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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 23.01.2024***

+ **W.P.(CRL) 856/2019**

NOOR JAHAN

..... Petitioner

Through: **None.**

versus

STATE & ORS.

.... Respondents

Through: **Mr.Sanjay Lao, standing counsel with
Ms.Priyam Agarwal and Mr.Abhinav
Kr.Arya, Advocates for State with SI
Jitender Kumar, PS AHTU/
Cr.Branch.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Present petition has been filed as Habeas Corpus under Article 226 of the Constitution of India seeking directions to the respondents to produce missing son of the petitioner; call for record of telephonic conversation between petitioner and her son; and call for records of action taken by the respondents with regard to complaints in different police stations qua missing son of petitioner.

2. The petitioner is aggrieved by the fact that on 18.07.2018, the petitioner reported that her son Mohd. Sabir aged about 17 years and 11 months had boarded Bihar Sampark Kranti train from Darbhanga Railway



Station for Delhi but did not reach Delhi. Consequently, a missing report, vide DD No. 16-A was lodged at police station New Delhi Railway Station on 18.07.2018 by the petitioner Smt.Noor Jahan.

3. Thereafter, the search of the missing boy was conducted by the local police but no clue was found as stated in the status report dated 25.11.2021. Consequently, the investigation of the case was transferred to AHTU, Crime Branch, Delhi vide order dated 06.11.2019 of this Court.

4. It is further stated in the said status report that on 10.07.2018, a dead body was found alongside the Railway track in the jurisdiction of police station GRP Kanpur Central, U.P. A mobile phone was also found lying near the railway track in the bushes in broken condition. One Sobran Singh, who helped Railway Police in lifting the body from the Railway track, found such mobile phone lying along the railway track. However, instead of informing the police about it, he kept the mobile with him and after got the same repaired and started using it by inserting SIM in the name of his wife Savita. Thus, the mobile phone was tracked by New Delhi Railway Police and as a consequence thereof, Sobran Singh was contacted. He identified the dead body as that of the same missing person, when he was shown the photograph of Mohd. Sabir.

5. On enquiry with GRP, Kanpur, it was revealed that the postmortem of the dead body was conducted by GRP Police, Kanpur, U.P. on 11.07.2018 at Post Mortem House, Kanpur Nagar, U.P. Many shortcomings were noticed in the postmortem report. As per the photographs available on the post mortem report, a light green colour shirt, jet black jean pant with stickers on its thigh were visible but in the Panchnama prepared by the local police, the colour of shirt mentioned was 'Firozee' and colour of pant was mentioned as



‘blue’. A brown colour belt of leather was also mentioned in the Panchnama alongwith an underwear of the brand ‘Venus’ in the colour blue. Postmortem report was found to be correct when the clothes were recovered from malkhana of police station GRP, Kanpur Central Railway Station to the extent that a light green colour shirt, jet black jean pant with stickers on its thigh were the same alongwith brown colour Belt.

6. The petitioner had also identified the dead body on seeing the photographs and said clothes. At the time of post mortem, skull hair and tooth were preserved as samples for DNA matching, Hence, on 14.02.2020, exhibits of deceased were sent to FSL Rohini to match with the DNA of the petitioner and her husband.

7. The DNA Examination Report dated 12.01.2021 was received from FSL, Rohini, Delhi on 01.02.2021 and as per report, DNA profile could not be generated from the source of exhibits.

8. During further investigation, it was revealed that one Imtiaz S/o Mohd. Nasir R/o N-17-B, Patharwala Bagh, JJ Colony, Wazirpur, Delhi aged 23 years, who lived in the neighbourhood of Mohd. Sabir, was also travelling by the same train on that day, in which Mohd. Sabir was travelling. Imtiaz met with Mohd. Sabir at Darbhanga Railway Station. He was sitting in the general coach which was next to the coach in which Sabir was travelling. He saw Sabir standing at the door of the coach at Darbhanga Railway Station. He thereafter met Sabir at Samastipur Railway Station also. Sabir was sitting at the gate of the general coach. He had last seen Sabir between Kanpur and Unnaon at the outskirts at a lonely place where the train stopped for a while. Both Imtiaz and Sabir had got down from the train. Thereafter, he did not meet Sabir and did not see him. Imtiaz was also



shown the photograph of the UIDB found in the jurisdiction of police station GRP Kanpur Central from the file. He identified the clothes in the photograph as those worn by Mohd. Sabir and he identified the dead body as of Mohd. Sabir.

9. The CDR of the mobile phone of the victim was again analyzed. On analysis, it was found that the mobile phone of the missing boy got switched off in Unnaon, U.P. on 09.07.2018 at 8.34 p.m. The CDR of the mobile number of the missing person i.e. 9599518864 and 9315781957 was again analyzed. Upon analysis of details pertaining to mobile number 9599518864, it was found that the last call on this mobile number was at 19:39 hrs on 09.07.2018 from mobile number 7667447495, which belonged to Rizwan, who is cousin (maternal uncle's son) of the missing boy Mohd Sabir. The last location of number 9599518864 was at Rani Bazar, Bara Gaon, Gonda, UP on 09.07.2018 at 19:39 Hrs.

10. On analysis of details of another mobile number i.e. 9315781957 which is of the missing boy, it was found that the last call was made on 09.07.2018 at 20:34 hrs from mobile number 9205048384 which belonged to the petitioner who had talked to Mohd. Sabir at that time, the location of this number 9315781957 was at Village Maliha Mau Pargana Ram Nagar, Tehsil, Ram Nagar, District Barabanki, U.P. (East). The location of this number 9315781957 was also at Rani Bazar, Bara Gaon, Gonda, U.P. on 09.07.2018 at 19:36 hrs. The missing boy used to keep two SIM bearing above two mobile numbers and one mobile was recovered from the same place where the body was found by the Railway Police, Kanpur Central, UP on 10.07.2018 near Pole No. 1040/10, Bhaupur Railway Station, Kanpur, UP.



