

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15733 of 2017

Date of Decision: 28.07.2022

Dharamveer Singh

---Petitioner

versus

State of Haryana and others

---Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Deepanshu Matya, Advocate
for the petitioner

Mr. Deepak Grewal, DAG, Haryana

Mr. J.S.Ahlawat, Advocate
for respondents No. 4 to 9

Mr. Nitin Kumar Sharma, Advocate
for Ms. Shubhra Singh, Advocate
for respondent No. 10-CBI

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for issuance of necessary directions to respondent No. 1 to hand over the investigation in case bearing FIR No. 1025 dated 28.12.2015 under Sections 364-A, 302, 201, 506 and 34 of the Indian Penal Code, registered at Police Station Camp. Palwal, District Palwal, to an independent agency or to the CBI.

The averments contained in the petition, in brief, are to the effect that Ajayvir (since deceased) son of the petitioner, was allegedly abducted on 27.12.2015 and was suspected to have been killed by the private respondents for the reason that he was in a relationship with a girl namely Jaya Bhardwaj (since deceased), daughter of respondent No. 4. It is

submitted that the son of the petitioner being in a relationship with the daughter of private respondent No. 4 was not to the liking by the father of the deceased Jaya Bhardwaj. His son left the house on 22.12.2015 to take tuition classes at Lal Institute Ballabhgarh and did not return.

A dead body was thereafter recovered on 28.12.2015 which was identified as that being of deceased Ajayvir whereupon the aforesaid FIR was registered. The private respondents were arrested by the police. A post mortem examination was conducted by a Board of four Doctors in the General Hospital, Palwal. The opinion given by the Doctors, who conducted the post mortem, is extracted as under:-

“The cause of death in this case was asphyxia as result of strangulation and antemortem injuries as entered in the PMR. However, viscera has been sent for chemical analysis at FSL, Madhuban.”

Thereafter, the dead body of Jaya Bhardwaj was also recovered from the canal on 04.01.2016 and postmortem was got conducted from PGIMS, Rohtak.

Learned counsel appearing for the petitioner has alleged that deceased Jaya Bhardwaj had written a letter to the petitioner pointing out that she had been beaten by her parents which shows that the private respondents were actively involved in the commission of the aforesaid offence of honour killing. He further contends that the postmortem report also shows that the deceased Ajayvir had sustained as many as 18 injuries on his body and as per the opinion of the doctor conducting post mortem, the said injuries were ante-mortem in nature. He contends that the Investigating Agency has not been carrying out a fair and impartial probe

since father of deceased Jaya Bhardwaj is a senior office bearer of the RSS. He further contends that the Investigating Agency is further being pressurized by a local member of Legislative Assembly who is also an incumbent Minister in the Cabinet. Even though allegation was also levelled against the Chief Minister, Haryana, however, learned counsel appearing on behalf of the petitioner gave up the said argument.

Pursuant to the notice issued to the respondents, reply by the respondent-State as well as the private respondents had been filed in this Court alongwith requisite documents.

In its reply filed by way of affidavit of Aman Yadav, ACP, City, Ballabgarh, the respondent State responded as under:-

“3. That on 23.12.2015 Rakesh Kaushik, S/o Sh. Deen Dayal, R/o Kaushik Farm House, Chawla Colony, Ballabgarh made call to the police control room Faridabad that Ramesh Bhardwaj, R/o H.No. 2842, Sector-3, Faridabad has unlawfully restrained their children and gave beating to them, the caller also made request to reach the spot. After having received the said information from the police control room in Police Post Sector-3 Faridabad, ASI Madan Lal Duty Officer alongwith other police personnel went to disclosed place, where Rakesh Kaushik, Ramesh Bhardwaj, Piyush Bhardwaj and some neighbours met them. upon enquired from them it was stated that there was scuffle between children of Ramesh Bhardwaj and Rakesh Kaushik and the matter has been amicably settled. The caller was agreed that he does not want proceedings against them. In this regard Daily Diary Entry No. 11 dated 23.12.2015 was recorded in Police Post Sector-3 Faridabad.

Keeping the facts and circumstances stated above the matter is non cognizable and as such Rapat was recorded in Police Post Sector-3 Faridabad.

