

IN THE HIGH COURT AT CALCUTTA

**Constitutional Writ Jurisdiction
APPELLATE SIDE**

BEFORE:-

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

WPA No. 3271 of 2022

SALEM KHAN

VERSUS

STATE OF WEST BENGAL & ORS.

For the Petitioner

:Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Rabi Sankar Chatterjee,
Mr. Samim Ahammed,
Mr. Imteaz Ahammed,
Ms. Saloni Bhattacharya,
Ms. Gulsanwara Pervin,
Mr. Sabyasachi Chatterjee,
Mr. Kaustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar,
Ms. Debolina Sarkar,
Mr. R. Mukherjee,
Mr. Akashdeep Mukherjee

For the State

: Mr. S.N. Mookherjee, Ld. Advocate
General,

Mr. Amitesh Banerjee, Ld. Senior Advocate,
Mr. Ayan Bhattacharya,
Mr. Sandip Dasgupta,
Mr. Raja Saha,
Mr. Saaqib Siddique,
Mr. Aviroop Mitra

For the CBI

:Mr. Billwadal Bhattacharyya, A.S.G.I.,
Mr. Kallol Mondal,
Mr. Samrat Goswami

Hearing Concluded on

: 15.06.2022

Judgment On

: 21.06.2022

Rajasekhar Mantha, J.:-

1. The subject matter of the writ petition is the unfortunate death of one Anis Khan on the night of February 19, 2022. The writ petitioner is the father of the deceased Anis Khan. He has prayed that the investigation into the death of his son should be transferred from the State Investigation Agency to an independent third party outside the control of the State Government.
2. The factual background is that the deceased Anis Khan was a student of Journalism and Mass Communication at Kalyani University. He was also an alumnus of Aliah University. He was a public-spirited person involved in various social causes, and participated in rallies and protest movements against the activities of the State Government. He was involved in the protests against the Hijab Ban and National Register of Citizens-Citizenship Amendment Act (NRC-CAA) issues. He was also involved in organizing blood donation camps that were shut down by the members of the ruling party.
3. It also appears from a complaint annexed with the writ petition, that in August 2017 the victim was tied up, insulted, mocked, and assaulted by the local Pradhan and his associates. The Pradhan was a member of the ruling political party who was allegedly enraged by the petitioner objecting and frustrating the attempts of the latter to extort hefty sums of donations from students seeking admission to a certain school named Ananda Niketan Vidyamandir. The said incident has been recorded in FIR being Bagnan P.S. Case No. 433 of 2017 dated 3rd August 2017.

4. FIRs are also lying registered against the deceased in the Amta and Bagnan police Stations. Five cases have been registered in which the deceased was either an accused or somehow involved in other ways.

The said cases are:

- Amta PS Case No. 213/14 dt. 17.07.2014, u/s 143/427/447/324/325/354/379/34 IPC.
- Amta P.S. Case No. 230 of 2014 dated 17.07.2014 under Sections 143/427/447/324/325/354/379 and 34 of the IPC, which has resulted in the charge sheet.
- P.S. Case No.429 of 2017 dated 2nd August 2017 under Section 354 of the IPC read with Section 12 of the POCSO Act.
- Amta PS Case no. 200/21 dt. 27.07.21 u/s 447/323/354B/506/34 IPC.
- Amta PS Case no. 201/21 dt. 28.07.21, u/s 341/323/506/34 IPC”

5. It further appears that on 21st May 2021, the petitioner was threatened by the booth president of the ruling party, Malek Khan, and his associates for organizing a blood donation camp. A mob organized by the said local ruling party is stated to have been sent to the petitioner’s house, to abuse and threaten the petitioner’s family members. The victim’s uncle was assaulted on the 22nd of May, 2022. It is submitted that despite submitting a written complaint detailing these incidents, Amta Police Station did not register any FIR.

6. The State submits that investigation into the FIRs registered with Amta P.S. being Case No. 213 of 2014 was continuing, and several attempts were made to serve notice under Section 41A of the Cr.P.C, but the deceased could not be served as he was allegedly absconding.

The victim was also evading summons in respect of Bagnan P.S. case No. 422 dated 19.02.2022.

