



\$~30

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

% ***Date of decision: 5th May, 2025***

+ **W.P.(CRL) 2286/2021**

NISHA KHAN @ NAZMA
W/o Naved Khan @ Dulare,
R/o 21/378, Indira Camp,
Kalyanpuri, Delhi-110091

.....Petitioner

Through: Counsel for Petitioner (appearance
not given).

Versus

1. STATE OF NCT OF DELHI
Through its Chief Secretary ...Respondent No. 1

2. COMMISSIONER OF POLICE ...Respondent No.2

3. STATION HOUSE OFFICER (SHO)
Police Station Mayur Vihar ...Respondent No. 3

Through: Mr. Yasir Rauf Ansari, ASC (Crl.)
for the State with Mr. Alok
Sharma, Advocate with SI Vishal,
PS Mayur Vihar.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Article 226 of the Constitution of India has been filed on behalf of the Petitioner/Nisha Khan @ Nazma seeking directions to register an FIR in respect of death of her son, Mohd. Aftab and to transfer the investigation to Crime Branch or Special Cell of Delhi



Police.

2. ***Briefly stated***, Petitioner, mother of the deceased Mohd. Aftab., received an information on 17.04.2021 at around 11:00 PM through a WhatsApp message that the dead body of her son, Mohd. Aftab (aged 39 years), was found lying at Dhobi Ghat, near Government School, Block 30, Trilokpuri, Delhi. The Petitioner along with other family members, immediately rushed to the spot. The Petitioner was informed that the dead body of her son has been sent to the mortuary of Lal Bahadur Shastri Hospital, New Delhi. She reached the Hospital but was not able to obtain any satisfactory information from the police officials of P.S. Mayur Vihar, Delhi.

3. Thereafter, on 18.04.2021, the Petitioner again visited the mortuary of Lal Bahadur Shastri Hospital with her other sons and was informed that no post mortem had been conducted as the deceased was found to be Corona positive.

4. It is further submitted that the Petitioner insisted on knowing the cause of death as she believed her son was murdered. However, the police forced her to take the body of her deceased son, or else the police would proceed with official disposal/burial. Subsequently, she was informed that no case was registered for the death of her son as the cause of his death was natural.

5. The Petitioner visited PS Mayur Vihar several times to request the officials to carry out proper investigation as the Petitioner believed that her son was murdered by the persons/rival group/another person in business having grudge against him.



6. The Petitioner submits that she has collected CCTV footage from nearby locations where the body of her deceased son was found. In particular, she obtained footage from the shop of one Sh. Ilyas covering the time from 9:32 A.M. to 9:35 P.M. on 16.04.2021, in which her deceased son was appearing to be sleeping by the roadside. She was later informed that the police has seized the DVR from the shop of Sh. Ilyas.

7. She further submits that Government-operated CCTV cameras are already installed in the area and are in working condition, and the movement of her deceased son could be easily tracked. She also submits that she has not been called by the police for any inquiry in connection with the death of her son.

8. On 18.04.2021, the police provided a Rapid Antigen Test Report allegedly conducted 30 hours after the death of Petitioner's son. She submits that such detection of COVID-19 is not reliable without lab confirmation/RT-PCR test as such detection is not possible. Indian Council of Medical Research (ICMR) has observed that there are no reliable antigen detection tests available worldwide. It is medically established that the Rapid Antigen Test is a method to quickly know if a person is infected, as a precautionary measure to self-isolate and receive treatment.

9. On 14.05.2021, the Petitioner sent a written Complaint to the SHO, P.S. Mayur Vihar, requesting an investigation into the alleged mysterious death of her deceased son. She also requested the retrieval of the CCTV footage from the area for investigation purposes. However, she alleges that the police failed to act in a proper and diligent manner.



10. On 26.07.2021, the Petitioner submitted a written Complaint to the Deputy Commissioner of Police, East Delhi, seeking a proper investigation into the death of her deceased son, Mohd. Aftab. According to the Petitioner, the cause of death of her son is not natural. As no action was taken in response to these Complaints, the Petitioner has filed the present Petition.

11. ***Status Report has been filed on behalf of the State***, wherein it is submitted that on 17.04.2021 at 06.19.07 hours, an information was received via GD No.09 regarding a person lying unconscious at Trilokpuri, Delhi. SI Dinesh Tyagi along with the staff, reached the spot and found the body of the deceased, Mohd. Aftab. Inquiries were made among nearby residents, but no one was able to identify the deceased. Consequently, the body was shifted to Lal Bahadur Shastri Hospital and he was declared “*Brought Dead*” vide MLC No.4199/21. No injuries were found on the body of the deceased.

