpired between the deceased and the accused on the said date. It would have also given the exact location of the accused. CBI has only made interrogation with the accused on this aspect, but not made the real efforts to get the said communication from the Network Company.

10. Further, it is submitted that no sincere efforts were made either by the Police or by the CBI to trace the track-suit, in which the deceased has returned to the home, as can be seen from the CCTV footage. Her body was, however, found in the night dress and despite repeated requests made by the Petitioner, no attempt was made by the Investigating Agency to find out as to where the track-suit,

which deceased was wearing, had gone. The attention is also drawn to the aspect that no attempt is made even to find out the cause for the alleged suicide. The CBI has positively concluded that the case of the Police that the break-up bouquet sent to the deceased by the accused had acted as trigger for the suicide, was a false story. There is now material on record to show that the deceased has got confirmation about being selected for the Hyderabad Film Project, for which she had given audition the day before and, therefore, the claim of Juhu Police that on account of depression, caused as a result of break-up with the accused and the professional decline in the career, the deceased has committed the alleged suicide, is not materialized from the record. Thus, it is submitted that only an independent Special Investigation Team, if formed, can probe into this aspect.

11. In this respect, the attention is also drawn to the conduct of the accused. It is submitted that the accused, who claimed to be in love with the deceased, never bothered to visit her house on the very same day or subsequent day, when final rites were performed. The psychological test undertaken by the CBI on the accused clearly revealed that accused is trying to portray the death of deceased as

'suicide'. However, it seems that he was tutored and has been providing fabricated and manipulated information relating to his last conversation with the deceased. According to learned counsel for the Petitioner, the Special Investigation Team can go into the details and probe into this aspect of the matter, which CBI has failed to do so.

12. In addition to these specific points set out in the chart, the learned counsel for the Petitioner has referred to several other detailed aspects of the investigation, like, investigation being not carried out as to whether someone has entered from the balcony, through window, in the flat of the deceased. No investigation is conducted by the Police or CBI in the circumstances as to the presence of blood-stains in the adjoining bed-room, the possibility of tampering with the CCTV footage and CDR. No attempt is made to find out whether the injuries, especially, 'ligature marks', as found on the dead body of the deceased, were caused by the alleged instrument of ligature, like, *dupatta* or other objects, like, belt, watch etc. It is submitted that, if real efforts are taken to carry out investigation in the instant case with the necessary sincerity and intention, the truth can be found out. According to learned counsel

for the Petitioner, Petitioner is only interested in knowing the truth behind the cause of the death of her daughter and such truth can be found out only if the Special Investigation Team is constituted, to probe further into the matter, so that the discrepancies and lacunae pointed out by the Petitioner in the investigation carried out so far by the Police and CBI, can be removed. It is urged by learned counsel for the Petitioner that the endeavour of the Court should also be to find out the truth as and when any deficiency is noticed in the investigation. As such, it being the duty of the Constitutional Court, this Court should discharge its duty by constituting Special Investigation Team to conduct further / fresh investigation in the matter.

13. To substantiate this submission, reliance is placed on the two decisions of the Hon'ble Apex Court; firstly, in the case of *Bharati Tamang Vs. Union of India and Ors.*, (2013) 15 SCC 578, and, secondly, in the case of *Dharam Pal Vs. State of Haryana and Ors.*, (2016) 4 SCC 160, wherein the Hon'ble Apex Court has dwelt upon the powers of the constitutional courts to direct further investigation or *de novo* or fresh investigation or re-investigation or constitution of Special Investigation Team in an appropriate case and even to monitor such investigation, which power, according to

the Hon'ble Apex Court, no doubt, has to be used sparingly, but is always there to find out the real truth and to find out such truth even by lifting the veil, which tried to hide the realities or cover the obvious deficiencies. According to learned counsel for the Petitioner, therefore, this is a fit case where this Court should exercise its extra-ordinary jurisdiction and direct fresh / further investigation by constituting Special Investigation Team.

