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

+ W.P.(CRL) 1105/2021

MALIKA

..... Petitioner

Represented by: Mr.Ramesh Gupta, Sr.Advocate with
Mr.Shailendra Singh, Advocate.

Versus

STATE OF NCT OF DELHI & ORS.

.... Respondent

Represented by: Mr. Sanjay Lao, Standing Counsel
with Mr.Karan Jeet Rai Sharma,
Advocate for the State.
Mr.Sandeep Goel, Director General
(Prisons) through video conferencing.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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20.07.2021

1. By this petition, the petitioner seeks transfer of investigation in case FIR No. 243/2021 under Sections 302/34 IPC registered at P.S.Hari Nagar from respondent No.3 to CBI, directions to preserve CCTV footages of the relevant time and compensation to the petitioner/mother of the deceased.
2. According to the petitioner, her son was taken into custody in FIR Nos. 178/2019, 179/2019 and 180/2019 on 13th June 2019 and since then, he was in judicial custody. On 14th May 2021, son of the petitioner died on being taken to the hospital and in this regard, FIR No. 243/2021 was registered at P.S.Hari Nagar under Sections 302/34 IPC. According to the

petitioner, on looking at the photos and videos of the deceased body, deep cut wounds on his thighs and hands were found which could not be caused due to the simple cricket bats, as alleged and such wounds would have been inflicted only by a sharp object. Daughter of the petitioner i.e. sister of the deceased had received a call from the deceased one day prior to the date of incident wherein, she claims that her brother told that he would be murdered by the jail officers. Further, at the time of incident itself, a PCR call was received from the jail which was not from the officers of the jail wherein, the caller stated that *'my brother has been got murdered by R.N.Meena; I am in jail and R.N.Meena is also in jail, who is D.S. in jail and has assaulted me yesterday and also assaulted my brother with sticks; my brother has been moved to DDU Hospital name Shreekant Rama Swami; my brother has been murdered'*. When Shrikant was admitted in hospital, after some treatment, he was declared dead. In view of the fact that the deceased died in custody, judicial enquiry is in process.

3. According to the learned Standing Counsel for the State, report of Magisterial enquiry has not been received, however, FIR No. 243/2021 under Sections 302/34 IPC was registered on the same day. The investigation of the FIR is being conducted by the investigating officer from P.S.Hari Nagar and based on the investigation conducted, a status report has been filed which is reproduced here-in-under:-

“Most respectfully it is submitted that on 14/5/21 a PCR call was received in P.S Hari Nagar vide DD No – 41-A that, “Tihar Jail No-2, “Caller is stating that, “My brother has been got murdered by R.N Meena . I am in the Jail and R. N Meena also in Jail, who is D.S in jail and has assaulted me yesterday and also assaulted my brother with sticks. My brother has been moved to DDU hospital Name Shreekant Rama Swami, My brother has been murdered”. On receipt

of information SI Kavish was informed to take necessary action. In the meanwhile information was received from Safdarjung hospital that Srikant @ Appu was admitted in hospital where he was declared dead during treatment. As per direction of senior officer Insp. Praveen and SHO sir also reached at the spot and in the meanwhile SI Kavish also reached there. In Jail No-2 Tihar jail eyewitnesses of the incident Warder Lalit was enquired and his statement was recorded. He stated that on 14/5/21 he alongwith warder Praveen was present on duty on ward No-2 of jail No -2. As per routine the barracks of inmates were opened at about 6 PM and after opening the barracks he alongwith warder Praveen were present in the guard room near main gate of the ward. Suddenly at about 7 AM they heard hue and cry from side of barrack No-4. On hearing the rush towards the barrack where inside the barrack inmates Arun @ Mandwa, Ganpat, Kishan and Akash were found assaulted inmate Srikant @ Appu with cricket bats. Both the warders controlled the assaulters with help of other inmates. During this, all the assaulters committed crossing (a common term used for mutual giving injuries to each other just to create defense) with each other. During this assaulter Arun also received injuries on his head and started bleeding profusely. They locked the other assaulters in another barrack and tried to take both the injured inmates namely Srikant @ Appu & Arun @ Mandwa for treatment, but Srikant refused for the same and warder Lalit took injured inmate Arun to jail dispensary for treatment and warder Praveen remained in ward for duty. Senior jail officials were also informed by the warders. When after treatment of Arun Jail warders and other officials were taken round of the ward. Inmate Srikant complained of pain and he was rushed to jail dispensary, from where he was referred to Safdarjung hospital, where he was declared dead. Information in this regard was also conveyed to concerned duty M.M. Ld. Ms. Anjani Mahajan. The scene of crime was inspected and some blood stains were noticed on the floor and a bedsheet with blood stains was also recovered. The jail officials also provided two cricket bats having blood stains which were snatched from the accused persons and wearing blood stained clothes of inmate Arun. On statement of warder Lalit present FIR was registered and investigation was started. In the meanwhile PCR calls were also received from unknown numbers that inmate Srikant has been

