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

% *Date of decision: April 8, 2025*

+ **W.P.(CRL.) 2360/2021**

ANITA GUPTA

W/o Late Surender Kumar Gupta

R/o 407, Main Road, Mandawali

Fazal Pur, East Delhi-110092

.....Petitioner

Through: Mr. Rahul Pandey & Mr. Atul
Kumar, Advocates

Versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI

.....Respondent

Through: Mr. Amol Sinha, Additional Standing
Counsel

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Writ Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been filed seeking a direction to the SHO Police Station GTB Enclave, Delhi for conducting investigation as her husband Sh. Surender Kumar Gupta, has been killed under suspicious circumstances.
2. *The Petitioner has submitted* that though FIR No. 152/2021 has been registered at Police Station GTB Enclave, but for the offences under Section 279/304 A IPC and not for offence under Section 302/ 120 B IPC.
3. It is the case of the Petitioner that there existed a long standing



dispute over title of ancestral property situated at village Hasan Bania, P.O. Tarai, District Chapra, Bihar between Petitioner's late husband Sh. Surender Kumar Gupta and the maternal uncle, Brahm Prakash Gupta. He received a call from his maternal uncle, during early hours of 25.05.2021 and called him to his residence at Rahul Vihar, Loni, Ghaziabad to discuss about ancestral property of the mother. The Petitioner's Late Husband left house at around 11:25 AM for his maternal uncle's house.

4. Petitioner's late husband spoke to his next friend at around 05:22 PM and informed that he was on the way his residence i.e. from Ghaziabad to Laxmi Nagar. He was spotted at Nathipura Square at around 06:02 PM driving his auto rickshaw towards Laxmi Nagar.

5. It is submitted that the Petitioner's dead body was found in the main lane of Shahdara Fly Over, going towards Seelampur, which is opposite to Laxmi Nagar i.e. Petitioner's residence. At 06:46 PM, the husband was declared *Brought Dead* by the attending doctor at GTB Hospital.

6. It is further submitted that the FIR No. 152/2021 under 279/304 A IPC was registered on the averments that her husband died due to acute head injuries namely skull fracture, subdural hemorrhage, etc. among other injuries over shoulder and left foot, in the road accident while driving an auto-rickshaw bearing No. DL 1 RV 0637.

7. The Petitioner has asserted that the death of her husband did happen in the road accident but was a murder as is brought forth from the attending circumstances. The post-Mortem Report indicates that clothes of the Petitioner's Late Husband were covered in Ground Soil whereas on



Shahdara Flyover's main lane, there are no Ground Soil. Also, he had blue ink on both his thumbs at the time of death, which is highly suspicious in view of the fact that the Petitioner's Late Husband quarreled with his maternal uncle regarding ancestral property dispute on the same day.

8. Also, Petitioner's father-in-law had called up maternal uncle Brahm Prakash Gupta to enquire about him on his mobile phone at around 06:59 PM, which call was answered by his wife, who informed that auto rickshaw of Petitioner's husband had overturned and he has suffered minor injuries and their son, Rahul, has taken him to the hospital for bandage and that there was nothing to worry about. Subsequently, Petitioner's father-in-law received a call at around 08:00 PM from Rahul Gupta who informed that Petitioner's husband had left their home at around 05:00 PM and he enquired if he had reached home.

9. At around 09:40 PM, Petitioner received a call from a person purporting himself to be financier of Auto Rickshaw owned by her late husband, who enquired about the Auto Rickshaw and informed her that it had met with an accident. It is at this stage, Petitioner came to know about her husband's hospitalization. She went to the hospital at about 11:00 PM where Rahul Gupta was already present and his presence made it suspicious, especially the wife of Brahm Prakash Gupta had got the knowledge of the accident at around 06:15 PM i.e. much prior to the knowledge being given to the wife and father of the deceased.

10. A Complaint dated 30.05.2021 was written by the Petitioner to DCP, Shahdara District, asserting that Brahm Prakash Gupta was not the real maternal uncle of the deceased. Their grandmother (*nani*) was blind and



these persons with deceitful means from their Nani, who was a widow, got her eyes operated and got the land registered in their names, without their consent or any intimation to the deceased or their family.

11. She raised all the issues to claim that her husband had not died in the alleged road accident, but was murdered by Brahm Prakash Gupta and Rahul Gupta.

12. She also approached the learned MM on 13.07.2021 with an Application under Section 91 Cr.P.C. dated 13.07.2021 seeking a direction to the Telephone Companies to preserve the call record of the mobile phone of her husband as well as of Brahm Prakash Gupta and Rahul Gupta. She again approached learned MM on 24.07.2021 with an Application under Section 91 Cr.P.C. seeking direction for preservation of CCTV footages of the nearby areas.