14. Per contra, learned counsel for CBI, Shri. Anil Singh, ASG, has, by taking us through the report filed by the CBI in the Trial Court, after carrying out further investigation, as per the direction of this Court to consider the possibility of 'homicidal death' also and taking us through the detailed affidavit-in-reply filed by the Police Inspector of CBI, submitted that all these aspects, which the Petitioner has highlighted as discrepancies or lacunae in the investigation of the police, were inquired into and investigated by the CBI. A totally impartial, fair and transparent investigation was made by CBI in a thorough manner. Each and every angle of the medical evidence and of the circumstantial evidence; the conduct of the accused and/or cause of the incident; everything was re-considered with a fresh angle to ascertain and verify whether it can

be a case of 'homicidal death' and then only, after confirming that it was a case of suicidal nature, the CBI has filed further report. By pointing out to all the material and taking a re-look again to the same, it is submitted by learned ASG that no fault, as such, can be found with the investigation carried out either by the Police or by the CBI. According to him, merely because the CBI has arrived at the same conclusion, to which the Juhu Police had arrived at, that of the death of deceased being a case of suicide, it will not be proper to hold that CBI has not carried out further or proper investigation in the matter.

15. Moreover, it is submitted by learned ASG Shri. Anil Singh that the Petitioner is having now adequate remedy before the Trial Court, as the case is pending before the Trial Court for framing of charge. At that stage or even at the subsequent stage also, the Petitioner can, on the basis of the material and evidence produced on record by the Police and CBI, request the Trial Court for framing of charge of homicidal death. However, according to him, now there remains nothing further to investigate, re-investigate or *de novo* investigate and, for that purpose, to form Special Investigation Team. In his opinion, as the incident is of the year 2013 and already the case is ready for hearing, it would be proper to leave both the parties to

proceed with the trial, in accordance with law, on the basis of material already thoroughly scanned and adduced, so as to secure the rights of prosecution and accused also, for the speedy trial.

15. Having heard learned counsel for the Petitioner and learned ASG, in extenso, we are of the opinion that, in order to properly appreciate their rival submissions, it would be necessary to refer to few facts of this case.

16. The Petitioner, in the instant case, as stated above, is the mother of deceased Jiah, who was a young 'Artist'. Petitioner is a British citizen; whereas, her daughter, deceased Jiah, was an American citizen. Since last about six years prior to this incident, Jiah was residing in Flat No.102 at Sagar Sangeet Building at A.B. Nair Road, Juhu, Mumbai. In February, 2013, when deceased had been to London to meet Petitioner, the Petitioner came to know about the relations between deceased and accused Sooraj Pancholi and that they were living in live-in-relationship since last one year. In April, 2013, when Petitioner came to Mumbai, accused had confessed to her that he was madly in love with the deceased and he cannot live without her.

17. As regards the date of incident, it is the case of the Petitioner that, on 3rd June 2013, when she returned home at about 11:20 pm, she found her daughter Jiah hanging from the ceiling fan of one of the bed-rooms in her apartment. As she could not remove the body herself, she called on phone her friend Anju Mahendroo and other friends for help. Upon arrival of Anju Mahendroo and her friend Moin Beig @ Munnu, the body of the deceased was untied from ceiling fan and put on the bed. Thereafter, Dr. Aggarwal was called, who declared Jiah to be dead. The police received information about the incident at about 23:45 hours. Police visited the spot at about 23:55 hours; conducted the Panchanama of the scene of crime; sent the dead-body for postmortem examination and then on the same night, at about 2:20 hours, the Accidental Death Report No.61 of 2013 was registered at Juhu Police Station. The Inquest Panchanama of the dead-body was conducted at Cooper Hospital prior to postmortem examination. There the injuries on chin, ligature mark around the neck, black scar on the left hand on the upper side of the elbow were found and noted accordingly in the Postmortem Report and also in the Inquest Panchanama. The provisional cause of the death was given as, *“evidence of ligature mark on the neck”*; however, final opinion was reserved pending for

histopathological examination report. On the receipt of such report, the final cause of the death was given on 5th August 2013 as *“asphyxia due to hanging (unnatural)”*.

