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

+ W.P.(CRL) 3396/2016

SHRIMATI SARITA

..... Petitioner

Through: Mr. Jagdish C. Toor, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Sangita Rai, CGSC and
Mr. Pradeep Singh Tomar, Advocate
for respondent No.1/ UOI.

Mr. Rajesh Mahajan, ASC for the
State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

20.01.2017

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1. The petitioner has preferred this writ petition, *inter alia*, to seek that the investigation into the circumstances leading to the custodial death of one Sh. Amit, the son of the petitioner be got down by an independent agency like the Central Bureau of Investigation (CBI).

2. The petitioner's son Sh. Amit was undergoing a sentence of imprisonment in respect of his conviction under Section 307 IPC and Section 27 of the Arms Act. While in jail custody, the petitioner's son died an unnatural death. The post-mortem report vide report No.225/2015, *inter alia*, shows that there were three injuries including one, namely Abrasion 0.4 x 0.3 c.m. brownish over right temporal area of head, 11 cm above right ear lobule. There were two other injury marks, one on the right arm and one

on the right thigh of the deceased. The petitioner being dissatisfied with the manner in which the proceedings were undertaken, preferred this writ petition, as aforesaid, to seek investigation into the demise of her son by the CBI. The petitioner also seeks compensation for the custodial death of her son, apart from action against the erring officials of Tihar Central Jail.

3. When the case was taken up on 04.01.2017, Mr. Mahajan had informed that inquest proceedings were underway before the concerned MM Sh. Ajay Malik, Room No.294, Tis Hazari Courts. Despite a direction by this Court requiring that the inquest report be requisitioned from the learned MM, the same has not been received. However, a status report has been filed by the State.

4. The status report shows that the learned MM has been conducting the proceedings under Section 176 Cr.P.C. at least since 14.05.2015. The status report also purports to contain the examination report prepared by the FSL dated 21.09.2015. As per the report of the FSL, no presence of alcohol or other kinds of poison was detected in the samples.

5. Mr. Mahajan submits that the histopathology report was also obtained and the summary of the said report reads as follows:

“Received in the same container piece of brain, kidney (both), liver spleen, piece of both lung, one piece of heart. Sections from kidney, spleen, lungs and brain all show marked vascular congestion. There is septal edema in lungs. Liver shows sinusoidal congestion. Heart shows mild vascular congestion.”

6. The same has been prepared by Dr. Anita Nangia, Professor at Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital, New Delhi.

7. Mr. Mahajan submits that on the basis of the aforesaid reports, the Department of Forensic Medicine has rendered its final report stating that the death was caused due to chronic liver disease and its complications.

8. The deceased was undergoing his sentence of imprisonment at Tihar Jail. He was not found to have consumed liquor prior to his death. It is not clear whether the final report prepared by the Department of Forensic Medicine, Lady Hardinge Medical College & Smt. Sucheta Kriplani Hospital, New Delhi has taken into account the post-mortem report, which found injuries on the body of the deceased. It is also a matter of concern that proceedings under Section 176 Cr.P.C. are underway even after a year and a half of the demise of Sh. Amit.

9. I am conscious of the decisions of constitution bench of the Supreme Court in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.*, (2010) 3 SCC 571, and the subsequent decision in *K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors.*, (2013) 12 SCC 480. Transfer of investigation to the CBI by the Court, though competent for this court to order, should be sparingly resorted to. The Supreme Court in *State of West Bengal* (supra) observed in para 70 as follows:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no

*inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. **This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.** Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”* (emphasis supplied)

10. In my view, the present is a fit case for transfer of investigation to the Central Bureau of Investigation since involvement of the local police force in the death of Sh. Amit cannot be ruled out at this stage. Upon taking the overall view of the matter, this Court is not satisfied with the manner and pace of investigation conducted so far by the police in the present case.

11. Accordingly, the investigation in the present case is forthwith transferred to the CBI. The learned MM is directed to complete the inquest with the assistance of the CBI at the earliest.

12. A copy of this order be communicated to the Director, Central Bureau of Investigation as well as the learned MM, for compliance.

VIPIN SANGHI, J

JANUARY 20, 2017

B.S. Rohella