

CRM-M-21787-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-21787-2022 (O&M)

Date of decision: 04.09.2023

Mustak

....Petitioner

V/s

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Singh Saini, Advocate for the petitioner.

Mr. Karan Garg AAG Haryana.

Mr. Rajeev Anand, Advocate for respondent No.4-CBI.

ARUN MONGA, J. (Oral)

Present petition has been filed under Section 482 Cr.P.C. for handing over the investigation to Central Bureau of Investigation (CBI) to conduct fair and thorough investigation in case FIR No.0034 dated 23.02.2021 registered under Section 302 read with Section 34 IPC at Police Station Nuh, District Nuh with a further prayer seeking direction to DGP, Haryana to constitute a SIT for the purpose of thorough and proper investigation in the aforesaid FIR.

2. The facts giving rise to present petition succinctly are:-

3. On 22.02.2021, after having dinner together with the entire family, deceased Rizwan and other family members went to their respective rooms to sleep. In the morning, around 07:15 a.m, a call was received by petitioner from the local police that dead body of his brother, namely, Rizwan was lying around 2-3 kilometres away from home on new by-pass road near canal. Mobile phone of the deceased was also found lying near his dead body. Petitioner along with other family members reached the spot. After identification, the dead body was sent to local civil hospital for post-mortem. Various injuries were found on the body of deceased Rizwan. FIR No.34 dated 23.02.2021 under Section 302 read with Section 34 IPC was registered at Police Station, Nuh against unknown person.

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Investigation ensued. During the course of investigation, it was found that deceased received a phone call on the night intervening from Shifa daughter of Salauddin, who happens to be influential person, whereafter he left the house at around 04:15 a.m. This was also captured in the CCTV camera installed outside his house. It was later discovered that deceased Rizwan and Shifa were in friendly relationship and used to communicate with each other over phone. The said fact can also be illustrated and demonstrated by photographs which are annexed with the petition.

4. Learned counsel for the petitioner contends that despite providing overwhelming evidence to Police, no action has been taken which raised suspicion about inertia of the police. Thereafter, two detailed representations dated 16.03.2021 and 24.04.2021 (Annexures P-4 & P-5 respectively) were given to Police but no action has been taken which necessitated the petitioner to approach this Court vide CRM-M-31284-2021. The said petition was disposed of by coordinate Bench of this Court and a direction was issued to Superintendent of Police, Nuh, Mewat to ensure that matter pertaining to death of brother of petitioner be got investigated expeditiously in accordance with law so that final report be submitted thereafter at the earliest. Despite specific directions issued by this Court for ensuring expeditious investigation, nothing has been done by the Police and all the accused are at large and roaming scot free.

5. Learned counsel further submits that brother of the petitioner, namely, Rizwan was murdered on the night intervening 22.02.2021 and 23.02.2021, in respect of which present FIR has been registered.

6. Learned counsel also submits that although a period of more than one year had elapsed after lodging of FIR when this petition was filed on 16.05.2022 but till date the police has not arrested any accused. It has been submitted that immediately before the death of the petitioner's brother, there had

been long conversation between the phone number used by petitioner's brother and mobile phone 9813237171, which has been registered in the name of Salauddin used by his daughter, who was on friendly terms with petitioner's brother. It has been contended that Salauddin is an influential person and in order to favour him, police is now proceeding to present a cancellation report without examining the call details recorded between petitioner's brother and Shifa, daughter of Salauddin. According to learned counsel, said call details would be material piece of evidence.

7. Learned State counsel has filed status report by way of an affidavit of Varun Singla, Superintendent of Police, Nuh on 1704.2023. Para 7 thereof reveals as under:

“7. That on 24.02.2022, scene of crime team has visited at the spot and inspected the same. On 25.02.2021, Salauddin and his daughter namely Sifa were joined in the investigation and she stated that she was on talking terms with Rizwan since December 2020 through SMS, her family members were not aware about it. After chatting, she got deleted the messages from the mobile. In the night of 22/23.02.2021, a call was received from the mobile number of Rizwan at around 2:00 AM and talked with her. Thereafter, at around 5:30 AM, WhatsApp call was received from the mobile number of Rizwan on her mobile and talked with him. In the meantime, voice of Rizwan was suddenly stopped from the Rizwan's side, but noise of traffic was listening and she disconnect the call and she again called to Rizwan for 2/3 times, but Rizwan did not pick the call. After that she felt asleep. In morning at around 11/12 O'clock, she heard that Rizwan has passed away. On 26.02.2021, CCTV Footages of the surrounding of the spot were checked. In the CCTV Footage of JK Fast food hotel at about 05:37 A.M., a Pick-Up is found to be gone from the side of spot to Nalhad road, but registration number could not be seen due to its fast speed. Mumtaz wife of Salauddin son of Jamil Ahmed, his brother Jalauddin and Tarif son of Unus R/o Salahedi Nuh, on the basis of Suspicion, hence they were got joined into the investigation and interrogated on 30.05.2021. It is further submitted that dump of the place of occurrence was also obtained and CDR of all the suspected number were matched and it was revealed that the mobile numbers of the family members of Shifa were not found in dump of the concerned tower or at the place of incident.”

8. A perusal of the aforesaid contents shows that all was not hunky dory with the investigation. In view of the aforesaid stand taken by the prosecution itself, police ought to have carried out further investigation in deeper details than has been done in the case herein. Merely on the basis of conjectures and surmises, the findings have been rendered by the investigating agency that it appears to be a case of death in vehicular accident.
9. No attempt seems to have been made to unearth the reality by recording the statements of the family members of the deceased about his supposed death in vehicular accident.
10. In the overall premise, petition is disposed of with a direction to respondent No.2 to assign the case to an Officer not less than the rank of Additional Director General of Police, to conduct thorough investigation in accordance with law to ascertain the circumstances leading to the death of Rizwan, cause of his death and to identify the culprit.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 04, 2023
Ajay

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