11. On analysis of mobile number 9599518864, there was no incoming and outgoing call on this number after 09.07.2018. Analysis of mobile number 9315781957 shows that last call on said number was made from mobile number 9205048384 on 09.07.2018 at 20:34 hrs which belonged to the petitioner. Thereafter, there are some SMSs received on this number 9315781957 from private companies (50000) and from mobile number of the petitioner (9205048384), from mobile number of Tanvir (9971223260), who is brother of Mohd. Sabir, from mobile number of Sajid (7361886766) who is the maternal uncle of Sabir, from mobile number of Sahida Khatoon (8877831521), who is the maternal aunt of Sabir and from mobile number of Sahil (8178939559) who is friend of Sabir till 10.07.2018 at 10.43 a.m.

12. The petitioner was suspecting the involvement of Imtiaz in the disappearance of her son Mohd. Sabir. Hence, on 17.08.2020, after obtaining consent of the suspect in the Court, he was/produced before the Assistant Director/Lie Detection, FSL, Rohini for pre-test interview which was conducted on the same date. On 18.08.2020, the Polygraph Examination of the suspect was conducted. The questions on relevant issues were asked from him and his answers to those issues were found truthful in his responses.

13. On 18.11.2019 the petitioner was also examined in this case. She narrated the same facts as mentioned in the FIR. She further told that she herself had gone to Kanpur immediately after this incident and inquired about her son Mohd. Sabir but she could not get satisfactory answers from the staff. She further told that she had also gone with the police officials of police station New Delhi Railway Station, but she was not shown the clothes. She further told that if the clothes are shown to her, she could



identify whether UIDB was of her son or not. On seeing the photograph of the dead body, she identified the clothes worn by the dead body as that of her son Mohd. Sabir. She further said that from the physical description of the body and from the clothes, the dead body was that of her son Mohd. Sabir.

14. On 19.11.2019, enquiry was made from Mohd. Rizwan, who is the son of Mohd. Sazid r/o Ramol Road, Shruti society, Janta Nagar, Ahmedabad, Gujrat of Mohd. Sabir and had come to see off his cousin Mohd. Sabir to Darbhanga Railway Station. He told that Mohd. Sabir had also clicked a selfie of both of them and sent him through whatsapp. He was also shown the photograph of the dead body. He also clearly identified the clothes (jean pant and brown belt) as that of Mohd. Sabir.

15. On 17.12.2019, the petitioner Smt. Noor Jahan w/o Mohd Lal Babu r/o N-17A/190, Patharwala Bagh, T Huts JJ colony, Wazir Pur, Delhi was taken to GRP Kanpur and search of clothes of victim was made at malkhana of PS GRP Kanpur. After a lot of physical efforts, the clothes of victim consisting of a light green shirt, jet black jeans with stickers on its thigh portion, one brown colour belt and underwear of the brand Venus, as told by the petitioner, were traced in malkhana. On seeing the clothes, she identified the clothes as that of her son Mohd. Sabir. She also told that from the physical description of the body as seeing in photograph and from the clothes, the dead body was that of her son Mohd. Sabir.

16. On 08.02.2021, the petitioner was again examined and during examination, she seemed to be of the opinion that from the recovery of clothes of her missing son Mohd. Sabir and from recovery of his mobile phone from the bushes near the location of dead body and from the



identification of clothes worn by dead body and on seeing his photograph that her son Mohd. Sabir was no more and thus, she did not want any further search of her missing son to be made.

17. On perusal of the record, this Court found that respondent/State has filed as many as 18 status reports pointing out in detail efforts made to conduct the DNA of the dead body in order to match the same with his parents. However, on 05.09.2023, a team of police officers was sent to police station Chakeri Kanpur Nagar to collect the DNA Exhibits of UIDB in PM No.2208/18 of this police station but as per the post mortem report, received vide diary No.1458/R/ACP/AHTU on 31.08.2023, a tooth of the UIDB which was preserved in dry paper for DNA matching not found in malkhana of police station Chakeri, Kanpur and a report regarding non-availability of DNA sample of UIDB in PM No.2208/18 police station Chakeri was provided to Investigation Officer in which it was mentioned that they do not have DNA sample in their malkhana. Accordingly, a report was prepared by the present malkhana Incharge namely SI Kuldeep Singh and by Incharge Inspector of police station Chakeri Kanpur Nagar and same report was placed on file. The present malkhana Incharge was examined and a separate statement of malkhana Incharge SI Kuldeep Singh police station Chakeri, Kanpur Nagar, U.P. was recorded under Section 161 Cr.P.C. and placed on file.

18. As per status report dated 05.10.2023, investigation was taken up by the AHTU/Crime Branch and that no further clues had been traced.

19. It is not disputed that Mohd. Sabir boarded the train from Darbhanga and did not reach Delhi. It is pertinent to reiterate here that the entire evidence found by the respondent was shown to the petitioner and cousin of



missing boy and that the dead body was found in the area of Chakeri Kanpur Nagar, U.P. Initially the petitioner and said cousin identified the body and stated that no further inquiry was required to trace out her missing son as she was convinced that it was her son whose dead body was recovered.

20. Keeping in view of the same and also that numerous efforts, in last 5½ years, have been made by the respondents, therefore we hereby dispose of the present petition while recording appreciation of the police station mentioned above and the Crime Branch. Since no purpose would be served in continuing with the proceedings, or seeking status reports and passing orders after orders, we deem appropriate to hereby dispose of the present petition.

21. The present petition is disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 23, 2024/ab