

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 26313 of 2017 (O&M)

Date of decision: May 06,2020

Ram Kumar...Petitioner

versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mrs. Justice Lisa Gill

Present : Mr.Vaneet Soni, Advocate for the petitioner.

Mr.RohitArya, DAG Haryana.

Mr.SumitGoel, Advocatefor respondent No. 6.

Lisa Gill J

This writ petition has been filed by the petitioner – the unfortunate father of Rahul, who is alleged to have been done to death by the accused named in FIR No. 154 dated 10.4. 2017, attached as Annexure P-2 with this petition. The petitioner seeks entrustment of the investigation of FIR No. 154 dated 10.4. 2017 to respondent No. 6- CBI, while alleging that the police officials in connivance with the accused, are not investigating the matter in a proper manner.

It is contended that the murder of the petitioner's son has been illegally given a colour of suicidal death. The petitioner's son is stated to have been murdered on account of his relations with the daughter of the accused - Ghanshyam. It is submitted that the petitioner's son, aged

about 25 years was serving as Points man with the Railway authorities, Babrala. The petitioner belongs to the Yadav community. The petitioner's son developed friendly relations with the daughter of Ghanshyam who belongs to the Brahmin community and both of them were deeply attached to each other. This was not to the liking of the girl's family. It is averred that on the intervening night of 3/04.04.2017, the petitioner's son was returning home after completing his duty when he was caught hold of by the accused persons and taken to the house of the accused, Ghanshyam Pandit. The petitioner's son is alleged to have been murdered by the accused persons and thereafter hanged from the ceiling fan in the house of Ghanshyam Pandit. After hanging the petitioner's son, the accused persons came to the petitioner's house to inform that they have hanged Rahul in their house after confining him in a room. The petitioner rushed to the house of Ghanshyam Pandit along with his other son – Rohit, his wife Sushma and others from the neighbourhood and discovered his son Rahul hanging from a ceiling fan. Rahul was brought down and taken to the Life Care Hospital, Rewari for treatment on the intervening night of 3/04.04.2017 and to be precise he was taken to the hospital at 2.45 AM on 04.04.2017. The police was immediately informed by the hospital authorities. Despite intimation, FIR was not registered and it is only on 10.4.2017, that an FIR under Sections 323, 341, 342, 148, 149 IPC was registered. The petitioner's son however, succumbed to his injuries on 12.4.2017 at 7.30 AM at Park Hospital. Post-mortem was conducted on 12.4.2017 at 4.15 PM. Post-mortem report is attached as Annexure P-3 with the petition. Offence punishable under section 302 IPC was added after the death of Rahul.

It is further submitted that instead of taking any action against the accused persons, respondent No. 5 in connivance with the accused persons got registered FIR No.0164 under section 451 IPC on 13.4.2017 against the petitioner's son on a written complaint dated 13.4.2017 submitted by Sushma wife of Ghanshyam. The FIR attached as Annexure P-4, it is submitted, was peculiarly registered after the petitioner's son had died on 12.4.2017.

Learned counsel for the petitioner vehemently argued that no action was being taken by the police authorities despite various representations. The petitioner thereafter moved an application dated 08/09/2017 before the Sub Divisional Judicial Magistrate, Kanina seeking status report in FIR No. 154 dated 10/04/2017, Annexure P7. Status report dated 16/09/2017, Annexure P-8, was submitted by the police authorities wherein it is stated that the present is not a case of honour killing and in the investigation carried out till that time, allegations levelled by the present petitioner were not found to be proved. However a Special Investigating Team (SIT) was stated to have been formed to further investigate the matter. No further action was allegedly taken by the police authorities and on enquiries made by the petitioner he came to know that the investigating agency was preparing a cancellation report in FIR No. 154 dated 10.4.2017. The said report was not provided to the petitioner despite the submission of an application under the RTI act and neither any notice regarding submission of a cancellation report, it is stated, was received by the petitioner.