18. Meanwhile, on 7th June 2013, the statement of the Petitioner was recorded by the Juhu Police, in which she expressed the doubt that on account of being cheated in relationship, Jiah has committed suicide. In this statement, she also disclosed about recovery of one diary of Jiah from her flat, in which Jiah has stated of being in depression and, therefore, wanting to end her life. She handed over the said letter and diary to the Police.

19. Thereafter, on 10th June 2013, the Supplementary Statement of the Petitioner came to be recorded, in which she gave details of the love and relationship between deceased and accused and also about the earlier attempt of suicide made by Jiah. In this statement, she also attributed the cause of Jiah's suicide to the accused and lodged complaint against the accused. On the basis of this complaint, C.R. No.204 of 2013 came to be registered against accused Sooraj for the offence punishable under Section 306 of IPC. He was arrested on the same day and thereafter released on bail, as per the order passed by this Court on 1st July 2013 in Criminal Bail Application

No.992 of 2013.

20. While the investigation of the crime was in progress, the Petitioner preferred Writ Petition bearing No.3553 of 2013 for transfer of investigation to CBI. However, at the time of hearing of Writ Petition, the said prayer was not pressed. It was stated by the learned counsel for the Petitioner therein that Petitioner would be satisfied if her further statement was recorded and the materials produced by her are looked into by the Investigating Officer. Accordingly, as per the direction given in the said Writ Petition by this Court, further statement of the Petitioner was recorded, in detail, on 26th October 2013. Police had then again carried out Panchanama of scene of offence in the presence of Petitioner, recorded further statements of witnesses, collected blood samples of accused, sent them for analysis to the Forensic Science Laboratory and after completion of investigation, filed Charge-Sheet against the accused under Section 306 of IPC in the Court of 10th Additional Chief Metropolitan Magistrate, Andheri on 10th June 2014. The case is now committed to the Sessions Court, Mumbai vide S.C. No.83 of 2014.

21. Being still not satisfied with the investigation carried out in

the case, the Petitioner preferred another Criminal Writ Petition No.919 of 2014, seeking an appropriate direction for transferring investigation or for directing further investigation in respect of the incident by an independent body such as Special Investigation Team or FBI, with a specific direction to re-investigate the matter or to carry out further investigation and probe into the same, from the point of view of the homicidal death, rather than the suicidal death. A specific grievance was raised in the said Petition also, as in the instant Petition, that the Investigating Officer in the said case had not considered the possibility of murder and the entire investigation had proceeded on the hypothesis that it was a case of suicide.

22. This Court has heard at length the submissions advanced on behalf of the Petitioner by her learned counsel, attempting to point out various circumstances and the sequence of events, particularly the discrepancies, which were found in the Forensic Reports, as given by the Doctors who had conducted the postmortem examination and as given by Dr. R.K. Sharma and Dr. R.N. Jerajani. It was reiterated that the investigation has mainly proceeded on the hypothesis that it is a case of suicide and no efforts have been made to examine it from the angle that deceased might have been hanged

after she was murdered. This Court has, therefore, thought it fit that an independent agency like CBI should re-examine the entire material and carry out further investigation, so as to come to the conclusion whether this was a case of homicide or suicide. Accordingly, the direction was given to CBI to carry out further investigation and then submit a report to the concerned Court. It was specifically observed in the said order dated 3rd July 2014 that this Court not being an expert in the field of medicine or investigation and, therefore, it was necessary to handover the investigation of the case to an independent agency.

23. In paragraph No.16 of the order, it was observed that, *“though the Petitioner has requested for formation of Special Investigation Team to probe into the matter, it may not be advisable since the officers of Special Investigation Team are still the officers from the State Police Machinery and, therefore, it is essential to appoint an independent agency such as CBI to look into the matter.”*

24. In paragraph No.21 of the order, it was further made clear that, *“we must also make it clear that we do not wish to find any fault with the State Investigating Agency. However, we are of the view, that no useful purpose will be served by asking the same*

agency to carry out investigation.”