assaulted by Jail official R.N.Meena. During investigation of the case other eyewitnesses were enquired Eye witness Warder Praveen was also enquired and his statement was recorded in which he corroborated the statement of Warder Lalit. Other inmates were also enquired and they also supported the version of complainant and stated that the deceased used to bully other inmates and also demand money from them. It was also revealed that just a day prior to this incident i.e. 13/5/21 the deceased has again harassed accused Arun @ Mandwa & another inmates Vikas Jain and Arun has also made a written complaint to Jail authorities in this regard and Arun and Vikas have requested for change of their barracks and after this they were shifted to barrack No. 6 from Barrack No. 4. Notice was given to jail authorities to provide CCTV footage of incident. But they stated that the CCTVs in Ward No. 2 are not in working condition. The number from which PCR call with regard to death of Srikant was made is not reachable since then. Even no brother of deceased Srikant was found to be lodged in Tihar Jail as alleged in the PCR call. Post mortem of the deceased was got conducted in Safdarjung hospital on 15/5/21 and as per post-mortem report cause of death is given as "Death is due to shock as a result of multiple injuries to head, both upper limbs and both the lower limbs consequent to blunt force impact". After this all the four accused persons were arrested in the present case after permission of Hon'ble Couret. During interrogation they stated that deceased Srikant used to harass and bully all other inmates and even demand money from them. Arun stated that he was a new inmate in barrack No. 4 of Jail No. 2 and Srikant used to harass and bully him and used to demand money from him. Due to this constant torture he has also made a complaint to jail authorities and has requested to change his barrack and due to this reason on 13/5/21 he was shifted to barrack No. 6 from No. 4. He has discussed all this with other accused persons, who all were also having grudge against Srikant due to his constant torture and they all hatched a conspiracy to kill Srikant. On the day of incident after opening of barracks, all accused persons entered in barrack of decease and assaulted him with cricket bats which subsequently caused his death. Blood sample of all the accused persons have been obtained and have been sent to FSL alongwith other seized exhibits for opinion. The registered owner of mobile phone No. 9311898547

(from which PCR call with regard to involvement of Deputy Superintendent Sh.R.N.Meena in murder of deceased was made) Ms. Hina W/o Md. Irfan R/o Gali No. 15, Near Shiv Mandir Vir Baazar Mukundpur Delhi was also enquired and she stated that she has lot her mobile phone having above sim and due to ignorance she has not lodged any complaint in this regard and she does not know Srikant and none of her acquaintance is lodged in Tihar jail.

Sh. R.N.Meena Deputy Superintendent was also enquired and he stated that deceased Srikant used to bully other inmates and his conduct in jail was very bad which is evident from the list of several punishment tickets issued to him in jail and at the time of incident he was not even on duty and his name is dragged into this offence just because he is trying to maintain discipline in the jail.

The investigation of the case is in final stage and from the investigation conducted so far sufficient evidence has come on record to prove involvement of above mentioned four accused namely Arun, Ganpat, Kishan & Akash in the present case.

Report may kindly be submitted please”.

4. No post-mortem report of the deceased has been placed on record before this Court. When this petition came up before this Court on 8th July 2021, this Court while issuing notice directed the State to submit a status report, whereafter, the petitioner's plea for transfer of investigation to CBI was to be considered.