4. That on 24.12.2015 Sh. Ramesh Bhardwaj, S/o Girdhari Lal, R/o 2842 Sector-3 Faridabad present himself in Police Post Sector-3 and moved an application to the Incharge Police Post Sector-3 Faridabad. After verifying the facts from him and from the record, he recorded police proceedings upon the application, thereafter a Tehrir was sent to Police Station Sector-7 Faridabad for lodging FIR through constable Devender. Upon which a case FIR No. 812 dated 24.12.2015 under Sections 365 and 34 IPC was registered against Ajayveer @ Saurabh, S/o Dharambir, R/o Arya Nagar Ballabgarh and others at P.S.Sector-7 Faridabad for unlawfully restraining and kidnapping of daughter of complainant.

5. That after registration of the case, the matter was entrusted to Incharge Police Post Sector-3 Faridabad for investigation who verified the facts from the complainant and also enquired from the neighbourer including family members of alleged persons on 24.12.2015. An application was moved to Incharge Cyber Cell Sector-30 Faridabad and call details of Tata mobile No. 9211159723 of Jaya Bhardwaj and mobile No. 9211176374 of Ajayveer @ Saurabh were obtained from Cyber Cell Sector-30 Faridabad. Investigating Officer had also made efforts to trace the alleged persons and flash wan message to all SHOs of District Faridabad and adjoining area of the police station of other District Palwal for informing missing person Jaya Bhardwaj and pamphlets also published in the public places, cinema halls, railway station, bus adda etc. Investigating Officer has also enquired from the friends of both the parties, but no clue arrived against the alleged persons at that time.

6. That on 25.12.2015 while he was on patrolling and checking for detection of crime, then Incharge received message from P.P.IMT P.S.Sadar Ballabgarh that Scooty make Honda is lying. Immediately he alongwith police personnel of Police Post Sector-3 Faridabad visited at disclosed place and efforts

were made to the passersby to join investigations and also enquired about the missing Jaya Bhardwaj from them, they refused to join investigation and stated their inability. The then Commissioner of Police Faridabd, vide his office No. 24026-28 dated 26.12.2015 has transferred investigation of the said case to the DCP Crime for further investigation as complainant has levelled allegations against Ajayveer @ Saurabh and others regarding unlawful restrain and abduction of her daughter.

7. That on 27.12.2015 information was received in Camp Police Station Palwal that a dead body of unknown person was seen in Nala near Asawta District Palwal. Immediately police official of P.S.Camp Palwal went to the disclosed place and flash message to the adjoining police stations regarding recovery of dead body of male person and request for identification. Then called Umesh and others who appeared in police station and identified the unknown dead body of Ajayveer @ Saurabh, who was son of the petitioner. After recording the statement of Umesh, S/o Bijender, R/o Unchagaon, Yadav Colony, Ballabgarh a case FIR No. 1025 dated 28.12.2015 U/s 302, 201, 34 IPC was recorded in Police Station Camp Palwal against the alleged persons named in the complaint.

During the investigation of the said case inquest proceedings were conducted of the police official of P.S.Camp Palwal and thereafter dead body of Ajayveer @ Saurabh was sent to the Govt. Hospital Palwal for conducting post mortem on 28.12.2015 and dead body was handed over to his relatives.

8. That the present petition has been filed for issuance of directions/order to respondent to conduct fair investigation in FIR No. 1025 dated 28.12.2015 U/s 201, 302, 364A, 34, 506 IPC of P.S.Camp Palwal from some higher officer or independent agency. Whereas said FIR has been transferred to District Faridabad and petitioner filed petition before this Hon'ble Court without any substance or material and has

concealed the material facts.

In fact zero FIR was registered at Camp Palwal and thereafter it was transferred to District Faridabad upon which a case FIR No. 919 dated 28.12.2015 U/s 364-A, 201, 302, 34, 506 IPC was registered against the alleged persons in P.S.City Ballabgarh.