25. Accordingly, it was directed that CBI should carry out further investigation and submit a report to the concerned Court, so as to consider whether this is a case of suicidal or homicidal death and if CBI comes to the conclusion that it was a homicidal death, then further investigation should be made to find out who is perpetrator of the crime and, accordingly, action should be taken.

26. It is a matter of record that, in pursuant to the order passed by this Court in the above Writ Petition on 3rd July 2014, CBI had taken over investigation of the case and after carrying out detailed investigation in the case, filed the report / Charge-Sheet by coming to the same conclusion that it was a case of suicide and not of homicide. In the Supplementary Report of further investigation filed to that effect in the Trial Court and in this Writ Petition in the affidavit-in-reply filed on behalf of CBI, the details of the steps taken in the further investigation for ascertaining the possibility of homicidal death, are also given.

27. In this backdrop, the grievance of the Petitioner, as stated above, is the same, as it was raised in the earlier Writ Petitions, that,

like the police machinery, CBI has also not carried out effective and proper investigation to ascertain whether it was a case of homicidal death and has again filed the same report of it being a case of suicide.

28. At this stage, it may also be stated that the Petitioner's grievance is on the same aspects of alleged lacunae in the investigation, which she has raised earlier also, when the investigation was handed over to CBI.

29. The first grievance of the Petitioner pertains to the medical evidence, especially the 'ligature marks', which were found on the dead-body. According to her, admittedly, as can be seen from the photographs and also the Postmortem Report, these ligature marks were running parallel to each other and were all around the neck, indicating that it was a case of strangulation, rather than suicide by hanging. It is her case that neither earlier investigation has dealt with this aspect, nor the CBI investigation has dealt with it scientifically. According to her, merely some queries were made by the CBI to PGI, Chandigarh, as to what is the actual cause of death on the basis of the medical reports and whether it was a case of suicidal or homicidal death. It is urged that the alleged ligature, namely,

dupatta, was not sent to PGI, Chandigarh, nor the photographs of the dead-body were sent. It is submitted that, in the absence of such material being forwarded to PGI, Chandigarh, the opinion given by PGI, Chandigarh, is also not firm as to whether it was a case of hanging or strangulation. What is stated is merely to the effect that the possibility of suicide cannot be ruled out. Thus, it is submitted that though the ligature marks found on the dead body were clearly suggestive and certain of homicidal death, no further effective investigation was made towards that direction. Only the further statements of Dr. Bhise and Dr. Chikalkar were recorded, who have confirmed their earlier opinion. Learned counsel for the Petitioner has, in this respect, placed reliance on the opinions of the experts like Dr. Rajani, Mrs. Rukmini Krishnamurthy, Ex-Director of Forensic Science Laboratory and that of Mr. Jason Payne-James, an Advisor for National Crime Agency, U.K., to submit that, according to these experts, the possibility of homicidal death cannot be ruled out.

30. Reliance is also placed by learned counsel for the Petitioner on certain observations made in the Modi's Text-Book of "Medical Jurisprudence and Toxicology" and in the book of Dr. Parikh on the

same subject to submit that the injuries, which were found on the dead-body, especially the ligature marks circling the entire neck and the ligature marks running parallel to each other, coupled with other injuries, found on the body are clearly indicating possibility of strangulation.

31. In this respect, reliance is placed also on the other injuries, namely, the oval shaped injury near the chin, abrasion mark on the left side below the chin, bruise mark on the left upper arm and injury mark on the lips. It is submitted that these injury marks are clearly suggestive and certain of the possibility of the death being as a result of strangulation and on these aspects also, no proper investigation has been made by either police or even by CBI.