7. Sometime in February 2022, the Social Media Monitoring Cell of the Howrah Rural District discovered 38 sensitive posts on the social Media website “Facebook”, based on which the police launched enquiries. 25 of such posts came to be deleted on the intervention of the police. Proceedings under Section 107 of the Cr.P.C. were drawn up in three such cases.
8. Apprehending communal tension and a law and order situation, two cases have been registered being Bagnan Case No. 57 of 2022, dated 11th February 2022 under Sections 153, 153A, and 295A IPC, and Penro P.S. Case No. 15 of 2022 dated 13th February 2022 under Sections 153, 153A and 295A of the IPC. The aforesaid cases are related to the “Hijab” issue, which originated in Karnataka.
9. It is in connection with these cases that the said Social Media Monitoring Cell of Howrah Rural District found a post on Hijab issue on the Facebook profile of a person named Anis Khan at about 8.00 pm on 18th February 2022. Given the law and order situation apprehended in respect of the Bagnan P.S. and Penro P.S. cases dated 11th February 2022 and 13th February 2022 respectively, the said information was provided along with the phone number and profile to the Additional Superintendent of Police, Howrah Rural District, on a WhatsApp group. The Additional Superintendent of Police is stated to have then passed on the mobile number of one Sabir Khan (brother of the deceased), found associated with the Facebook profile, and the

details were forwarded to the O.C., Amta Police Station, and the I.C., Bagnan Police Station. The Additional Superintendent of Police is stated to have directed the person responsible for the Facebook account to be picked up.

10. Nine persons including Jiyaaur Rahman (civic volunteer), Debabrata Chakraborty (SI), Sourav Kanrar (OC Amta PS), Arijit Polley, Pritam Bhattacharya, Subir Sen, ASI Nirmal Das, Constable Jitendra Hembrem, Home Guard Kashinath Bera, Sujay Kanrar and others participated in a raid on 18th February 2022 in furtherance of the aforementioned ASP's order. The matter and proposed raid were not entered into the GD of the police. The said persons reached the house of the writ petitioner where deceased Anis Khan was stated to have reached.
11. At about 12.00 midnight, three of the aforesaid persons took positions on the rooftop of the surrounding houses, and one was at the back side of the house. Four persons went to the front door of the house.
12. One person started talking to the writ petitioner, Salem Khan, enquiring of the whereabouts of the deceased Anis Khan. Two persons went upstairs and searched for the deceased. The writ petitioner insisted that Anis Khan was not at home. One of the members of the raiding party, Kartick Pramanik, is stated to have received information over the phone from one Sujay Kanrar, Civic Volunteer, that somebody was on the rooftop. Thereafter a loud thud was heard. The victim was found lying full of blood in front of the house, appearing to have fallen from the roof. The writ petitioner-father started shouting

and his family members came out. The entire raid party fled from the scene.

13. The writ petitioner-father is stated to have called the Amta police twice at about 3.00 am, but the police did not reach the house of the deceased until about 9.00 in the morning. The writ petitioner along with his nephews and elder son took the victim immediately to Uluberia hospital, where he was declared having been brought dead. The petitioner brought back the body to the house. The body was handed over to the police after initial objection, and only after the arrival of the media. The body of the victim was taken by the police for inquest and post mortem. The post-mortem was conducted without intimation to the family members.
14. A formal written complaint was submitted by the petitioner on 19th February 2022 to O.C. Amta PS, putting his thumb impression, that was registered as Amta PS Case No. 48 of 2022, under Sections 302/201 and 34 of the IPC. The complaint is stated to have been drafted by a member of the village. The writ petitioner is illiterate and thus put his Left Thumb Impression on the complaint.
15. The incident was mentioned before this Court on 21st February 2021, by Senior Counsel appearing for the petitioner, asking for suo moto cognizance, which was taken. A formal writ petition was filed by the petitioner the next day.
16. The State submitted on the next day that a Special Investigation Team has been constituted comprising three senior IPS officers belonging to

the CID, West Bengal, and the 3rd being the Joint Commissioner of Police, Barrackpore.

17. This Court had permitted this SIT to proceed with the investigation and the 2nd post-mortem, after the body was exhumed, where another direction was passed. SIT submitted a preliminary report on 11th March 2022, indicating the progress of the investigation. A further detailed report was filed by the SIT on 19th April 2022. Counsel for the petitioner filed an objection to the said report.
18. The investigation was subsequently completed and a detailed report has been received from the SIT by this Court. This court has carefully considered and scrutinised the Case Diary, the Statements of all witnesses, statements under Section 161 and 164 Cr.PC, the FSL Reports, the Post-Mortem report, and all the written complaints filed by both the deceased as well as the writ petitioner, alongside the English translations of these complaints furnished by the Ld. Advocate for the petitioner.
19. Mr. Bikash Ranjan Bhattachariya, Senior Counsel for the writ petitioner, has assailed the investigation report, inter alia, on the ground that the conspiracy to eliminate the victim, which is the principal reason behind the police raid, has not been addressed by the SIT. It is also argued by reference to the complaints of the years 2017 and 2021, that the present political dispensation of this State had targeted the deceased on repeated occasions, and had all the motives to eliminate him. It is also submitted that the social media posts and the purported likely law and order situation because of the

participation of the deceased in the hijab and the anti-CAA protests, was a mere ruse to unleash an old vendetta of certain influential persons, and a front to eliminate him.