Further investigation of this case was entrusted to Incharge Police Post Aggarsain Chowk Ballabgarh. Whereas the Commissioner of Police Faridabad vide his office Memo No. 923-929 dated 29.12.2015 has issued directions for constituting SIT and further investigation of this case was handed over to undersigned including five other members who are expert of the matter including Incharge Cyber Cell, Incharge Crime Branch and Incharge Police Post Aggarsain Chowki. They were further directed to investigate this case according to law. The copy of the direction of Commissioner of Police Faridabad has placed on record as Annexure R-1 for kind perusal.

The dead body of Jay Bhardwaj was recovered on 4.1.2016 near Kosi Agra Canal and after getting postmortem handed over to her relatives.

9. That after having received the direction from the Commissioner of Police Faridabad further investigation of this case FIR No. 919 dated 28.12.2015 was carried out by members of team of SIT in this matter.

During the investigation alleged persons namely Ramesh Bhardwaj, Ravinder had joined and arrested on 29.12.2015, after medical examination they were produced before the Area Magistrate, Faridabad and an application for police remand was moved against Piyush Bhardwaj and remaining two persons sent to judicial custody. On 3.1.2016 alleged person Deepak Bhardwaj had joined and arrested in this case and police remand was requested which was allowed till 7.1.2016. Thereafter, they were produced before the Ld. Area Magistrate Faridabad who sent them in judicial custody.

In the meanwhile some new facts arrived in investigation which reveal that the call details of mobile phone of Ramesh Bhardwaj and Deepak bearing No. 9873383801 and No. 9999088499 for the relevant period were obtained from the Cyber Cell which reflected location of mobile found Tehsil Karjan, District Varoadra (Gujrat) on 22.12.2015. Similar call details of Chirag Mobile No. 8469917992 and 7065615737 were obtained. After verification, it was found that on that day alleged persons were in the area Varoadra (Gujrat). During the investigation, Investigating Officer has also obtained call details of mobile of Ravinder Bhardwaj bearing No. 7404989139 and CDR record. The statement of witnesses reveals that the said persons were in Varoadra (Gujrat) and Rohtak (Haryana) on that day.

Now Director FSL Haryana Madhuban had sent report of FSL dated 22.1.2016 and 25.1.2016 that diatom could not be detected and no common poison could be detected in exhibit 1a, 1b & 1c

During the investigation of this case, various applications bearing No. 99-D dated 29.3.2016, letter No. MLA16/16 dated 14.03.2016 and No. MLA/16/19 dated 25.3.2016 had moved to the State Medico-Legal Advisor Sr. Professor Head, Department of Forensic Medicine PGIMS Rohtak for clarifications regarding facts mentioned in PMR of Ajayveer.

Now in this regard Dr. S.K. Dhattarwal of State Medico-Legal Advisor Sr. professor Head, Department of Forensic Medicine PGIMS Rohtak vide his office D.O.No. MLA/2016/20 dated 29.3.2016 has informed parawise which is as under:-

i) Based on the observations of videography of the Post Mortem Examination and perusal of postmortem report; the above mentioned body of deceased Ajayvir son of Dharamvir was in advanced stage of putrefaction. Therefore, the

possibility of misinterpretation of postmortem changes and artifacts with ante-mortem injuries cannot be ruled out. In addition as mentioned in various standard text books of Forensic Medicine and Toxicology; it is possible that the accumulation of blood in the tissues of the neck in drowning may simulate ante-mortem hemorrhage due to strangulation. The pressure of gases produced due to decomposition may lead to pseudobruising due to hypostasis and displacement of internal pools of blood.

ii)It is possible that the diatom report may be negative in a case of death due to drowning, wherein the mechanism of death may be due to laryngeal spasm or vagal inhibition. Vagal inhibition caused sudden cardiac arrest from fright or terror, or it may be caused during a sudden and unexpected fall in water.

iii)Any of the long bones such as femur, humerus or tibia can be sent for the detection of diatoms in a suspected case of death due to drowning. Query regarding the condition or aptness of the sample, usually full long bone is always a better option to be sent than a piece of part of long bone.

iv)Regarding the eighteen injuries mentioned in the post mortem report of deceased Ajayvir son of Dharamvir, none of the injuries mentioned is individually fatal.”

Keeping the facts and circumstances stated above and facts verified from the records which reveals that their names have been falsely implicated in this matter by the complainant.