32. However, on perusal of the final report filed by CBI in the Trial Court and affidavit to that effect filed by its Police Inspector in this Court, coupled with the opinion given by PGI, Chandigarh, and the further statements of Dr. Bhise and Dr. Chikalkar, as recorded by CBI, we are unable to accept the submission of learned counsel for the Petitioner that CBI has not carried out further investigation properly, in order to ascertain whether it can be a case of suicide or

homicide.

33. We find that CBI has, after taking over the investigation, sent all the original medical reports, the CD containing the videography of the postmortem examination and photographs of the dead-body etc. to the Chairman, Medical Board, PGI, Chandigarh, for constituting a Board of Forensic Medical Experts for medico legal aspects of the case. Accordingly, a team consisting of three experts of Forensic Medicines was formed by PGI, Chandigarh. The said expert committee had, after analysis of the documents, medical reports and materials sent to it, including the opinion of Prof. Dr. R.K. Sharma, answered all the four queries as follows :-

4a) What is the actual cause of death on the basis of the Medical reports?

Ans. As per the findings of the post-mortem report of the deceased Nafisa@Jia Khan vide PMR No. FMGGMC/HRT/355/13 Dated 04/06/2013, the possibility of "Asphyxia due to ligature constriction of neck" being the cause of death in this case cannot be ruled out.

4b) Whether the injuries on the chin and around the neck of deceased are ante mortem or post mortem in nature? If so, how?

Ans. Owing to the presence of vital signs such as colour changes of the injuries, congestion and edema of underlying tissues vide PMR No. FMGGMC/HRT/355/13 Dated 04/06/2013, the possibility of the injuries on the chin and around the

neck of deceased to be ante mortem in nature cannot be ruled out.

- 4c) *Whether the ligature marks seen on the neck of the deceased can be caused by dupatta and found in (i) suicidal hanging (ii) homicidal hanging. If so, how?*

Ans. No opinion can be given.

- 4d) *Whether this is a case of suicidal death or homicidal death? Please explain?*

Ans. As per the findings of the post-mortem report of the deceased Nafisa@Jia Khan vide PMR No. FMGGMC/HRT/355/13 Dated 04/06/2013, in the absence of struggle marks over the body, the possibility of suicidal death cannot be ruled out. However to arrive at a logical conclusion, the ligature material and other circumstantial evidences may also be taken into consideration.

- 4e) *Any other point experts may like to point out with respect to the allegation in FIR/High Court Order, and the observation/instruction in the order.*

Ans. Nil.”

34. It is also a matter of record that CBI has, thereafter, recorded the statements of Dr. Chikalkar and Dr. Bhise, who were the part of the expert team, who had conducted the postmortem and who has given the final cause of the death. They were also confronted with the opinion given by Dr. R.K. Sharma. They were also asked about the cause of antemortem injuries found on the lips, chin and the left arm to know whether they were the struggle marks and according to their knowledge and their expertise, they have explained as to how these injuries can be possible, even in the case of suicidal death. In

respect of the injury marks on the lips, they have opined that they can be possible due to resuscitation and it is the statement of the Petitioner herself and that of Anju Mahendroo and the witness Moin Baig that the Petitioner has given such mouth to mouth breathing to the deceased, after the dead-body was removed from the hanging.

35. In their statements, they have stated that the antemortem injury found near the chin of the deceased may happen due to blunt and hard object with a round margin or otherwise, it can also be possible with the multiple knots of the ligature present at the site. The CBI has then recorded further statement of Moin Baig @ Munnu, who had reached to the spot immediately, along with Anju Mahendroo, and has assisted the Petitioner in taking out the body of Jiah and has removed the knot of the *dupatta* from the neck of the deceased. His statement revealed that *dupatta* was wrapped around the neck of the deceased and there were multiple knots of the *dupatta*.

36. Thus, there are statements of the experts like Dr. Bhise and Dr. Chikalkar, who have explained how the injuries and the ligature marks found on the dead-body were in consonance with the case of suicide, even after they were confronted with the opinions of the

experts like Dr. R.K. Sharma and Dr. Jerajani, on which much reliance is placed by the Petitioner and according to whom, these injuries and the ligature marks may be suggestive of homicidal death.