Learned counsel for the petitioner argues that there are specific call detail records, Annexure P-10, between the petitioner's son

and daughter of Ghanshyam Pandit, which prove that they were emotionally attached to each other. It has been found in the investigation itself that both daughter of Ghanshyam and the petitioner's son were regularly and consistently in touch with each other. Moreover, the post-mortem report itself rules out death by hanging. Learned counsel for the petitioner also points out to the crime scene report to submit that the distance between the floor and the fan besides the height of the bed do not indicate death by hanging. Moreover, it is submitted that the possibility of the petitioner's son hanging himself in the manner as suggested is highly improbable. It is vehemently argued that the attempt of the police authorities to cover up the entire matter is apparent on the face of it. It is an apparent case of high caste persons prevailing upon the police authorities, thus causing grave injustice to the petitioner, who belongs to the Yadav caste. It is, thus, prayed that this writ petition be allowed and investigation of FIR No. 154 dated 10.4.2017 be handed over to CBI.

Learned counsel for the state, per contra, refutes the averments as above and submits that investigation of the matter was carried out thoroughly in a fair and scientific manner. SIT was also constituted to rule out any unfairness in the investigation. The cancellation report was thereafter filed in the facts and circumstances of the case after a thorough investigation duly keeping in view the opinion of the Board of doctors, which clearly opined that cause of death in this case is suicidal hanging. It is further submitted that there is no such injury on the body of the deceased to indicate a homicidal death. Mere presence of call detail records of the petitioner's son and daughter of

Ghanshyam Pandit to show that they were in touch with each other are not relevant or material in this case and neither do they indicate murder of the petitioner's son as alleged. Learned counsel for the State argued that even if the emotional relationship or attachment between the petitioner's son and daughter of Ghanshyam is accepted, it cannot by itself lead to an inference of Rahul's murder. The room (Baithak) in which the body of Rahul was discovered, it is submitted, was bolted from inside and it is due to extreme shame on being caught in the girl's house that Rahul committed suicide. It is, thus, prayed that this writ petition be dismissed.

Learned counsel for the CBI while submitting that there is no necessity of referring the matter to the CBI, however, points out to report dated 12.2.2018 which was submitted before this Court in a sealed cover on 23.10.2018. It is to be noticed that the tentative report submitted by the State was scrutinised by the CBI as is apparent from a perusal of order dated 22.12.2017 passed by a Coordinate Bench in this case. Order dated 22.12.2017 reads as under:-

“Mr.Goel, learned counsel appearing for CBI, submits that tentative report submitted by the State is being scrutinised by CBI. In case, some lacunae are found in the same, this court shall be apprised by way of report in sealed cover. In such a situation, this court may consider entrusting investigation to CBI.”

Thereafter, scrutiny report was produced before the Court in a sealed cover on 23/10/2018, which was perused and ordered to be resealed. At the time of final arguments in this case, learned counsel for

CBI submitted that he was however in possession of a copy of the said report. Consequently the scrutiny report was opened and taken on record subject to just exceptions.

I have heard counsel for the parties and have gone through the paper book as well as the police file produced in court during arguments.

As per status report dated 16.09.2017, Annexure P-8, filed by the police authorities before the Learned Sub Divisional Judicial Magistrate, Kanina, it is specifically observed that call details of the phone numbers of the deceased were procured. It was found that the deceased and daughter of Ghanshyam were in touch and were regularly communicating with each other through their cell phones. It was also admitted by the daughter of Ghanshyam that the Samsung mobile phone, having SIM No. 8295199209 was given to her by Rahul. Daughter of Ghanshyam is stated to have called the deceased on 3.4.2017 at 11.30 PM from her father's mobile No. 9896671473 but the petitioner's son disconnected the call and called her from another phone. They were found to have talked to each other for 2-3 minutes. The petitioner's son wanted to visit her house which was refused by the girl. However, the petitioner's son is stated to have proceeded to the house of Ghanshyam nevertheless.