In this regard Investigating Officer moved an application dated 30.03.2016 before the Area Magistrate Faridabad requesting him for discharging the alleged persons

Ramesh, Ravinder Bhardwaj, Piyush and Deepak. After perusing the facts mentioned in the application, Ld. Area Magistrate Faridabad had passed order, in which they were discharged from the proceedings pending against them.

10 During the investigation best efforts had been made to collect evidence against alleged persons, but in vain. It is wrong to suggest that investigating officer did not take necessary action and conducted investigation in accordance with law.

11. That investigation of this case has been conducted in accordance with law conducted by SIT constituted by the then Commissioner of Police Faridabad and members of team of SIT have made efforts from various angles and also sought opinion from the expert PGIMS Rohtak in this matter.

Thereafter facts arrived on record that Jay Bhardwaj and Ajay @ Saurabh S/o Dharambir love each other. From the call details and location they were present at bank of Agra Canal where Jaya's Scooty was found unclaimed. Both jumped into Agra Canal and commit suicide and died due to drowning. These facts corroborated from call details of 22.12.2015. The dead body of deceased Ajay @ Saurabh was recovered from Agra canal in the area of Palwal on 27.12.2015.

Whereas a case FIR No. 919 dated 28.12.2015 U/s 364A, 302, 201, 506, 34 IPC was registered against Ramesh Bhardwaj, Piyush, Chirag and Ravinder etc. at P.S.City Ballabgarh. During the investigation, the said alleged persons had joined investigation and arrested in this matter. The investigation of SIT reveals that allegations levelled against them were found false. Thereafter application was moved before the Ld. Area Magistrate Faridabad and they were discharged from the court on 03.02.2016.

Similarly on the basis of complaint of Ramesh, a case FIR No. 812 dated 24.12.2015 U/s 365, 34 IPC was registered against Ajayveer @ Saurabh, S/o Dharambir, R/o

Arya Nagar Ballabgarh and others at P.S.Sector-7 Faridabad for unlawfully restraining and kidnapping the daughter of the complainant. After investigation the allegations levelled against the alleged persons were found false and baseless. In fact deceased Ajayveer jumped into Agra Canal and died due to drowning. Therefore, cancellation report was prepared against them on 9.7.2016 by the then Inspector SHO P.S. Sector-7 Faridabad. Information regarding closure of investigation was served upon the complainant and complainant was appeared before the area Magistrate Faridabad who raised objection in this matter. The matter is sub-judice before the Ld. Area Magistrate Faridabad for judicial verdicts in this matter, whereas the petitioner has not exhausted remedy before the court in this matter and as such the present petition being devoid of merit is not maintainable and liable to be dismissed.”

A separate response was also filed by CBI (Respondent No. 10) wherein the agency pleaded being over-burdened on account of its strength and the case of original jurisdiction as well as entrustment by various High Courts across the Country. It was also contended that the necessary pre-requisites for referring the case to CBI are not made out.

The investigation of the case was thereafter transferred to DCP Crime Faridabad by the Commissioner of Police, Faridabad vide his office Memo No. 24231-83/Reader dated 29.12.2015. A Special Investigation Team was constituted by the DCP to be headed by ACP Crime, assisted by Inspector Crime, Inspector Incharge Cyber Cell, Incharge Aggarsain Chowk, Incharge Crime Branch, Badarpur with a direction to deploy all scientific methods.

An additional affidavit was thereafter filed by State of Haryana on 16.01.2018 giving details of further investigation conducted in the matter

and also appended the report of the State Medico-Legal Advisor-cum-Professor and Head of Forensic Medicine, PGIMS, Rohtak alongwith the final report.

No counter to the said Additional affidavit or report of the State Medico-Legal Advisor was filed to dispute the opinion of the expert.

Vide order dated 22.03.2022, the Commissioner of Police, Faridabad was directed to re-verify the entire investigation and file his affidavit.

This was thus a third examination of the investigation conducted.

In compliance of the said order, the affidavit of the Commissioner of Police, Faridabad dated 12.05.2022 has been filed. The relevant extract of the said affidavit is reproduced hereinbelow:-

“8. That in compliance of the order dated 22.03.2022, the present affidavit is being submitted after re-verifying the investigation.