5. A report had been received from the Superintendent, Central Jail No.2 indicating that on the day of incident, Sh.Lalit, Warder and Sh.Parveen, Warder were deployed on duty as Head Warder and Warder respectively in Ward No. 2 in morning shift. At about 7:00 hours, they heard some hue and cry in Barrack No. 4 of Ward No. 2. They rushed towards Barrack No. 4 of Ward No. 2 where four UTPs/inmates namely Arun @ Mandva, Akash @ Hunny, Ganpat @ Niranjan and Kishan s/o Tejman were giving beatings to inmate Shrikant @ R.Srikant @ Appu with cricket bat. Inmate Arun was

also injured and blood was oozing out of his head when the officials intervened and separated the UTPs. Immediately, inmate Arun @ Mandav was taken to jail dispensary where he was given stitches and UTP Shrikant was asked to come to the jail dispensary however, he refused to go to the jail dispensary. Thereafter, a team comprising of Assistant Superintendent visited Ward No. 2 again where they found that UTP Shrikant was taking bath. When the team enquired from Shrikant, he complained of trepidation and pain in the body. The team also noted the injury in his body and took him to jail dispensary from where he was referred to Safdarjung Hospital. The search team also found one mobile phone and one iron patti from UTP Shrikant. As claimed in the status report, at around 12.20 pm, a message was received about the death of Shrikant @ Appu at about 11.50 am.

6. Vide order dated 8th July 2021, this Court directed the Director General (Prisons) to file a detailed report indicating as to where and how many CCTVs are installed in and around Barrack No. 4 of Ward No. 2. It was also directed that the affidavit would be accompanied by a complete site plan giving the locations of the said CCTVs and the place of incident and in case, CCTVs are installed, explanation was also directed to be rendered that why, immediately on receiving the information of the incident at the said place, CCTV footages of the entire area were not preserved at that time.

7. A reply has been filed by the Director General (Prisons) along with the site plan. As per the reply, most of the old CCTVs installed in Tihar Jail have become non-functional and thus, a mega plan of installation of the CCTVs is underway and at most of the places, they have been installed. Director General (Prisons) who appears in person through video conferencing states that the project of installation of CCTVs got delayed due

to Covid-19, however, efforts are being made to ensure that the newly installed CCTVs become functional expeditiously. He states that out of 6967 CCTVs to be installed, more than half of the CCTVs installed are functional and rest would be functional by 15th August 2021.

8. It is thus evident that no CCTV footage of the incident is available. However, the prime issue which now concerns this Court besides the manner in which the death of the inmate has been caused, is, why no proper investigation could be carried out despite the fact that a PCR call was made from a phone number from the jail and the said phone number is duly recorded in the PCR Call.

9. As noted above, in the status report, it is stated that the registered owner of the mobile number 9311898547 from which PCR call was made is one Ms. Hina, wife of Md. Irfan from whom enquiry was made and she stated that she has lost her mobile phone having the said SIM and due to ignorance, she had not lodged any complaint in this regard. She stated that she does not know deceased Srikant and none of her acquaintance was lodged in Tihar Jail. From the status report, it is apparent that the investigation based on the mobile phone number as noted in the PCR still appears to be incomplete. Claim of the sister of the deceased was that she received a phone call from the deceased himself a day prior to the incident from the jail, informing her that he would be murdered, however, there is no investigation on the said point nor has the mobile of the sister been taken nor have the call records been analysed which would have revealed something nor has any investigation been carried out from the call records of the mobile number 9311898547 from which PCR call was made. It has been two months since the FIR in question has been registered.

10. Considering the fact that as per status report filed by the Superintendent Jail, there was no apparent injury on the deceased, however, the case of the petitioner is that there were deep injury marks on the deceased and an indepth investigation is required to be conducted to find out the circumstances under which the deceased made a phone call to his sister expressing his apprehension of death and his subsequent death in the judicial custody, this Court finds it fit to transfer the investigation of the case FIR in question to CBI.

11. Status report will be filed by the concerned S.P., CBI after investigation into the FIR in question well before the next date of hearing.

12. List on 29th September 2021.

13. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 20, 2021/akb