13. During the hearing of these Applications, the Investigating Officer submitted that CCTV footage at GTB Hospital was not available and CCTV cameras that were fixed around the place of alleged incident, were not functional. The learned MM accordingly disposed of the Application vide Order dated 12.05.2021.

14. Hence, the present Petition has been filed for direction the SHO, GTB Nagar for conducting investigation under Section 302/ 120- B IPC.

15. ***The Status Report has been filed on behalf of Respondent-State*** wherein it is stated that FIR No. 152/2021, dated 26.05.2021 under Section 279/304 A IPC, has been registered at Police Station GTB Enclave, Delhi and the investigations were duly conducted. The *Mechanical Inspection* of the Auto Rickshaw was done on 27.05.2021. The statements of the PCR



Caller as well as other witnesses, were duly recorded. The CCTV cameras at Keshav Chowk, Shyam Lal College at Shahdara Flyover and Metro Station MS Park were checked, but none were found operational. The Cameras GTB Hospital was also checked but by then the footage had been deleted to clear storage space.

16. *The investigation of the case was thereafter, transferred to DIU/ SHD East by the Deputy Commissioner of Police.*

17. Notice under Section 160 Cr.P.C. was served upon Brahm Prakash Gupta, who was examined regarding the property dispute and the activities done after deceased reached home. His statement was recorded wherein he submitted that he had come back home after 36 hours of duty and asked the deceased to come to his place for a drink. He stated that the injured had drinks and food at his place till 12:00 hours. Thereafter, he was tired and went to sleep and later he came to know about accidental death of deceased. He further informed that the deceased had departed from his residence at about 05:00 PM. According to CDR location, of deceased his last call was at 05:22 PM from Loni, Ghaziabad and 05:37 was Pratap Nagar, Saboli which means he was coming back to home.

18. Accused Brahm Prakash Gupta was examined by Senior Forensic Assistant, Psychology to ascertain the truthfulness of his statement and also another Senior Forensic Assistant was called to ascertain the circumstances in which the deceased had died.

19. The statement of Kanti Devi and Rahul Gupta were also recorded. The Post Mortem Report was collected. The mobile phone of deceased was sent for tracking and it was found that the phone was not being used anywhere and his last location at 05:30 PM was Loni, Ghaziabad and 07:00



PM it was Pratap Nagar, Saboli.

20. The location of Rahul Gupta, son of Brahm Prakash Gupta at the time of incident, was at village Behta Hazipur, Loni.

21. The blood samples of deceased, were taken and sent to FSL for investigation and as per Report, no alcohol was detected in the blood of the deceased.

22. The IMEI number of the phone of deceased was sent to obtain CAF of all the persons who called the deceased on the day of the incident. Wife of the deceased also joined the investigation.

23. During investigation, Owner of copper wire factory where Brahm Prakash Gupta was also investigated who stated that Brahm Prakash had 36 hours shift on 24.05.2024.

24. The PCR caller was also asked to join investigation to ascertain the exact position in which the deceased was lying on road and position of the Auto but he did not join the investigation.

25. In the *Mechanical Inspection Report of the TSR*, it was observed that all dents and collusion on the TSR were on lower front left side of the auto and no dents or collusion marks were on the back side of the TSR.

26. *The Post Mortem Report opined* that the ante mortem injuries caused due to blunt force / abrasion on dead body was on left side, which is probably due to accident.

27. It is submitted that in view of the above detailed investigations, no evidence had come on record that the deceased was murdered on the day of the incident. However, an accident did happen, because of which the deceased died. There is no eye witness who saw the accident or came forward during the investigation to support the claim of Petitioner. There is



no CCTV footage of the place of the accident is available nor any offending vehicle or accused could be traced despite all efforts.

28. On the basis of the comprehensive investigation, the Untrace Report has been filed before the Court of learned MM on 21.03.2025, which is pending consideration and next date is 22.04.2025

29. *Submissions heard and the Record perused.*

30. While the Petitioner, wife of the deceased, has every reason to be disturbed about demise of her husband, but the detailed investigation has been conducted, not only by the local Police but also by the DI Unit, which reflects no suspicious circumstances to make out a case under Section 302 IPC against the named suspects.

31. In any case, Untrace Report has been filed before the learned MM and all these contentions may be taken by the Petitioner before the learned MM.

32. Nothing survives in the present Petition, which is accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 8, 2025

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