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

+ **W.P.(CRL) 189/2017**

MRS SHIKHA AGGARWAL

..... Petitioner

Through: Mr. Sudarshan Rajan with Mohd.
Qamar Ali, Advocates

versus

STATE OF NCT OF DELHI & ORS

..... Respondent

Through: Ms.Kamna Vohra, ASC

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
27.01.2017

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By this writ petition, the petitioner seeks transfer of the investigation of the case FIR 549/2016 registered at PS MadhuVihar under Section 302 IPC to CBI or any other independent investigation agency. She also seeks a direction that the role of the other accused persons may be investigated in view of the last letter written by the deceased and his telephonic conversation with his brother.

On 20.01.2017, when this case was taken up for the first time, the following order was passed:

“Issue notice. Ms. Vohra accepts notice on behalf of the State.

The petitioner has preferred the present writ petition to seek transfer of investigation in case FIR No.549/2016 registered at PS – Madhu Vihar, Delhi under Section 302 IPC to the CBI, or any other independent investigation agency. The petitioner is the wife of the deceased.

The submission of learned counsel for the petitioner is that the deceased had addressed communication to the Prime Minister of India on the morning of the same day on which he was murdered specifically naming several persons, including Sushil Uppal and Rohit Uppal as the persons who had been issuing threats to him and from whom he apprehended the attack on his life. However, the FIR does not name Rohit Uppal and Sushil Uppal as accused.

He further submits that despite the petitioner requiring the I.O. to collect the CCTV footage, the same was not collected, and subsequently it was the accused, who produced the CCTV footage.

It is further pointed out that at the time of obtaining bail, the accused was in complete knowledge of the investigation undertaken and of the persons, who were relied upon as witnesses and whose statements have been recorded by the prosecution. The accused Sunil Uppal even managed to get an affidavit from his maid, who was an eye-witness to the pushing of the accused from the fifth floor of the balcony of his residence. She subsequently retracted from her statement given to the police implicating him as an accused.

Learned counsel for the petitioner submits that the deceased had made a telephonic call to his brother on the same day naming, inter alia, Sunil Uppal, Sushil Uppal and Rohit as the persons, who could kill him. The same had been recorded by the brother of the deceased and was played before the SHO of the police station. Despite the same, no case was registered against them even though the deceased had been killed, as aforesaid.

On the other hand, Ms. Vohra submits that the statement of the maid servant of the accused Sunil Uppal has been recorded, who has named only him as the person responsible for the demise of the deceased on account of his being pushed down from the balcony of the fifth floor.

Prima-facie, it appears to this Court that the grievance of the petitioner may be justified. There are serious unanswered questions with regard to the manner in which the investigation has been done by the police in this case.

Let a status report be filed within a week particularly dealing with the aspects noted hereinabove. The status report shall be vetted by the DCP concerned. No further time shall be granted. The case diary shall be kept available on the next date. List on 27.01.2017”.

Ms. Vohra states that the status report has been filed on record on 25.01.2017. The same has, however, not come on record. She has tendered in court another photocopy of the same, which is taken on record.

Learned counsel for the petitioner submits that the said status report further strengthens the suspicion and apprehension of the petitioner with regard to the alleged collusion between the investigating agency/ IO and the accused. Learned counsel has pointed out that in the status report, it is claimed that:

“During investigation CCTV cameras of society were also checked and found that deceased went alone to accused house just before the crime through lift situated at C Block of Milan Vihar. DVR was also seized fromt there and same has been sent to FSL, Rohini Delhi”.

However, when the bail application of the accused was being argued before the trial court, the counsel for the accused had played the CCTV footage on his laptop computer for a perusal of the trial court, and the IO

had also verified the same. In the order dated 13.01.2017 passed by the learned ASJ while granting bail to the accused, the trial court had, inter alia, recorded:

“It is also seen that deceased had made call to police at 07.42 pm which is verified by the I.O. from CDRs of mobile phone of accused and police record and from the CCTV footage as played before this court by Ld. Counsel for the applicant on his laptop computer which is verified by the I.O. who has already the copy of the same, it is seen in the CCTV footage that deceased was on the ground floor at 07.42 pm, when he made the call and had entered into the lift on ground floor while talking on phone and it is not possible from the combined effect of CDR and CCTV footage that at the same time deceased was in custody of the accused as stated in police complaint case”.

The submission of counsel for the petitioner is that if the DVR had been seized and sent to the FSL Rohini, Delhi for the purpose of forensic examination and report, it is not explained as to how the accused was in possession of a copy of the CCTV footage which was even played by him before the trial court. Learned counsel further submits that the accused was apparently also aware of the persons interrogated who could be cited as witnesses by the prosecution. He submits that the IO had recorded the statement of Kajal who was working as a maid at the house of the accused and she had given a statement implicating the accused Sunil Uppal. However, subsequently, under the influence of the accused – once they became aware of the statement given by Kajal, she was coerced into withdrawing her statement and made her file an affidavit resiling from her earlier statement and claiming that the same had been forcibly obtained by the police.

In the present case, the deceased had addressed a communication to the Prime Minister of India naming not only Sunil Uppal, but also his other brother, nephew, father and son as the persons from whom he apprehend physical harm. He had stated that the said persons are likely to finish him. Moreover, he had also made a phone call to his younger brother which had been recorded by the younger brother, wherein he had once again named not only Sunil Uppal, but the others as well from whom he had a life threat. The said recording was also played before the SHO, PS Madhu Vihar. Despite that being the position, the grievance of the petitioner is, that only in respect of Sunil Uppal the proceedings were undertaken and even in his respect, the witnesses were influenced on account of leak of information by the IO to the accused.

The case concerns the alleged brutal murder of the petitioner's husband who had allegedly been thrown of the balcony from the 5th floor soon after he had arrived at the residence of the accused Sunil Uppal. The circumstances pointed out by the petitioner and taken note of herein above are, in the opinion of the court, sufficient to shock the confidence of the petitioner and gives rise to apprehension in her mind that the investigation has not been properly conducted. Being the widow of the deceased, she is entitled to raise a grievance in this respect. Even this court is left with a lurking doubt as to whether or not the investigation has been properly conducted thus far in the case.

Consequently, without going into the issue as to whether or not the IO is positively mixed up with the accused as alleged by the petitioner, in my view, it would be in the interest of justice to transfer the further investigation in the case to the Crime Branch of Delhi Police. The DCP

Crime Branch is directed to ensure that a competent and independent officer is nominated for the purpose of carrying out further investigation in the case. The record be transferred to the DCP Crime Branch forthwith.

Petition stands disposed of. Dasti.

VIPIN SANGHI, J

JANUARY 27, 2017

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