As per the version set up by Sushma wife of Ghanshyam, in FIR No. 164 dated 13/04/2017, the petitioner's son was seen by Ghanshyam and their son, when he trespassed in their house. They locked Rahul, the petitioner's son, inside their Baithak. In the meantime,

Sushma wife of Ghanshyam along with 4 or 5 ladies are stated to have proceeded to the petitioner's house to inform him of Rahul's presence at Ghanshyam's house. It is relevant to note at this stage that the petitioner's house is admittedly about 300 yards away from the house of the accused. In the meantime, the petitioner's son is alleged to have hanged himself from the ceiling fan after bolting the door from inside. At this stage, it is pertinent to note that as per the Crime Scene Visit Report, Annexure R- 5, there is nothing on record to show that the door of the Baithak was securely bolted from inside or that the door was forced open for retrieving Rahul who was hanging from the ceiling fan inside this room. It is mentioned in the said report that if some pressure is applied on the door in question from outside, the possibility of opening the door cannot be ruled out. At the same time, three(3) injuries were found present on the person of the petitioner's son as per the medico-legal report MLR, Annexure R1. The said injuries as mentioned are reproduced as hereunder:-

- “1. Reddish contusion of 3 cm width extending from 2 cm below the Left Angle of Mandible **crossing across the neck below the thyroid cartilage** (emphasis added) extending up to 2 cm below (Rt) angle of mandible.
2. (Rt) Side Chest Elevated.
3. Contusion M 3 cm x 2 cm present over(L) shoulder.”

The injuries are stated to have been caused by a blunt weapon within 0 to 6 hours. As per the post-mortem report, a faint bluish green contused mark, 43 cm x 2.05 cm, was seen ‘incompletely encircling the neck running transversely across the neck anteriorly, 12

cm below the chin, running obliquely below angles of mandible, towards both ear lobule, 9 cm from right and 6 cm from left ear lobule, with a gap of 2 cm at the back of neck, total neck measuring 42 cm.'

Opinion of the Medical Board was sought. A copy of the report of the Medical Board has been attached as Annexure R 7 along with the reply filed on behalf of the respondent State and it reads as under:-

"To

The SHO

PS-Kanina, Mahendergarh.

On the review of said post-mortem No.YSG/PKC/244/17 and MLR No. PG/2017/02 dated 04.04.2017.

Subsequent opinion dated 19.08.2017. Board is now of opinion further that which regards to the query again forwarded that:

1.Contusion Mark around the neck all the features consistent with antemortem hanging.

2.There is only a single bruises on the back of the left shoulder, which is 5X4 cm, no external injury was found, internal findings showed no feature, all neck cartilages were intact, any other injury which would have suggested any struggle should have been in the form of bruises, nail marks/finger marks at the border of the ligature around neck which should have suggest any struggle and resistance offer by the deceased. Since no such injury found, hence there is no reason to opine anything other than suicidal hanging.

3.Injury mentioned in the MLR(PG/2017/02) at Park Hospital, Rewari, will be opined by the concern doctor.

Sd/-

Sd/-

Dr Yudhvair Singh
MO,GH, Gurugram

Dr Pawan Kumar Chaudhry
RMO,GH, Gurugram”

It is merely on the basis of this medical opinion itself that the police authorities have proceeded to conclude that there is no truth in the allegations levelled by the petitioner. It is a matter of record that as far as the ligature mark is concerned it was found all around the neck of the deceased as per the MLR, though it is mentioned to be incompletely encircling in the post mortem report. The injury on the chest and the contusion on the shoulder as reproduced in the foregoing para were detected on the person of the deceased. As per the Medico Legal Report, Annexure P-1, the said injuries were caused by a blunt weapon. The Medical Board appears to have proceeded on a presumption that in the absence of bruises, nail marks/finger marks at the border of ligature around the neck, the death could not be held to be homicidal.