37. Learned counsel for the Petitioner has, however, relied upon the detail opinion of Jason Payne-James, the Forensic Expert from U.K., according to which the death was not by self-hanging as a suicide but a homicide, having been suspended by other person or persons, having been assaulted and over-powered.

38. Whatever it may be, in our view, as per the facts on record, there are two rival opinions expressed by the two sets of experts in the field as to the cause of the death. Needless to state, that, at this stage, we do not intend to and cannot enter into the exercise of deciding as to which opinion is correct, because that exercise can be undertaken only at the stage of the trial, when the rival opinions given by the two sets of experts are tested on the anvil of cross-examination and accepted or rejected, depending on the appreciation of other corroborating circumstances. Moreover, the fact remains that, medical evidence is, after all, always an “opinion evidence” and the experts may differ in their opinions. Therefore,

the opinion of the expert is required to be tested at the time of trial before acceptance. At this stage, we only have to consider whether the CBI has carried out investigation in that respect.

39. As stated above, from the material collected by the CBI, including that of sending the entire set of articles to PGI, Chandigarh, and recording the statements of Dr. Bhise and Dr. Chikalkar again, who have conducted the postmortem examination, in order to probe into the angle of homicidal death, it is revealed that CBI has definitely made investigation on this aspect. Moreover, when, admittedly, the Postmortem Report, the opinions of the Doctors, who conducted the same, and the opinions of the experts consulted by the Petitioner are on record, along with the Inquest Panchanama, showing presence of the ligature marks, its peculiarities and also the presence of injuries, then, on the basis of the same, it will be the job of the Trial Court to arrive at an appropriate inference. Though it may be true that the *dupatta*, which was allegedly used as ligature, was not sent to PGI, Chandigarh, but then, as it is already produced in the Trial Court, it can be shown to the concerned experts in the course of recording their evidence, so as to elicit their opinion whether ligature marks found on the dead-body are possible by such ligature.

40. In our opinion, therefore, nothing further needs to be probed or investigated into the matter for the purpose of collecting material or evidence on the medico-legal aspect of the case to ascertain the cause of death. Sufficient evidence is now available on record for the Trial Court to form its own opinion as to the cause of the death. It is always for the Trial Court and not for the Investigating Agencies to form a conclusive opinion whether it is a case of suicide or homicide. Hence, in our opinion, now, after about three and a half years from the date of incident, nothing fruitful will come out either by directing further investigation by constituting Special Investigation Team, when the entire exercise to that effect was done at the instance of the Petitioner herself and on both the occasions, not only the police but also the CBI has probed into the angle of the homicidal death and on the basis of opinions of the experts arrived at the same conclusion of it being a case of suicide. Even if it is not so, the Trial Court has ample power on the basis of the material already collected to arrive at its own conclusion.

41. Even in respect of the contention raised by learned counsel for the Petitioner that tissues underneath the ligature marks were not sent for histopathological examination to Forensic Science

Laboratory, now nothing much can be done, as those tissues are no more available, either for being sent to the Forensic Science Laboratory or for carrying out further investigation. Though a grievance is raised that videography cassette of the postmortem examination was withheld from the Petitioner, the evidence on record shows that the said cassette was sent to PGI, Chandigarh. Thus, as regards the aspect of medical and forensic evidence is concerned, we are of the considered view that, both, the police, the CBI and simultaneously the Petitioner herself, have collected their own material in the course of investigation to support and fortify their own views and their own opinions. Nothing more remains to be done so as to investigate on this aspect by forming a Special Investigation Team. It will be for the Trial Court now to consider the forensic medical Jurisprudence and other evidence on record on the said aspect and to arrive at its own conclusion.

