

\$~20

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL) 1759/2018 & Crl. M.A. No.10879/2018

GAURENDRA GUPTA

..... Petitioner

Through: Mr. Vijay Shankar, Mr. Kapil Kumar
and Mr. Kapil Raghav, Advocates.

Versus

STATE & ORS.

..... Respondents

Through: Ms. Kamna Vohra, Additional Standing
Counsel for State with Ms. Sarabjeet Kaur,
Advocate with Inspector Jaiprakash, Special
Staff, West District.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

09.10.2018

The Status Report dated 31.08.2018 of the Station House Officer,
Police Station South Rohini, Delhi, states as under:-

“ Most respectfully in continuation of previous status report it is submitted that a report of the board to give opinion regarding cause of death of deceased Devyani, from Maulana Azad Medical College, New Delhi, dated 25-08-18, has been received on 27-08-18 and as per the report " The board members examined the photographs. After perusal of the photographs there is no change in the opinion regarding cause of death as given on 24-02-2012 i.e. The post mortem findings are consistent with death due to hanging, hence the board members agree with the opinion given by Dr. Vijay Dhankar that cause of death is asphyxia due to hanging." Further Insp. Manmohan Singh visited the FSL to obtain opinion based on the photographs of, the deceased but the official verbally told that they can't give the opinion merely on the basis of

photographs because to give an opinion either they have to visit crime scene or to examine the body.”

On the previous date, the Court had recorded as under:-

“ On the basis of photographs of the deceased, the petitioner has sought a fresh opinion from the Forensic Science Laboratory and for examination of the evident bleeding and wounds on the body, in particular, on the left collar bone, and the thumbs and finger impression on the throat and about the absence of saliva coming out from the mouth and other relevant facts. It is the petitioner's case that the deceased died an unnatural death. It evidently was not suicide, because the photographs show bleeding from her neck. This does not ordinarily occur in the case of self-strangulation; although ligature mark is mentioned in the post-mortem report, it goes on to state that no blood was found on the clothes of the deceased, whereas blood oozing from the neck of the deceased is evident from the photographs. According to the petitioner, is not in consonance with the Status Report filed by Inspector Jai Prakash, SHO/ South Rohini dated 18.07.2012 (page 38 of the writ petition), wherein he has stated as under:

“.....Accordingly, the dead body of deceased Devyani was shifted to and preserved at BSA Hospital Prior to shifting of the dead body, the scene of occurrence got inspected by the Crime Team and was photographed. Broken Kundi and Chunni (allegedly used in hanging) were taken into police possession. On the next day i.e. on 17/03/12, parents of deceased arrived. Statement of Sh. Gorendra Gupta, father of the deceased (petitioner) was taken on record by SDM Saraswati Vihar. Father of deceased was specifically asked about any incident of harassment to the deceased for demand of dowry, but he did not narrate any such incident. However he suspected that it may be a case of murder. After recording the statement of father of deceased, SDM Saraswati Vihar did not give any direction to the 10 for registration of case against

anyone. PM on the dead body was conducted on 18/03/11 and the dead body was handed over to the family members of deceased. Post Mortem Report mentions the cause of death as "Asphyxia due to hanging".... "

The learned counsel for the petitioner submits that the case has deliberately been weakened; that requisite information has not been furnished and that proper investigation was not conducted. There will be a miscarriage of justice if the situation is allowed to remain. Ms. Vohra, the learned ASC for the State, submits that an opinion was sought by a Medical Board on the basis of the photographs, in terms of the relief sought in this petition. The Medical Board of Maulana Azad Medical College vide its opinion dated 25.08.2018 has concluded, inter alia:

" The post mortem findings are consistent with death due to hanging. Hence the board members agree with the opinion given by Dr. Vijay Dhankar that 'Cause of death is asphyxia due to hanging'.

Let a report be filed along with the Status Report. A copy of the same be supplied to the learned counsel for the petitioner.

List on 09.10.2018."

Ms. Vohra, the learned counsel for the State, submits that the case is at the stage of arguments to be advanced by the petitioner. She submit that all the issues raised by the petitioner, including the requirement to send the evidence to the Forensic Science Laboratory for obtaining their opinion, can be addressed by the petitioner before the learned Trial Court and that the discretionary remedy, as sought in this petition, under Article 226 of the Constitution of India, would not be warranted.

The learned counsel for the petitioner submits that there is something seriously amiss in the investigations as the information received by him through the RTI, filed by him, states to the effect that the body of the deceased, Devyani, was received by one Raj Kumar on 16.03.2011 at 10.15 in the night. In other words, the body was already in the mortuary. However, according to the investigation, the police had reached the site of the crime after 11 p.m., where they found the dead body of the deceased. This is an impossibility because the dead body cannot be at two places simultaneously. He further submits that the information received through the RTI has been given by Dr. Vijay Dhankar, who had conducted the post-mortem.

The Court would note that these arguments shall be available to the petitioner, to be addressed before the learned Trial Court, to be duly considered.

In view of the above, the petition, alongwith pending application, stands disposed-off in the above terms.

NAJMI WAZIRI, J.

OCTOBER 09, 2018

sb