12. On 18.04.2021, the body was identified as that of Mohd. Aftab, by the Petitioner and the other family members. The Inquest proceedings were conducted and the statements of family members including the Petitioner were recorded. None of them expressed any suspicion regarding his death; rather, they stated that the deceased used to consume alcohol on a daily basis. Even his wife, Smt. Wasim @ Babo stated that deceased used to take alcohol regularly and a few months earlier, she along with her nephew took the deceased from the same spot when he did not reach the house.

13. Statements of local persons were also recorded. During enquiry,



the local persons stated that on 16.04.2021, the deceased was roaming here and there and purchased slippers as he was bare foot. The CCTV footage was reviewed, which reflects that the deceased was in an intoxicated state. At one point of time, the deceased was seen sitting in a rickshaw and was later made to get down by the rickshaw owner, who also stated that the deceased was intoxicated.

14. It is further submitted that the deceased was found COVID-19 positive, and therefore, post mortem was not conducted. His last rites were performed in the presence of family members, and information regarding the incident was sent to the SDM, Mayur Vihar.

15. *According to the Respondents, the cause of death of the deceased, Mohd. Aftab, was natural and involved no foul play.*

16. ***In Reply to the Status Report filed by Respondents***, the Petitioner submits that the police failed to conduct Inquest proceedings in accordance with Section 174 of the Criminal Procedure Code, 1973 (*hereinafter referred to as "Cr.P.C."*).

17. The Petitioner contends that no CCTV footage from the area where the body was discovered has been provided to her, which raises suspicion of police involvement in a possible cover-up. She reiterates her submission regarding the reliability of the Rapid Antigen Test report.

18. ***Another Status Report was filed by the State***, submitting that on 22.07.2022, a detailed enquiry report was submitted to the Ld. SDM, Mayur Vihar, and that no foul play was found in connection with the death of deceased Mohd. Aftab.

19. **Submissions heard and record perused.**



20. The moot question for consideration before this Court is ***whether a writ in the nature of mandamus can be issued directing the Police to register an FIR and transfer the investigation to the Crime Branch or Special Cell in the alleged mysterious death of the Petitioner's son/Mohd. Aftab?***

21. The Petitioner had already approached the SHO, PS Mayur Vihar, *vide* Complaint dated 14.05.2021, and the Deputy Commissioner of Police, East Delhi, *vide* Complaint dated 26.07.2021.

22. As per the Status Report, the Inquest proceedings have already been conducted and no foul play was found. The Rapid Antigen Test Report dated 18.04.2021 shows that the body of the Petitioner's son/Mohd. Aftab, was found to be Covid positive and, therefore, the post-mortem could not be conducted. Furthermore, the Police recorded the statements of the family members, including the Petitioner, immediately after the death of Mohd. Aftab, and no apprehension of murder was expressed at that time. Moreover, suspicion about the death of Mohd. Aftab was raised only after a month i.e. on 14.05.2021, when the Complaint was made to the SHO.

23. The statements of the local people present at the spot where the Petitioner's son/ Mohd. Aftab, was found dead also reveal that he was in an intoxicated state.

24. In this regard, reference be made to the observations by the Apex Court in Sakiri Vasu vs. State of U.P., (2008) 2 SCC 409, wherein it has been categorically held that the High Court should not encourage or entertain a writ petition or a petition under Section 482 Cr.P.C for



registration of an FIR, as there is already a remedy available under Section 156(3) Cr.P.C. It was observed thus:

“26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

*27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). **The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.**”*

25. This judgement was referred by the Apex Court in Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage, (2016) 6 SCC 277, wherein it was observed that if the High Courts start entertaining such writ petitions, they will be flooded with such petitions *praying for registration of the first information report or praying for a proper investigation, and will not be able to do any other work except dealing with such writ petitions.* The complainant must avail of his alternate



remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

26. The Status Report shows that a relevant inquiry has already been conducted by the Police and it is apparent that the cause of the death of the Petitioner's son/Mohd. Aftab, is natural and no foul play is involved.

27. In any case, the Petitioner if not satisfied, has an alternate remedy of approaching the Magistrate under Section 156(3) CrPC.

28. There is no merit in the present Petition which is hereby dismissed along with pending Applications(s), if any.

29. The Petition is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 05, 2025