42. As regards the grievance raised by the Petitioner that no attempt was made to retrieve the chat on BBM Messenger, which was exchanged between the deceased and the accused just few minutes before the incident, the investigation done by the CBI reveals that they had sent Blackberry mobile phones for analysis to

Gandhi Nagar Forensic Laboratory and the said Laboratory had stated in its report that, in the absence of password, the vital data, i.e. BBM Communication, could not be retrieved. As to the contention of the Petitioner that the said data could have been obtained with the assistance of US Embassy, in our considered opinion, this is only a possibility and one cannot order re-investigation for that purpose, when already Police and CBI had done sufficient investigation.

43. About the alleged mystery of missing track-suit, the affidavit filed on behalf of CBI reveals that they have searched not only the premises of the deceased but also that of the accused, but they did not find the same.

44. The affidavit filed on behalf of CBI also reveals that they had carried out investigation in order to ascertain the whereabouts of the accused at the time of incident and further to ascertain whether there was any possibility of third person entering into the said premises. The said affidavit shows that, during the investigation, CBI had analyzed CDRs of accused and deceased for their locations and it was revealed that, at the time of the incident, location of the accused was at Novotel Hotel Building.

45. It is also stated in the report and affidavit that, CBI team inspected Sagar Sangeet Building and surrounding premises and it was revealed that the said building had one main entrance for entry and exit. There is a watchman room at the main gate itself. The duty hours of the watchman were "24 x 7". The identity of the strangers, visitors and unknown persons at the main entrance gate was verified by the watchman with the inmates of the building by calling them on intercom system installed at the building. The building premises are surrounded by 6.4 *inch* compound wall and 2.2 *feet* iron fencing above the wall. It was also revealed that the building is under surveillance of four CCTV cameras. Camera No.1 was installed near the lift, covering the area of the staircase and also the backside area. Camera No.2 was installed at the entrance of the building, covering the entrance of the building and front parking area. Camera No.3 was installed opposite to lift, covering the entrance of the lift, staircase and back side parking area, and Camera No.4 was installed at the main gate of the building premises, covering the area of main gate, watchman room and main room. The movements of the deceased during the relevant time and date are also noted in the CCTV Camera and they are found reflected in the affidavit. As per the investigation carried out by CBI, including recording of

statements of lift-man, watchman, and Chairman of the building and the movements of the deceased, no unknown persons were found at the relevant time. No suspicious movements were also found in the CCTV footage coverage. Thus, CBI has analyzed the CCTV footage of Sagar Sangeet Building. They have also tried to find out whether there was possibility of anyone climbing through the sliding window portion and on the basis of their inspection, they have ruled out the possibility of any third person entering the premises.

46. About the location of the accused, in addition to the data from mobile tower, CBI has also found that, at the relevant time, accused was at the Novotel Hotel and was having meeting with Smt. Neelkamal Soni, the Jewelry Designer.

47. The CBI has also carried the Forensic Statement Analysis of the accused, which was conducted by CFSL, SAU, Navi Mumbai, by Dr. Rajneekumari, Forensic Psychologist. The request was made by CBI for accused to undergo the forensic tests (Polygraph Examination, Brain Mapping Test / Brain Encephalograph Oscillation Signature Test and Narco Analysis Test). However, accused refused to undergo the tests. Hence, CBI could not do anything.

48. Thus, the report of the investigation filed in the Trial Court and the affidavit filed in this Court on behalf of the CBI, clearly goes to show that they have again carried out fresh investigation and recorded further statements of the witnesses, including that of Anju Mahendroo, Moin Baig etc. They have also examined the Investigating Officer of the case Smt. Kalpana Gadekar and recorded her statement in respect of alleged lacunae and discrepancies in the investigation carried out by Police. They had also sent the alleged suicide note / letter of the deceased to the Handwriting Expert to re-examine the handwriting and it revealed that it was in the handwriting of the deceased, however, the age of the letter could not be established. According to the CBI, this letter gives reflection about the mind of the deceased inclined towards committing suicide, on account of betrayal in relationship with accused.