20. On the investigation by the SIT, it is stated that the polygraph test has been perfunctory and only three questions were put to each of the accused police personnel. The manner in which the raid was conducted i.e. by placing one policeman each on the rooftop of three surrounding buildings, the altercation between the three accused home guards and the family members of the deceased, is extremely unusual and part of the conspiracy to murder.
21. Under the garb of a raid, the accused were executing a pre-planned murder at the instance of a large number of hidden players and political leaders. It is also argued that the murder is further confirmed by reason of the fact that the deceased after falling from the rooftop, was left to die by the accused rather than being taken for immediate medical attention.
22. Ld. Advocate General, Mr. Soumendra Nath Mookherjee appearing for the State, submits that the complainant-petitioner did not mention or suggest any conspiracy in his complaint. Hence, the conspiracy angle was not even an issue before the SIT. The writ petition does not refer to any conspiracy in any detail except to annex old complaints regarding past altercation and incidents with a certain third person.
23. On the investigation by the SIT, it is submitted firstly that the exhumation of the body and the 2nd post-mortem was conducted in accordance with law, after the body was exhumed under orders of this

Court. The 2nd autopsy surgeon opined that the death was the effect of head injury, antemortem in nature. The SIT followed the investigation process strictly by the book. A sketch map was prepared. The scene and place of occurrence were re-enacted with the help of dummies by the forensic experts. The seized articles of clothing, sim cards, and mobile phones of the deceased as well as of all the accused and suspects were duly analyzed. Two persons were arrested who were part of the police team which conducted the raid. Exhumation and TI Parade was conducted in the presence of the District Judge, North 24 Parganas. The FSL and CFSL reports clearly indicated that the death was due to an accidental fall, and that the deceased was pushed from the 2nd floor. The polygraph test was conducted by the independent agency under the control of the CBI. Apart from the sound of the body falling from the 2nd floor, there were no other sounds of any scuffles, shouting or screaming by the deceased or any other persons, that have emerged from all the oral, documentary, and expert evidence.

24. The writ petitioner-father did not make any statement under Sections 161 and 164 of the Cr.P.C. of any conspiracy behind the death or murder of his son Anis Khan. The SIT therefore, did not feel the need to investigate any conspiracy angle. Reference is also made to the evidence on record that there was absolutely no scuffle whatsoever, indicating any injury other than the mechanical injury due to impact of the body on a blunt hard surface.

25. Therefore, according to the Ld. Advocate General, the conclusion of the SIT that the deceased Anis Khan died after falling from the 2nd

floor, is the most plausible conclusion. This Court does not wish to detail any other of the arguments and counter-arguments made by the petitioner and the State, since it would prejudice the prosecution and/or the defense in course of the trial.

26. This Court notes that the investigation was conducted strictly as per the Standard Operating Procedure for investigation and best practices. All evidence that has come on record, as well as FSL Reports and statements under Sections 161 and 164 of the Cr.P.C. and interrogations appear to have been considered. The State has also produced complete and full details of the steps taken by the forensic polygraph specialist, who functions under the administrative control of the Central Bureau of Investigation. All questions considering all angles, prescribed parameters of testing of the physical evidence, FSL reports medical reports, appear to have been addressed. The evidence, according to the SIT, points to acts and omissions of a set of persons including police personnel. Lapses on the part of the raiding party and the raid itself have been found faulty by the SIT. The prima facie findings against such persons are plausible, and the same is subject to the trial and findings of the Sessions Court.

27. The only question that remains is whether the SIT committed any error in not investigating the conspiracy angle as canvassed by the counsel for the petition, at the Bar. The conspiracy was that the deceased Anis Khan was an eyesore, and thorn on the side to some members of the political establishment. Admittedly, there are four FIRs registered with the Amta and Bangnan Police Station in which

the deceased Anis Khan was either an accused or substantially involved. The incidents of intimidation of the deceased by the local booth president of the ruling party occurred in early 2021. The incident at Ananda Niketan Vidyamandir occurred in 2017, while the dates when the incidents at Aliah University occurred have not been specifically mentioned by the petitioner. The reference to protests against land grabbing of Aliah University are equally vague. There is a long time-gap between the incidents in question and the death of the victim. The causal connection between the said incidents and the death of the victim appears to be rather remote. This is to be coupled with the fact that the writ petitioner-father in his written complaint or even in the statements under Sections 161 and 164 Cr.P.C. did not suggest or indicate any conspiracy behind the death of his son. No reference was made to any political vendetta for the death of his son. This Court does not, therefore, find fault with the SIT in not having considered the conspiracy angle worthy of any investigation.