9. That in the Post Mortem (Annexure P-2), following injuries were found on the body of the deceased:-

a) Reddish brown abrasion mark present directly in front of right pinna at temporomandibular joint.

b) Abrasion 3 x 2 cm present just lateral to angle of mouth.

c) Multiple bluish black contusions present over right cheek, small sized lied about 2 and 2 ½ inch lateral to right angle of mouth.

d) Abrasion 2 x 1 cm present over left upper eyelid.

e) Reddish brown abrasion present on dorsolateral aspect about 3 x 1 inch over upper 1/3rd of right forearm.

f) Reddish brown abrasion present about 1 inch lies lateral and above to injury 6.

g) Abrasion reddish black in colour present on dorsal aspect of right hand in size 3 x 1 inch placed horizontally over

base of first 4 metacarpal.

h) Abrasion on left hand placed horizontally 1 x 1 inch in size on dorsal surface.

i) Abrasion in circular in shape 1 inch in diameter present on left forearm upper 1/3rd zone.

j) Abrasion present 3 1/2 x 1 1/2 inch over left hand over base of 1st to 4th metacarpal on dorsal surface.

k) Abrasion about 1 x 1/2 inch present on dorsal surface of thumb on left hand.

Multiple abrasions over dorsal surface of right foot at base of 2nd and 3rd digits.

l) Abrasion present on dorsal aspect of 2nd and 3rd digit 1 x 1/2 inch in size of left foot.

m) Abrasion reddish brown in colour 2 x 1 inch present over anterolateral surface of right forearm in lower 1/3rd zone.

n) Abrasion about 1 x 1 inch present on dorsal surface at base of thumb right hand.

o) Abrasion present over left foot 3 x 1 inch on dorsal surface.

p) Multiple abrasion present on dorsal surface of right foot on base of 2nd and 3rd digit.

q) Boggy swelling with abrasion over left side of forehead above left eyebrow.

A lacerated wound present on left side of rectum 2 x 1 CM. on dissection of above mentioned injuries extravasation of blood seen in underlying soft tissue.

10. That during the detailed investigation, the opinion of “State Medico-Legal Advisor, Government of Haryana” was solicited. In his expert opinion, regarding the cause of death of deceased Ajayvir, Dr. S.K. Dhatarwal (Senior Professor and Head of Department of Forensic Medicine, PGIMS, Rohtak) submitted his report dated 29.03.2016. The findings of his report are as under:-

“Based on the observations of videography of the Post Mortem Examination and perusal of postmortem report; the

above mentioned body of deceased Ajayvir son of Dharamvir was in advanced stage of putrefaction. Therefore, the possibility of misinterpretation of postmortem changes and artifacts with ante-mortem injuries cannot be ruled out. In addition as mentioned in various standard text books of Forensic Medicine and Toxicology; it is possible that the accumulation of blood in the tissues of the neck in drowning may simulate ante-mortem hemorrhage due to strangulation. The pressure of gases produced due to decomposition may lead to pseudobruising due to hypostasis and displacement of internal pools of blood.

It is possible that the diatom report may be negative in a case of death due to drowning, wherein the mechanism of death may be due to laryngeal spasm or vagal inhibition. Vagal inhibition caused sudden cardiac arrest from fright or terror, or it may be caused during a sudden and unexpected fall in water.

Any of the long bones such as femur, humerus or tibia can be sent for the detection of diatoms in a suspected case of death due to drowning. Query regarding the condition or aptness of the sample, usually full long bone is always a better option to be sent than a piece of part of long bone.

Regarding the eighteen injuries mentioned in the post mortem report of deceased Ajayvir son of Dharamvir, none of the injuries mentioned is individually fatal.”

(The report is annexed as Annexure R-1). The Diatom Test Report from Forensic Science Laboratory, Haryana Madhuban, Karnal was also obtained. That report also do not suggest of any foul play. (The FSL Report is annexed as Annexure R-2).

