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

+ **W.P.(CRL) 1192/2018**

RAHUL MALIK

..... Petitioner

Represented by: **Mr. Varinder Kumar Sharma,**
Advocate.

versus

STATE OF DLEHI

..... Respondent

Represented by: **Mr. Rahul Mehra, Standing**
Counsel for State, **Mr. Anuj**
Jain and **Mr. Jamal Akhtar,**
Advocates with **Inspector**
Kuldeep Shekhawat and **SI**
Ashok Ahlawat, PS Vikaspuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
20.04.2018

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Crl. M.A. No. 7228/2018 (Exemption)

Allowed, subject to all just exceptions.

W.P.(CRL) 1192/2018

1. By this petition, petitioner inter alia seeks transfer of investigation in case FIR No.89/2018 under Sections 308/328 IPC registered at PS Vikas Puri, Delhi on the complaint of petitioner to CBI.

2. Case of the petitioner is that the petitioner was brutally stabbed on the neck resulting in removal of his bone as well however, despite the same the police is not investigating the offence seriously and fairly, thus the same be transferred to CBI. Grievance of the petitioner is that a fair and impartial investigation is not being carried out and the FIR is not based on the

W.P.(CRL) 1192/2018

page 1 of 4

statement of the petitioner as stated by him. To show the anomalies, learned counsel for the petitioner states that immediately after the incident, the stomach wash of the petitioner was not taken. Secondly no action has been taken against Ankit, brother of accused Akshay.

3. FIR No. 89/2018 was registered under Sections 307/328 IPC and not under Sections 308/328 IPC as pointed out by learned counsel for the petitioner on the statement of the petitioner who stated that he was doing the work as a property dealer and had money transactions with his friend Akshay, who had studied upto 10+2 in Shanti Gyan Niketan School. He stated that he gave a loan of ₹7 lakhs to Akshay Kanotra who was dealing in sale purchase of the old cars and had previously also taken huge amount of money. On 25th February, 2018 at about 12'o clock Akshay called him on his mobile two-three times to inform that he had received 2.5 lakhs in his account, thus he intended to return the same. The complainant stated that he had to take a sum of ₹20,000/- from one Panna Lal at Green Park, thus Akshay stated that he should come to A-Block, Janakpuri and from there, they will go together. The complainant went to Akshay's office in his swift maruti car where Akshay asked him to give his car for some time and came back after 15-20 minutes. After that both of them went to Patanjali Store, Safdarjung Airport from where the complainant received ₹20,000/- from Panna Lal and proceeded to his home. In the meantime, Akshay offered him mazza cold drink purchased from a shop at Dhaula Kuan while going to Safdarjung Airport. Petitioner drank Mazza and felt dizzy. When he told this fact to Akshay, Akshay took on the driver seat and started driving the vehicle. When the petitioner regained his conscious, he saw Akshay had

attacked on his neck with a sharp edged knife like paper cutter. Petitioner tried to save himself when Akshay again attacked him on the other side of the neck. When the petitioner put his hand to save himself, Akshay attacked on his left hand with the cutter. He also tried to hit on his head with danda kept in the car, on which the petitioner forced himself out of the car and ran away. Akshay tried to hit him with the stone however, the petitioner managed to escape and reached the main road where people were standing and sought. In the meantime, two police men reached on the motorcycle and also called 100 number. Petitioner claims that he had in his car money, which were from business transaction, his mobile phone which was taken by Akshay. Petitioner was immediately rushed to U.K. Nursing Home, from there to Chanan Devi Hospital and thereafter to Venkateshwar Hospital. MLC of the petitioner was collected. Statement of the petitioner was recorded.

4. Though the grievance of the petitioner is that his proper statement was not recorded, which was later recorded under Section 161 Cr.P.C., this Court finds that in the subsequent statement the petitioner has stated that the loan amount of ₹22 lakhs had been taken by Ankit, brother of Akshay Kanotra and he had threatened to kill him refusing to return back the money six–seven days prior to the incident and that he had given ₹48 lakhs to Akshay Kanotra.. Rest of the facts stated in the FIR as lodged are the same.

5. Statement of the petitioner has already been recorded under Section 161 Cr.P.C. and thus whether Ankit, even if not arrayed as an accused by the Investigating Officer, is required to be summoned or not will be in the domain of the Court. The second grievance of the petitioner is that gastric

lavage and blood samples were not taken immediately after the incident from which it could have been detected as to what was the intoxicant given to the petitioner. As noted above the petitioner was in succession shifted to three private hospitals and whether the gastric lavage could be taken at that stage for the reason the petitioner's throat had been slit, was the decision to be taken by the doctor.

6. As per the status report which has been handed over, in the first statement the petitioner only levelled allegations against Akshay Kanotra, who was arrested within two days of registration of FIR and the weapon of offence, cover of pistol which were in his possession have already been recovered.

7. Considering the status report filed, this Court finds no ground to transfer the investigation.

8. Petition is dismissed. It is hoped and expected that the investigation will be concluded expeditiously.

MUKTA GUPTA, J.

APRIL 20, 2018

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