The fact that the petitioner's son and daughter of Ghanshyam were in touch with each other is a matter of record. The police authorities themselves have accepted this fact. As per the Crime Scene Visit Report, there is no evidence to suggest that the room/Baithak was securely bolted from inside due to which the petitioner's son could have easily hanged himself in the presence of the accused Ghanshyam and others, who were admittedly present in the house at that time. Presence of the petitioner's son at the spot is duly admitted by the accused persons. Even if the version in FIR No.164 registered at the instance of Sushma i.e., Ghanshyam's wife, is accepted, it is highly improbable that Rahul would have managed to hang himself from the fan in the baithak in

the manner suggested, while the accused were admittedly lying guard, waiting for the petitioner and his family to arrive. The Crime Scene Report, photographs of the door of the Baithak do not *prima facie* indicate such a scenario. Even in case the accused take a stand(though not agitated), that all of them had gone to call Rahul's family and it is in their absence that Rahul hanged himself, the same too is not believable. This is so for the reason that when there was nothing to prevent the petitioner's son from fleeing from the spot as admittedly the latches on the doors were not too secure, there is no question of the petitioner's son not trying to do so. It is pertinent to note at this stage that the petitioner's son is alleged to have trespassed into Ghanshyam's house on earlier occasions as well but he had allegedly managed to flee. There is indeed nothing on record to indicate as to why Rahul would not have done the same on the fateful day but chose to hang himself.

In the scrutiny report dated 12.02.2018 furnished by the Superintendent of Police,CBI, SCB, Chandigarh, the difference of opinion between the treating doctors and doctors of the Government Hospital, Gurugram, Haryana and the Medical Board has been noted and it is observed that an independent opinion could have been sought to arrive at a logical conclusion regarding the nature of injuries inflicted on the body of the deceased. It is further to be noted that communication between the petitioner's son and daughter of Ghanshyam is admitted. Ghanshyam's daughter has admitted that she had been given a Samsung mobile phone by the deceased-Rahul and she was in touch with him. Even if it is to be accepted that the deceased was not forcibly taken to the house of Ghanshyam by the accused persons and he had

voluntarily gone there, it cannot be concluded only on the basis of the evidence collected that the petitioner's son had committed suicide by hanging himself from the ceiling fan in the Baithak in which he was confined by the accused. It is the specific case of the accused party that the deceased had earlier also trespassed into the house. The evidence on record, at this stage, does not prima facie point to a suicidal death. In any case this aspect has clearly not been investigated properly. The manner in which the police authorities have proceeded in this matter indeed casts suspicion on the manner and quality of investigation. Intimation regarding admission of the petitioner's son to the hospital was duly sent to the police authorities on 04.04.2017 itself. Report dated 04.04.2017 is a matter of record. FIR was however registered on 10.04.2017. In a peculiar manner, FIR No. 164 under section 451 IPC was registered on 13.04.2017 against the petitioner's son. Admittedly, the petitioner's son had already died on 12.04.2017.

The Hon'ble Supreme Court in the judgement titled '**State of West Bengal v. Committee For Protection of Democratic Rights, West Bengal and others**'(2010) 3 SCC 571 has held that no inflexible guidelines can be laid down for exercise of power to issue directions to the CBI to investigate a particular matter. It is observed by the Hon'ble Supreme Court that,

“..... 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 court 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 circumstances 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.”

It is apparent from the facts as above that the present is clearly a matter which calls for a thorough and proper investigation which has indeed not been carried out by the police authorities. There is a clear-cut need of an in-depth investigation in respect to the death of the petitioner's son. In my considered opinion, investigation in the present case is required to be handed over to CBI in order to provide credibility and instil confidence in the investigation, besides, ensuring complete justice. I am fully conscious of the CBI already being overburdened and facing constraints of manpower and paraphernalia, as has been urged by its counsel, but the present is clearly an exceptional situation and in order to dispense complete justice it is necessary to direct an independent investigation to be conducted by the CBI into the incident and circumstances leading to the death of the petitioner's son.

Keeping in view the facts and circumstances as above, this writ petition is allowed. Accordingly, investigation of FIR No.154 dated 10.04.2017 is entrusted to respondent No. 6-CBI, which shall carry out proper investigation in the matter and take necessary steps expeditiously, in accordance with law. The police file along with the entire record of the case be handed over to the CBI by the Haryana Police forthwith.

May 06, 2020

(Lisa Gill)
Judge

rts

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No