11. *That in order to investigate the matter further, the police team interrogated the doctors of Govt. Hospital, Palwal who performed the autopsy. The details of interrogation and the statements of doctors are annexed as Annexure R-3, R-4 and R-5 (along with Vernacular Version). From the statements of the*

doctors, it appears that there was enormous pressure on the administration to solve the matter as the family members and other persons sat on a Dharna and blocked the road, demanding the arrest of persons responsible for the death of deceased Ajayvir. During interrogation the doctors who performed autopsy have stated that they usually referred the dead body more than 3 days old but in the present case they performed post-mortem of dead body which was 6 days old due to law & order situation and on the direction of senior officers. They further stated that generally a long bone such as femur, humerus or tibia is being sent for the detection of death from drowning from the bone marrow sample but in this case they had sent small piece of Right Tibia Bone because they have no proper equipments to retrieve the full part of bone.”

Learned counsel appearing on behalf of the petitioner has placed reliance on the postmortem report given by the doctors and contends that the cause of death given in the post mortem report is as a result of strangulation and ante-mortem injuries and as such, it was a clear case of homicidal death of Ajayvir. The said argument, although may sound convincing as a stand alone submission but has to be rejected since the affidavit filed by the Commissioner of Police, Faridabad, clearly shows that the opinion regarding the cause of death of deceased Ajayvir was obtained from a Senior Professor and Head of the Department of Forensic Medicine, PGIMS, Rohtak and in his report dated 29.03.2016, he had clearly submitted that when the body of deceased Ajayvir was recovered from the canal, it was in an advance stage of putrefaction and that there is a huge possibility of misinterpretation of postmortem changes and artefacts with ante-mortem injuries. It has also been stated in the aforesaid report that as per the standard text books of Forensic Medicine and Toxicology, it is possible that accumulation of blood in the tissues of the neck in drowning

may simulate ante-mortem hemorrhage due to strangulation. Furthermore, the pressure of the gases produced on account of decomposition may lead to pseudo-bruising due to hypostasis and displacement of internal pools of blood. Moreover, the additional affidavit also shows that the team of the doctors of the Govt. Hospital, Palwal, who had performed autopsy were also interrogated and their statements have been appended along with the additional affidavit. The doctors have not disputed the report given by the Professor and Head of Forensic Medicine, PGIMS, Rohtak and had rather specifically stated that the body of the deceased Ajayvir was decomposed and that the senior officers had compelled them to carry out autopsy. Considering the law and order situation, the same had to be done. The relevant questions and answers of the Doctors are reproduced hereunder:-

“Question: When you conducted postmortem of deceased Ajayvir, if his body was decomposed. If it was decomposed then why did you not refer his body?”

Answer: The body of deceased Ajayvir was decomposed. Our senior officers compelled us to do autopsy. Considering the law and order situation we had to conduct postmortem.

Question: On one hand you sent the body sample for Viscera and Diatom test and on the other hand you explained the cause of death in the report. Why did you not wait the report of FSL?

Answer: At that time there was enormous pressure of our seniors and public upon us. We were asked to give our opinion immediately. In that situation we gave opinion based upon our experience only. We mentioned in the report which we found reasonable.”

It is evident that the doctors conducting the postmortem had given their opinion on account of enormous pressure of the seniors and public, as per the statement so given by them. Besides, they have also said that their opinion is only on the basis of experience and not as a result of

scientific examination of the injuries and conclusions drawn on the basis of adjective assessment based upon results of the Forensic Science Laboratory examination.

In view of the uncontroverted and undisputed report furnished by the expert Senior Professor and Head of Department of Forensic Medicine, PGIMS, Rohtak and the statements made by the doctors conducting the postmortem that they had been giving the opinion after postmortem on the basis of experience only and due to enormous pressure from senior officers as well as the public, the reliance placed on the postmortem report (Annexure P-2) by the petitioner cannot be given much weightage. Even though a period of nearly four years had elapsed since a copy of the report of the expert had been filed in Court, however, no material has been filed to dispute the report of the State Medico-Legal Advisor. No argument or material has been referred to substantiate as to how the report is liable to be rejected or is based on erroneous application of medical jurisprudence.