49. Even as regards the alleged blood-stains found on the clothes of the deceased and on the mattress from the second bed-room, DNA analysis was done. The affidavit of CBI also reveals the various steps they had taken in carrying out further investigation, so as to ascertain the relations between the deceased and the accused. They had also studied the scene of crime by re-visiting the spot again,

particularly the distance between the ceiling and bed, the height of the top, edge of the cot etc., to ascertain whether it was a case of suicide or homicide. Thus, the affidavit detailing the various steps taken by the CBI show that they had carried out various angles of investigation in order to consider the possibility of homicidal death also.

50. In our considered opinion, in such situation, nothing further seems to be achieved by acceding to the request of the Petitioner for constituting Special Investigation Team. Now it will be for the Trial Court to arrive, on the basis of this material, at its own conclusion, as neither it can be the job of the police or of the CBI, nor that of the medical experts to give conclusive opinion whether the death is the result of suicide or homicide. Ultimately, everything depends upon the evidence, which will be brought before the Trial Court. For the present, it is clear that investigation from all the aspects appears to be mostly completed.

51. As regards the authorities relied upon by learned counsel for the Petitioner that of, *Bharati Tamang (supra)* and *Dharam Pal (supra)*, though it is true that it is the duty of the Constitutional Court to ensure effective investigation of the case, such duty, as held

in the said authorities, is to be exercised only if deficiency in investigation or prosecution is visible or can be transpired by lifting the veil and such duty is to be exercised in exceptional circumstances in order to prevent miscarriage of criminal justice. Here in the case, on the basis of the material collected by both, the police and independent agency, like CBI, we do not find that any deficiency remains in the investigation, which can be removed by ordering further investigation by Special Investigation Team.

52. Now when after an independent agency has carried out thorough investigation, it would be futile to again appoint Special Investigation Team of the police personnel from the State Police Machinery; especially when the prayer to that effect made earlier was not acceded to. Merely because CBI, an independent agency, like the State Investigation Agency of Police has arrived at the same conclusion, after its re-investigation or fresh investigation, that of ruling out the possibility of homicidal death and that the Petitioner is not satisfied with the same, it cannot be accepted that one more agency, like Special Investigation Team, should be again directed to carry out further investigation. Needless to state, that there would be no end to such exercise until the Petitioner gets the result of her choice.

53. We are also satisfied that, it is not the case that merely because the police machinery or the CBI has filed Charge-Sheet, under Section 306 of IPC, Court is obliged to proceed only in accordance therewith. Nothing prevents the Petitioner from invoking the appropriate powers of the competent Criminal Court exercising such powers, including the powers under Section 216 so also 319 of Cr.P.C.. It is not as if the Charge-Sheet filed would conclude the matter and whatever alleged discrepancies or materials, which Petitioner has pointed out, would be shut out of the Court. She can still persuade the Trial Court for redressal of her grievances on the basis of the material produced on record before it. However, as rightly submitted by learned ASG, allowing this investigation to be dragged without any fruitful purpose and transferring it from one agency to another and again to third one is unnecessarily prolonging not only the trial but also the trauma of the Petitioner and the accused. Already more than three years had lapsed since the date of the incident and trial is yet to be opened. Speedy justice being the constitutional right of both the accused and the victim, from this angle also, in our considered opinion, no case is made out for the relief sought by the Petitioner of constituting the Special Investigation Team to further probe into the matter.

54. In this view of the matter, we hold that the Petition holds no merit and hence the same needs to be dismissed and, accordingly, stands dismissed.

55. At this stage, we may add that the accused in this case had also filed Intervention Application No.459 of 2016. However, as we are of the view that this Petition itself holds no merit, we do not find it necessary to allow such intervention application. The said application, therefore, becomes infructuous and hence stands dismissed.

56. Needless to clarify, that whatever observations we have made here-in-above are merely of prima facie nature and are made for the purpose of deciding this Petition only. These observations are not to be used in any way in any other proceedings.

57. To sum up, therefore, the Petition stands dismissed. Rule discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [RANJIT MORE, J.]