28. What, however, remains to be considered is the immediate trigger that had prompted the raid in question which resulted in the unfortunate death of Anis Khan. The SIT report reveals that the Social Media Monitoring Cell of the Howrah Police District after identifying certain inflammatory posts on social media (Facebook) of some persons has prompted an enquiry about the same. The situation at the relevant point of time in South Bengal was indeed volatile and concerning, in view of the agitations in relation to the Hijab issue that originated in the State of Karnataka.

29. About 25 persons who were responsible for such posts, were traced out, contacted, and had removed the said offensive and sensitive posts. Proceedings under Section 107 of the Cr.PC were drawn up against a few other persons. The Howrah Police, therefore, zeroed down on a few remaining posts and their Facebook account holders. Given the public-spirited background of the deceased and his Facebook posts, it is quite plausible that the Howrah Police might have been on a lookout to identify and access the deceased.
30. The explanation offered by the SIT that the above FIR of 2014 was not the actual reason but only an additional ground to apprehend the deceased for suspicious conduct at a time when communal tensions were running high, however, cannot be ignored. The reasons advanced by the SIT in this regard are plausible.
31. The SIT had analysed the statements of all the persons interrogated, including those under Sections 161 and 164 Cr. P.C.; the result of the polygraph test, the forensic evidence; analysed the call records of all the persons involved, the phone data of all persons, reconstructed the scene of the crime, the 1st, and 2nd post-mortem report, the evidence of the medical personnel, the sketch map of the scene of crime and re-enactment thereof, the result of the polygraph test, and have, prima facie, arrived at a conclusion of evidence against offenses under the relevant Sections of the IPC against the following persons:

i. 120 (b) r/w 342/452 IPC:

1. SI Debabrata Chakroborty, the then O/C of Amta PS
2. CVF Sourav Kanrar
3. ASI Nirmal Das
4. HG Kashinath Bera

5. CVF Pritam Bhattacharjee

ii. 120(b) substantive offence:

1. SI Debabrata Chakroborty, the then O/C of Amta PS
2. CVF Sourav Kanrar

iii. 452 IPC (substantive offence):

1. ASI Nirmal Das
2. HG Kashinath Bera
3. CVF Pritam Bhattacharjee

iv. 304(A) IPC:

1. ASI Nirmal Das
2. HG Kashinath Bera
3. CVF Pritam Bhattacharjee

v. 341 IPC:

1. ASI Nirmal Das
2. HG Kashinath Bera
3. CVF Pritam Bhattacharjee”

32. This Court has consciously not referred to the complete details of the investigation report as it may prejudice the parties in the trial.

33. The investigation conducted by the SIT is in order, as of now. Charge-sheet shall be filed immediately. The SIT always has powers to conduct further investigation, inter alia, upon discovery of new evidence and file supplementary charge sheets, if necessary. The Trial Court has powers under Sections 311 and 319 of the Cr. P.C., which are wide enough to include any other matter in course of trial and find any other person than those to be named in the charge sheet to be filed.

34. A court is required to exercise great care and caution before ordering transfer of investigation to a third party. Reference in this regard is made to paragraphs 70 and 71 of the decision of the Supreme Court

in **State of W.B. v. Committee for Protection of Democratic Rights**

reported in **(2010) 3 SCC 571**, wherein it was noted 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.

71. In Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya [(2002) 5 SCC 521 : 2002 SCC (L&S) 775] this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”

(emphasis added)

35. In the instant case, the SIT itself has implicated some police officials in its investigation report, finding fault with the manner and conduct of raid. The petitioner’s apprehension that the accused police officers would be shielded by the police, is therefore devoid of merit. In the facts of the case, merely because some police officers are involved there is no need for apprehending of impropriety in the investigation or the trial as the SIT is comprised of very highly ranked police personnel. Any other omission or mistake in future can be addressed under the provisions of the Cr.PC.

36. When the trial commences, the Sessions judge shall proceed to deal with the same independently, completely uninfluenced by the observations made hereinabove. This Court's observations and findings as above are only for the purpose of addressing the prayers made by the petitioner in this writ petition, and not for any other purpose.
37. For the reasons stated hereinabove, this Court is of the view that there is no need for transfer of investigation to any third agency. The prayer for transfer of investigation to the CBI is refused.
38. It is expected that the charge-sheet is put up for committal and the trial is commenced and concluded expeditiously, but not later than six months from the date of committal.
39. The writ petition is disposed of.
40. There shall however be no order as to costs.
41. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)