While referring to the second argument raised by learned counsel for the petitioner that deceased Jaya Bhardwaj had purportedly forwarded a letter to the son of the petitioner about having been beaten by her parents, the said argument does not by itself amount to evidence regarding the involvement of the private respondents in commission of offence of murder. The said letter can, at best, be a secondary piece of evidence which may at best establish that the private respondents were not happy with the relationship that deceased Jaya Bhardwaj had with deceased Ajayvir. Any further reading into such letter would be a premature jump to a conclusion rather than appreciation and assessment of the evidence

collected by the Investigating Agency.

So far as the third argument raised by the counsel for the petitioner is concerned, the same relates to the Investigating Agency not conducting an impartial probe alleging that the father of deceased Jaya Bhardwaj-respondent No. 4 herein is a senior functionary of RSS. The said argument is not substantiated in any particulars. The petitioner has not even given any detail about the post/assignment held by respondent No. 4. There is nothing even to remotely suggest that the said respondent is a member of RSS. There is also nothing to suggest that the respondent No. 4 is closely linked to the local MLA-incumbent Minister in the Government. The allegation of political influence is vogue. No prima facie proof of any association, leave apart influence, has been appended with the petition even though the case has remained pending for five years.

Besides, the said MLA has also not been impleaded as a party which shows that the allegation has been levelled without actually intending to substantiate the same or to afford any opportunity to the said Minister to respond to the same.

Apart therefrom, a specific query was also raised to the counsel for the petitioner as to whether he had any suspicion regarding the Investigating Agency being aligned to respondent No. 4 and as to whether any officer who conducted the investigation had a partisan approach during the investigation. Learned counsel has failed to advert to any material or allegation against the members of investigating team or its witnesses or to substantiate that there is an evident bias by the Investigating Agency and/or the senior officials in the Commissionerate of Police to be going out of the way to shield an accused.

In the absence of any allegations prima facie establishing that the Investigating Agency had a premeditated bias against the petitioner or was wanting to unduly favour the suspects or any substantiated averment or any reference to any evidence, such apprehensions cannot be accepted as sufficient proof to discredit the Investigating Agency or to stash away the scientific investigation and evidence collected by them.

The question which next arises is as to whether it is a fit case for reference to the CBI for investigation or not. The Hon'ble Supreme Court of India has laid down certain guidelines for referring the matters to the CBI in the matter of **State of West Bengal vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571**, which reads as under:-

46. 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. In so far as the question of issuing a direction to the 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 extra-ordinary 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 the 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.

47. In Secretary, Minor Irrigation & Rural Engineering Services, U.P. & Ors. v. Sahngoo Ram Arya & Anr., 2002(3) RCR (Criminal) 413 : 2002(2) S.C.T. 1090 : (2002) 5 SCC 521, this Court had said that an order directing an enquiry by the 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 the CBI or any other similar agency. We respectfully concur with these observations”

A perusal of the facts noticed and law above shows that there is no valid basis to suspect that the investigating agency has conducted a shoddy investigation that would erode confidence of any reasonable and objective person. Apart from above, there has been a multiple cross verification of the investigation conducted by SIT, supervised by DCP and then re-verified by the Commissioner of Police himself. There is no material to dispute the scientific evidence collected during investigation. Besides, petitioner has also not been able to substantiate any allegation of bias or malice or even the political influence, leave apart the large number of experts who were associated during investigation. It is indeed unfortunate that young persons, in the prime of their life, had to take a decision to abruptly end their lives believing that the dogmatic societal mentality would not accept their relationship. Cherishing and ballooning self ego at the loss of loved ones has never done any good to society or

families that suffer the loss but try to find solace in the worn armour of honour.

The incident, though a scar on humanity, would not however be used as a means to vex someone still further for offence of homicide when the investigation reveals a suicide.

In view thereof, the present petition is bereft of merit. No ground *per se* are made out for referring the present case for investigation to the CBI. The petitioner, if so advised, would be at liberty to take recourse to the alternative remedy(ies) available to him, in accordance with law before the Illaqa Magistrate.

The observations recorded hereinabove are only in the context of the prayer made in the petition for referring the matter to the CBI for further investigation and is not an expression regarding the existence of any culpable cognizable offence or not. The said aspect shall be determined by the trial court as per law, without being influenced by the observations recorded herein.

Petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

28.07.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes