

#38

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.12.2015

W.P. (CRL) 2349/2015 & CRL.M.A.16695/2015

RABIA @ MAMTA & ANR

..... Petitioners

Through: Mr. Colin Gonsalvis, Sr. Advocate
with Mr. Divya Jyoti Jaipurkar,
Advocate

versus

NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
(Criminal), Ms. Richa Kapoor, ASC
(Criminal) and Ms. Nandita Rao, ASC
(Criminal) with Mr. Rohit Kaul and
Mr. Ashish Negi, Mr. Advocates for
R-1

Mr. Kirti Uppal, Sr. Advocate with
Mr. Shailendra Babbar, SPP and Dr.
Rajiv Sharma, DCP, North (Crime)
and ACP Sukhvinder Singh (SIT) and
SI SI Somil Sharma, PS, Nand Nagri
for R-2 & R-3

Ms. Prabhsahay Kaur, Advocate for
R-4

Mr. Mohit Mathur, Sr. Advocate with
Mr. Nitesh Mehra, Advocate for the
Intervenor Manzoor Hassan

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The Supreme Court in Sidhartha Vashisth alias Manu Sharma vs. State (NCT of Delhi) reported as (2010) 6 SCC 1 commenting on the necessity of insisting upon the fairness of investigation observed at paragraph 197 of the report:-

“197.The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal.The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.”

2. In Nirmal Singh Kahlon vs. State of Punjab & Others reported as (2009) 1 SCC 441 the Hon'ble Supreme Court held that “fairness of the investigation is meant not only for the accused but even for the victim.” In paragraph 28 of the report the Supreme Court expounded:-

“28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of

peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.”

3. I would be failing in my duty if I did not refer to the observations made by the Hon’ble Supreme Court in **Zahira Habibulla H. Sheikh and Another vs. State of Gujarat and Others** reported as (2004) 4 SCC 158 where the Supreme Court considered how justice itself can become a victim if the investigation is not fair. The Court in paragraph 18 of the report expressed thus:-

18. When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was acting merely as an onlooker and when there is no fair trial at all, justice becomes the victim.”

4. The present is a case where after having heard counsel for the parties over two days and examining all the material placed on record including the statements of the witnesses to the dastardly crime as encapsulated in the video clipping furnished on behalf of the Delhi Police, in my view, the impression I gather is that the investigation thus far, three months after the alleged commission of the offence, is that the Special Investigating Team (SIT) has concentrated on exonerating the police officers concerned rather than discovering the truth.

5. It would be hyperbole to state that the state of affairs that has emerged from having heard the present case shocks the judicial conscience of this Court.

6. The present petition filed on behalf of Rabia @ Mamta and Sant Ram, who are the widow and the father-in-law of the deceased victim Shahnawaz Chaudhari, prays as follows:-

“In the above mentioned facts and circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to:

- (a) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.1 to form a Special Investigation Team preferably comprising of officers from another State to investigate into the incident and prosecute the offending police persons;
- (b) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.2 to conduct a departmental enquiry into the incident and terminate the services of the police officers found guilty, and in the meantime suspend them;
- (c) For a writ of mandamus or any other appropriate writ, order or direction to the respondents herein to pay compensation of Rs.5 crores to petitioner No.1 and her child;
- (d) For any other order or direction that this Hon’ble Court may deem fit and appropriate in the interest of justice.”

7. At the first listing of the present petition on 16.10.2015, on a submission made on behalf of Ms. Prabhsahay Kaur, learned counsel

appearing on behalf of Delhi Commission for Women, that Rabia @ Mamta had been illegally detained by the police overnight in the concerned police station on two occasions and that the police officers from the concerned police station were visiting the residence of the petitioner demanding to know whether any complaint has been made against any of their colleague, this Court directed Mr. Rajinder Singh Sagar, Additional Deputy Commissioner of Police-I, North East District, who was present in Court, to personally supervise the safety, security and well-being of the petitioners and afford protection to them.

8. Notice was issued to the official respondents, returnable on 20.10.2015.

9. It is an admitted position that the SIT appointed by the Delhi Police came into existence thereafter on 17.10.2015.

10. When the matter came up for hearing on the returnable date i.e. 20.10.2015, it was observed that despite an opportunity, no status report had been filed on behalf of the Delhi Police. It is in this backdrop that this Court passed the following order:-

“Where the mind is without fear and the head is held high;

*Where knowledge is free;
Where the world has not been broken up into
fragments by narrow domestic walls;
Where words come out from the depth of truth;
Where tireless striving stretches its arms towards
perfection;
Where the clear stream of reason has not lost its way
into the dreary desert sand of dead habit;
Where the mind is led forward by thee into ever-
widening thought and action –
Into that heaven of freedom, my Father, let my country
awake.”*

- Rabindranath Tagore

1. There can be no higher or loftier philosophy, belief or faith than humanism.
2. President Pranab Mukherjee is stated to have expressed “apprehension whether tolerance and acceptance of dissent are on the wane?” The President of this country is stated to have recalled the teachings of Ramkrishna Paramhansa ‘Jato Mat Tato Path’ “as there are a number of beliefs, there are a number of ways”.
3. These are questions which have to be answered by the collective conscience of this nation.
4. The present petition prays as follows:-
 - a) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.1 to form a Special Investigation Team preferably comprising of officers from another State to investigate into the incident and prosecute the offending police persons;
 - b) For a writ of mandamus or any other appropriate writ, order or direction to the respondent No.2 to conduct a departmental enquiry into the incident and terminate the services of the police officers found guilty, and in the meantime suspend them;
 - c) For a writ of mandamus or any other appropriate writ, order or direction to the respondents herein to pay compensation of Rs.5 crores to petitioner No.1 and her child;

- d) For any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice.

5. The present petition recounts a horrific tale of inhuman, reprehensible and condemnable conduct on behalf of the police entrusted with the task of protecting and upholding the rights of the citizens of Delhi.

6. On the fateful day at about 04.30 p.m. Shahnawaz Chaudhari and his wife Rabia @ Mamta (the petitioner No.1) accompanied by their 3½ month baby were on their way to Karuna Hospital at Dilshad Garden, Delhi.

7. On the way they noticed a couple quarrelling with each other and police officers present trying to intervene.

8. According to Rabia @ Mamta, since the late Shahnawaz Chaudhari was acquainted with the lady concerned, he stopped and made enquiries as to what the trouble was. The policemen are alleged to have asked him to stay out of it. Shahnawaz Chaudhari, however, insisted that since it was an ordinary matrimonial disagreement between the quarrelling couple, it would be best to let them sort it out amongst themselves. The policemen are alleged to have taken umbrage at Shahnawaz Chaudhari's persistent and purportedly uncalled for intervention as they perceived his actions to be an invasion by a busy body interloper into their domain and started roughing up Shahnawaz Chaudhari. When Shahnawaz Chaudhari objected to the treatment meted out to him, the policemen are stated to have not only rebuked and rebuffed them but also snatched the keys to the motorcycle on which the family was travelling. At this juncture, it is alleged that another vehicle belonging to the police drove up and all the policemen who had assembled there ganged up and repeatedly kicked, punched and beat up Shahnawaz Chaudhari. Despite the entreaties in this regard by Rabia @ Mamta, the police persisted with their assault on Shahnawaz Chaudhari and even assaulted him with *dandas*. The 3½ month old child was separated from Shahnawaz Chaudhari and Rabia @ Mamta and the latter were bundled into a police vehicle. The torture and brutality intensified in the police vehicle and three policemen climbed on to the chest of Shahnawaz Chaudhari and sat on him while the fourth continued giving persistent blows on his torso. The

entreaties of Shahnawaz Chaudhari and Rabia @ Mamta to the policemen to stop and desist from what they were doing, fell on deaf ears. Upon reaching Nand Nagri Police Station, Shahnawaz Chaudhari was taken inside. Rabia @ Mamta was subsequently informed that Shahnawaz Chaudhari was being taken to hospital since his health had deteriorated. Rabia @ Mamta observed that Shahnawaz Chaudhari was unconscious at that time.

9. Rabia @ Mamta was made to wait at the Police Station till 02.00 a.m. without being informed of the status of the health and well-being of Shahnawaz Chaudhari. Rabia @ Mamta was finally asked by the concerned Metropolitan Magistrate who arrived to record her statement. Rabia @ Mamta asserts that her statement was coerced by exertion of pressure by the policemen present and on the threat that the well-being of Shahnawaz Chaudhari could be jeopardized if she were to implicate them in any manner. Rabia @ Mamta was finally dropped off at her parents' house at 03.00 a.m.

10. Rabia @ Mamta visited GTB Hospital in search of Shahnawaz Chaudhari but to no avail. In desperation she went back to the Nand Nagri Police Station and beseeched the policemen to tell her where Shahnawaz Chaudhari was. She is stated to have spent the night outside the Nand Nagri Police Station waiting and pleading with the policemen to tell her of Shahnawaz's whereabouts.

11. At 07.00 a.m. the same morning Rabia @ Mamta went back to her parents' house and came back to Nand Nagri Police Station once again accompanied by her father (petitioner No.2). It was at this stage that they were informed that Shahnawaz Chaudhari has been declared dead on arrival by the doctor at the GTB Hospital on the previous day.

12. Rabia @ Mamta states that onlookers and passers-by have recorded videos of the incident on their mobile telephones which are a part of the report of the concerned SDM. It is further urged on her behalf that the entire area which falls within the Nand Nagri Police Station is covered by CCTV Cameras and a perusal thereof would reveal the truth about what transpired on that fateful day.

13. What happened thereafter is the natural response of an angry and anguished public to this dastardly act. The people of the area took to the streets and the roads in Nand Nagri

area were blocked by citizens. The police force which arrived in strength at the scene of the riots had to resort to a *lathi-charge* to disperse the agitated masses.

14. Thus, the life of a young man with a young wife and an infant child was extinguished.

15. We do not know whether Shahnawaz Chaudhari was a good samaritan or a busy body interloper. We do know, however, that he tried to intervene on behalf of the quarrelling couple in the presence of police officers and paid a heavy price for it.

16. The tragic incident brings to mind a couplet from Shakeel Badayuni immortalized by the voice of Begum Akhtar:-

*“....Mera Azm Itna Buland Hai
Ke Paraaye Sholon Ka Darr Nahin
Mujhe Khauf Aatish-E-Gul Se Hai,
Yeh Kahin Chaman Ko Jala Na De...”*

I must solemnly add:-

*“...Mujhe Dar Hai Aye Mere Charagar,
Ye Charag Tu Hi Bujha Na De...”*

17. Custodial deaths are anathema in a civilized society and militate against all the ideals and protections enshrined and guaranteed by the Constitution of India. Custodial deaths are a violation of basic human rights and are a convoluted manifestation of the darker side of the guardians of civil liberties. The only thought that occupies a benumbed mind is a prayer that sanity be restored. A fervent prayer springs forth from the heart of every humanist:-

*“Ishwar Allah Tero Naam
Sabko Sanmati De Bhagwaan”*

18. However, we shall overcome.

*“Bhar Lo Syahi Kalam Mein
Baaki Hai Khoon Jo Jism Mein
Phailaa Do Yakeen Logon Mein
Keh Do Ki Hum Taiyaar Hain*

*Dushman Ba-Khanjar Hi Sahi
Ham Par Bhi Hathiyaar Hain*

*Yaad Karo Woh Laala-O-Gul
Jo Is Watan Ki Jaan Hain
Budh Bhi Hain Kabir Bhi
Nanak Aur Bhagat Singh Veer Bhi
Gurudev Aur Mahaveer Bhi
Auliya Nizamuddin Peer Bhi
Gandhi Aur Azaad Hain
Keh Do Humein Sab Yaad Hain
Woh Jo Chaman Ki Shaan Hain*

*Na Thakna Hai Na Jhukna Hai
Manzil Se Pehle Nahin Rukna Hai
Chaman Par Aanch Na Aane Paye
Watan Kaa Maan Na Jaane Paye
Ye Karz Toh Ada Karna Hai
Ye Farz Toh Poora Karna Hai
Jeena Hai Toh Khul Kar Jeena Hai
Gar Marna Hai Toh Marna Hai”*

- Sifar

19. The above incident begs a question which can best be expressed in these words:-

*“....Kahan Hain Kahan Hain Muhafiz Khudi Ke
Jinhe Naaz Hai Hind Par Woh Kahan Hain
Kahan Hain Kahan Hain Kahan Hain*

....
....

*Zara Is Mulk Ke Rehbaron Ko Bulao
Ye Kuche Ye Galiyan Ye Mazaar Dikhao
Jinhe Naaz Hai Hind Par Unko Laao
Jinhe Naaz Hai Hind Par Woh Kahan Hain
Kahan Hain Kahan Hain Kahan Hain.”*

- Sahir Ludhianvi

20. Deaths in police custody are a recurring phenomena and have assumed alarming proportions. An original research paper conducted an analysis on custodial deaths in New Delhi over a period of 13 years from 1999 to 2011. The observations of this study were based on a total of 15 cases over the said period. The study reveals that the victims did not belong to any one community. The study further goes on to state that as per the 2011 NHRC report there were 14,231 custody related deaths in India during the period of 2001 to 2010. It was concluded that a majority of these deaths were a direct consequence of torture in custody. The study went on to lament that despite these high figures only a few studies have been done on this subject in India.

21. It is observed that custodial violence is a dark reality in our democratic country governed by “the rule of law”. In a democratic society, there is no gainsaying that the police have the predominant role of protecting the rights of citizens as enshrined in the Constitution. But it is equally well known that they systematically violate their powers and employ torture as a part of their investigation process. The poor, the deprived classes, women and political activists are the worst victims of police highhandedness. The police constitute a major part in the administration of criminal justice. One of the reasons why torture and custodial deaths are endemic in India on a large scale is that the police feel that they are immune from the rigours of the law and are confident that they will not be held accountable, even if the victims die in custody and even if the truth is revealed.

22. Custodial deaths are perhaps one of the worst crimes in a civilized society governed by “the rule of law”. The Hon’ble Supreme Court in **D.K. Basu v. State of W.B.** reported as (1997) 1 SCC 416, after enumerating the rights of an accused/detenué person, on the aspect of dealing with custodial deaths held that the rights inherent in Articles 21 and 22(1) of the Constitution require to be zealously and scrupulously protected. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law. Torture in custody flouts the basic rights of

the citizens and is an affront to human dignity. It imposes a serious threat to an orderly civilised society. It is also a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law.

23. The quality of a nation's civilization can be largely measured by the methods it uses in enforcing criminal law. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Efforts should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences.

24. *Angus Deaton*, the winner of this year's Nobel in economics, has contributed immensely to the understanding of poverty, prices, nutrition and well-being in India. His work has been guided by the belief that economic progress must lead to better lives for everyone.

25. The services and protection that all citizens enjoy in other civilized society are found wanting in the largest democracy in the world.

26. Is it then enough for us to echo what is stated in the Bible according to Luke :-

"Then said Jesus 'Father, forgive them for they know not what they do.'"

27. I beg to differ.

*"Vaishnava Jan Toh Tene Kahiye
Je Peed Paraayee Jaane Re"*

- Narsinh Mehta

28. A Division Bench of the Hon'ble Supreme Court had occasion to consider the issue of protection of human rights which have been the subject of a worldwide crusade. India is a signatory to the International Convention of Civil and Political Rights, 1966. In the said decision, Justice T.S. Thakur writing for the Bench observed that "*custodial torture is in fact violation of human dignity and degradation that destroys self-esteem of the victim and does not even spare his personality. Custodial torture, is a calculated assault on*

human dignity and whenever human dignity is wounded, civilisation takes a step backwards. The Court relied upon the Report of the Royal Commission on Criminal Procedure and the Third Report of the National Police Commission in India to hold that despite recommendations for banishing torture from the investigative system, growing incidence of torture and deaths in police custody come back to haunt.”

29. On behalf of the police an affidavit has been filed authored by Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi. The affidavit begins with the assertion “that present short reply affidavit is being filed without adverting to the contents of Writ Petition is general with leave and liberty of this Hon’ble Court to file a detailed seriatim reply if so directed by this Hon’ble Court or so required in the facts of the case subsequently. The answering respondents No.2 and 3 are confident that based upon the submissions hereinafter, this Hon’ble Court, would be apprised with the correct facts of the issue at hand.”

30. It is stated on behalf of the police that Shahnawaz Chaudhari, the deceased, was in a drunken condition and started quarrelling with the police officials. It is admitted that Shahnawaz Chaudhari was taken in the ERV to the Police Station and on the way he showed signs of physical discomfort and was immediately rushed to GTB Hospital. It is stated that the patient was declared as brought dead by the doctors at GTB Hospital. It goes on to assert that a judicial enquiry under section 176(1A) of Cr.P.C. was conducted and the concerned Magistrate after inspecting the dead body of the deceased Shahnawaz Chaudhari in the presence of Inspector Sanjeev Kumar recorded his finding. The said judicial enquiry recorded the statements of witnesses and concluded as under:-

“In the light of the examination of witnesses and post mortem report and other documents filed it is evident, that the deceased Shanu died due to asphyxia caused by compression of neck. The internal injuries on the neck of the deceased show that force was applied by the broad object on the neck of the deceased due to which the deceased expired. The medical evidence on record clearly proves that this is not a case of natural death and rather it is a case of homicide. The issue

whether it is a case of intentional killing is beyond the scope of this enquiry and can only be ascertained once proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation in the matter by registration of FIR.”

31. A perusal of the report dated 06.10.2015 reveals that Shahnawaz Chaudhari died due to asphyxia caused by compression of the neck. The internal injuries on the neck of Shahnawaz Chaudhari *prima facie* demonstrate that force was applied by a broad object on his neck owing to which he was asphyxiated to death. It thus concluded that Shahnawaz Chaudhari’s death was a case of homicide.

32. It is stated on behalf of the police that in pursuance to the above said report dated 06.10.2015, an FIR under sections 302/34 IPC has been registered against “unknown persons”. It is also stated that a Special Investigating Team (SIT) comprising of ACP, Eastern Range, Inspector Rakesh Dixit and Sub-Inspectors Manish/Ved Prakash has been constituted on 17.10.2015. In this behalf it is relevant to point out that the present petition was instituted on 13.10.2015. It is also pertinent to point out that although the said SIT was constituted on 17.10.2015, no status report with regard to the investigations conducted by them has been placed before this Court. It is also noticed that the inquest conducted by the concerned Sub Divisional Magistrate concluded as far back as on 15.09.2015 that Shahnawaz Chaudhari’s death was a case of custodial death. I hasten to add that Mr. Phoolka, learned Senior Counsel appearing on behalf of DCW states that they support the case of the petitioner.

33. This Court had by way of order dated 16.10.2015, directed Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi to personally supervise the safety, security and well-being of the petitioners and afford adequate protection to them. Today it has been urged on behalf of Ms. Shama Khatoon and Mr. Danish Chaudhary, the sister and brother of Shahnawaz Chaudhari, that the police has been approaching and intimidating witnesses to the gory incident that resulted in

the unfortunate demise of Shahnawaz Chaudhari and that the CCTV Cameras of the area which are a part of the evidence in the subject FIR have been removed by the official respondents.

34. The police authorities must be strictly held to the standards by which they profess their conduct to be judged.

35. In view of the aforesaid facts and circumstances and in order to instil confidence in the public as well as in the public interest the following directions are being issued for an effective and independent investigation into the subject FIR:-

- 1) The SIT shall immediately secure all evidence related to the subject FIR including the CCTV Cameras footage from the concerned area as well as the concerned Police Station.
- 2) The SIT shall obtain all contemporaneous video recordings alleged to have been made by members of the public on their mobile handsets at the time of the unfortunate incident.
- 3) The SIT shall take into their custody forthwith the Duty Roster and all other relevant documents from the concerned Police Station and clearly define the role of the police personnel who were on duty at the relevant time.
- 4) Since the subject FIR has been registered against “unknown persons”, the SIT shall forthwith investigate and ascertain the identity of the said “unknown persons”, who perpetrated the unspeakable crime.
- 5) The SIT shall take into custody the report of the concerned Sub Divisional Magistrate qua the inquest into the custodial death of Shahnawaz Chaudhari as well as the video recording of the post-mortem conducted on the body of Shahnawaz Chaudhari.
- 6) The SIT shall file a comprehensive status report before this Court with regard to the unnatural death of Shahnawaz Chaudhari and the circumstances antecedent and attendant thereto, before the next date of hearing.

36. In the event, it is determined during the ensuing investigation that police officers were complicit in the commission of the offences alleged, the Disciplinary

Authority shall initiate appropriate disciplinary action against the said delinquent officers in accordance with law.

37. In this behalf, it is directed that to restore the confidence of the general public in the force, the officers found to be delinquent and complicit in Shahnawaz Chaudhari's death be suspended and/or transferred during the pendency of the enquiry/investigation. This direction is just necessary, expedient and warranted in the light of the allegations made on behalf of Ms. Shama Khatoon and Mr. Danish Chaudhari, the sister and brother of the victim Shahnawaz Chaudhari, as afore stated.

38. Renotify for further consideration on 17.11.2015.

39. At this juncture, Mr. Rajendra Singh Sagar, Additional DCP/North East, Delhi states that a status report on behalf of the SIT shall be supported by an affidavit of the DCP (Crime).

40. Directed accordingly.

41. Before parting, it would serve civilized society well to recall the words of Mahatma Gandhi:-

“Let the first act of every morning be to make the following resolve for the day:

- I shall not fear anyone on Earth.

- I shall fear only God.

- I shall not bear ill will toward anyone.

- I shall not submit to injustice from anyone.

- I shall conquer untruth by truth. And in resisting untruth, I shall put up with all suffering.”

42. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.”

11. On that day, this Court directed the petition to be listed for further consideration on 17.11.2015.

12. On 17.11.2015, almost a month after the subject petition had been instituted, an affidavit was filed on behalf of the Delhi Police.

13. This Court was constrained to observe as follows:-

“...A perusal of the same reveals that no information with regard to the perpetrators of the crime has been stated therein. The official respondent is expected to comply with the directions issued by this Court by way of order dated 20th October, 2015 in letter and spirit on or before the next date of hearing....”

14. The letter and spirit this Court alluded to in the said order dated 17.11.2015 referred to the following portion of the order dated 20.10.2015:-

“35. In view of the aforesaid facts and circumstances and in order to instil confidence in the public as well as in the public interest the following directions are being issued for an effective and independent investigation into the subject FIR:-

- 7) The SIT shall immediately secure all evidence related to the subject FIR including the CCTV Cameras footage from the concerned area as well as the concerned Police Station.
- 8) The SIT shall obtain all contemporaneous video recordings alleged to have been made by members of the public on their mobile handsets at the time of the unfortunate incident.
- 9) The SIT shall take into their custody forthwith the Duty Roster and all other relevant documents from the concerned Police Station and clearly define the role of the police personnel who were on duty at the relevant time.
- 10) Since the subject FIR has been registered against “unknown persons”, the SIT shall forthwith investigate

and ascertain the identity of the said “unknown persons”, who perpetrated the unspeakable crime.

11) The SIT shall take into custody the report of the concerned Sub Divisional Magistrate qua the inquest into the custodial death of Shahnawaz Chaudhari as well as the video recording of the post-mortem conducted on the body of Shahnawaz Chaudhari.

12) The SIT shall file a comprehensive status report before this Court with regard to the unnatural death of Shahnawaz Chaudhari and the circumstances antecedent and attendant thereto, before the next date of hearing.

36. In the event, it is determined during the ensuing investigation that police officers were complicit in the commission of the offences alleged, the Disciplinary Authority shall initiate appropriate disciplinary action against the said delinquent officers in accordance with law.

37. In this behalf, it is directed that to restore the confidence of the general public in the force, the officers found to be delinquent and complicit in Shahnawaz Chaudhari's death be suspended and/or transferred during the pendency of the enquiry/investigation. This direction is just necessary, expedient and warranted in the light of the allegations made on behalf of Ms. Shama Khatoon and Mr. Danish Chaudhari, the sister and brother of the victim Shahnawaz Chaudhari, as afore stated.”

15. When the matter came up for hearing yesterday, Mr. Kirti Uppal, learned Senior Counsel appearing on behalf of Delhi Police handed over in a sealed cover a status report qua the investigation conducted by the SIT into the unnatural death of Shahnawaz Chaudhari. A video clip was also handed over to the Court by Mr. Shailendra Babbar, learned Special Public Prosecutor with a request that the same may be viewed by the Court.

16. Mr. Rahul Mehra, learned Standing Counsel (Criminal) has objected all along to the appointment of the special counsel to represent the Delhi Police on the ground that the latter have no authority to represent the Delhi Police owing to a bar contained in Section 24, sub-Section 8 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). The objections made on behalf of the nominated counsel in this behalf have been noted by this Court on more than one occasion. The acrimony which has erupted between two sets of counsel representing the Delhi Police, authorizedly or unauthorizedly, has resulted in ugly spats before this Court and *prima facie* seems to be a spillover of the deep distrust between the nominated counsel appointed by the Government of National Capital Territory of Delhi and the Special Counsel appointed by the Hon'ble Lieutenant Governor of Delhi.

17. The above deadlock has led to this Court having voiced this following refrain on numerous occasions:

“Nero Fiddled While Rome Burned”

18. In other words, the State seems to have occupied itself with unimportant matters and neglected important ones, totally ignoring the gravity of the situation.

19. Before I proceed to consider and discuss the status report filed on behalf of the Delhi Police yesterday, I would be remiss if I did not mention the dramatic development that transpired in Court at the very moment when Mr. Kirti Uppal, learned Senior Counsel was in the midst of his submissions before this Court. One Mr. Zahid Ahmed, who was present in Court and repeatedly trying to invite my attention to himself, was finally permitted to address the Court.

20. Mr. Zahid Ahmed, claims to be an eye witness to the incident leading up to the unfortunate demise of Shahnawaz Chaudhari, which occurred on 07.09.2015 at 06.00 p.m., when he was present at the Gagan Cinema T-Point, Nand Nagri, Delhi. Mr. Zahid Ahmed alleged-and with justification since what he stated was admitted to by the police officer, who heads the SIT and who was present in Court, on a query in this behalf-that despite having called the concerned ACP heading the SIT five times and offering to record his testimony in relation to the incident, the latter for reasons best known to him, did not do so.

21. This Court was constrained to direct the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi, within whose jurisdiction the

subject FIR has been registered, to record Mr. Zahid Ahmed's statement under Section 164 of the Code, before the said Magistrate.

22. I must pause at this stage to refer to the respective stands of the various parties before this Court canvassed over the past two days.

23. Mr. Colin Gonsalves, learned Senior Counsel, instructed by Mr. Divya Jyoti Jaipurkar, appearing on behalf of the petitioners has strenuously urged that the investigation into the murder of Shahnawaz Chaudhari be referred to the Central Bureau of Investigation without further ado.

24. This submission made on behalf of the petitioner is echoed by Ms. Prabhsahay Kaur, learned counsel appearing on behalf of Delhi Commission for Women as well as Mr. Rahul Mehra, learned Standing Counsel (Criminal) appearing on behalf of Government of NCT of Delhi. The opposition, if any, to the said submission has emanated from the Special Counsel representing the Delhi Police.

25. At this juncture it would be relevant to refer to the submissions made by Mr. Kirti Uppal, learned Senior Counsel, who is instructed by Mr. Shailendra Babbar, learned Special Public Prosecutor, who has been

instructed to represent the Delhi Police by the Hon'ble Lieutenant Governor of Delhi.

26. Mr. Uppal, learned Senior Counsel has canvassed that the SIT must be permitted to *firstly* obtain a second opinion on the basis of the post-mortem report of Shahnawaz Chaudhari in order to establish which amongst the 23 injuries suffered by the latter caused his death and by what “mode”. Mr. Uppal, learned Senior Counsel would then urge that the CFSL ought to furnish a report recreating the scene of the crime including the possible injuries suffered by Shahnawaz Chaudhari whilst he was in the ERV (a vehicle which the police used to transport him from the site to the concerned police station and onward to the hospital where he was pronounced ‘brought dead’). According to Mr. Uppal, learned Senior Counsel, the CFSL report in this behalf would establish the cause of death. Lastly, it was urged by Mr. Kirti Uppal, learned Senior Counsel that the FSL report needs to be obtained from the latter on the viscera which has already been dispatched to the them. Mr. Uppal, learned Senior Counsel submitted that the intervention of this Court was essential and a direction be issued to the All India Institute of Medical Sciences, Delhi to expedite the rendering of a second opinion, based on the videography conducted at the time post-mortem was carried out on

the body of Shahnawaz Chaudhari. Mr. Uppal, learned Senior Counsel further submitted that a direction would be needed to the CFSL to expeditiously furnish a report regarding the scene of crime and opining which of the injuries caused to Shahnawaz Chaudhari during his transportation in the ERV by the police, caused his death.

27. Needless to say that the objective sought to be achieved by requiring the authorities above stated to carry out the said tasks would assist the prosecution in arriving at the truth behind the unnatural death of Shahnawaz Chaudhari. However, it would have been better for the SIT to have sought exhumation on Shahnawaz Chaudhari's body and seek medical opinion thereon, rather than to seek an opinion on the videography conducted at the time post-mortem was conducted on Shahnawaz Chaudhari.

28. The submissions made on behalf of the SIT and the opposition thereto shall be referred to later in this order.

29. Before adverting to the facts of the case and the respective submissions made on behalf of the parties, it would be necessary to consider the status report handed over in Court yesterday on behalf of the Delhi Police.

30. The status report begins with an assertion that the directions of this Court by way of order dated 20.11.2015 have been complied with, with utmost urgency and sincerity. The Disciplinary Authority has initiated action in accordance with law against the delinquent police officers found complicit in the commission of alleged offences. It is further stated that pending departmental enquiries against the said police personnel they are being placed under suspension. It is contended that since neither the concerned Metropolitan Magistrate nor the Sub-Divisional Magistrate, Seemapuri directed the concerned authority to preserve the CCTV footage from the cameras installed at GTB Hospital on record, the footage now recovered by the SIT, does not relate to the material time when the incident occurred. It is also stated that one Mr. Yogender Solanki, who had provided the video clip which is in their custody and which has been viewed by this Court yesterday i.e. 02.12.2015, stated that he had received the same on WhatsApp and despite efforts made to trace the actual author of the said video clip, no headway has been made in this regard. The status report places great reliance on the testimony of an individual, who is attired in civil clothes and is visible in the said video clip. The long and the short of the statement of the said civilian, who has been identified as Vinay Kumar by

the SIT, is that according to him none of the police personnel involved nor anybody else gave Shahnawaz Chaudhari a beating at the material time. The report also places great emphasis on the testimony of one Fahmida, the mother-in-law of Farha, who was having an altercation with her husband at the Gagan Cinema, T-point, Nand Nagri which quarrel was the reason in the first place for the presence of the police at the spot, where the incident occurred. Her testimony is relied upon to urge that the police personnel present did not beat Shahnawaz Chaudhari with *lathies*, *dandas*, fist blows or kicks nor did they press his neck. Similar is the testimony reproduced at great length in the status report of Rihana, Shamshad, Mohd. Salman, Nafees Ahmed and Tufail Ahmed, who were allegedly witnesses to the incident at Gagan Cinema, T-point, Nand Nagri on the date of the incident.

31. The testimony of the eye witness Manish, who runs a puncture repair shop at the spot, is relied upon to demonstrate that the allegation of police brutality is unfounded and false. The testimonies of Lokesh Mittal, Devender as well as Rani are also relied upon in this behalf.

32. In paragraph 30 of the status report the sequence of events at the relevant time is enumerated thus:

“That from the investigations conducted so far the sequence of events has been:-

- (a) That at 09.00 AM vide DD No.26-B dated 07.09.2015 departure entry of ERV-57 (Police Station Gypsy), number DL-1C-M-4335 was lodged for patrolling duty along with in-charge SI Manzoor Hasan and driver Constable Deepak No.1651/NE.
- (b) That at 05.05 PM SI Rajender Singh made his departure entry vide DD No.80-B for execution of warrant of attachment along with Constable Sumit No.3424/NE and L/Ct Anita No.2903/NE at F-22/147 Sunder Nagri, Delhi. Investigation of the case revealed that SI Rajender and Constable Sumit went for execution of warrant of attachment on the private motorcycle of SI Rajender and lady Constable Anita went in the ERV which was called in the police station Nand Nagri for the purpose to accompany SI Rajender.
- (c) That at 05.45 PM, call regarding quarrel at Sunder Nagri, Gagan Cinema T Point received in Police Control Room which was passed over to PCR Van Baker-36. The PCR call was made by one Farah w/o Shamshad r/o E-117/19, Sunder Nagri, Delhi by her mobile phone number 7832886512.
- (d) That at 05.50 PM, PCR Van Baker-36, reached at spot. In-Charge ASI Tej Singh, Gunman Ct. Udaiveer and Ct. (Dvr) Sachin were present in the PCR Van.
- (e) At 05.51 PM a PCR call regarding quarrel at Gagan Cinema T-Point was received in PS Nand Nagri vide DD No.84-B, which was marked to HC Shripal on emergency duty for necessary legal action.

- (f) After few minutes, Shahnawaz @ Shanu along with his wife Rabia and child arrived at the spot on a Bullet Motorcycle.
- (g) Shahnawaz @ Shanu asked caller Farah to get down from the PCR Van and on resistance from police personnel Shahnawaz @ Shanu started abusing the police personnel.
- (h) Despite directions not to intervene, Shahnawaz @ Shanu kept on insisting that Farah should get down from the PCR Van. Due to this, a scuffle ensued between Shahnawaz @ Shanu and the PCR staff.
- (i) After few minutes, police Gypsy from local police station Emergency Response Vehicle (ERV)-57 staff reached the spot. SI Manzoor Hasan, I/C ERV-57, Driver Ct Deepak and lady Ct Anita were present in ERV-57.
- (j) On their way back to the police station, the police Gypsy (ERV-57) reaches Gagan Cinema T-Point. Normally the spot Gagan Cinema T-Point falls on the way from Sunder Nagri to the police station.
- (k) Lady Constable Anita segregated Rabia towards one side.
- (l) Shahnawaz @ Shanu became very violent and kept on abusing the police personnel and resisting himself to be taken in the police Gypsy and the police station.
- (m) At 06.08 PM, PCR Van Baker-36 passed message to Baker-1 that they were on the spot and ERV Staff (Gypsy) are also on the spot. And one man is misbehaving with them and the ERV Staff (Gypsy), which is causing traffic jam. Further, they requested to send local police at the spot.

- (n) At 06.12 PM, I/C PCR Van B-36 contacted the Duty Officer of the Police Station Nand Nagri on 'landline phone' that one man is misbehaving with them and the ERV staff, which is causing traffic jam and asked for sending local police on the spot.
- (o) Police personnel finally managed to put Shahnawaz @ Shanu inside the ERV-57 (Police Station Gypsy) and the Gypsy was ready to move from spot to PS Nand Nagri.
- (p) Meanwhile, Constable Sumit also arrived along with SI Rajender Kumar on his private motorcycle sent from the police station on demand of PCR Baker-36.
- (q) Due to traffic congestion, SI Rajender could not reach the spot and directed Constable Sumit to reach the spot on foot.
- (r) Constable Sumit reached the Gypsy and boarded the rear cabin of the Gypsy. He held the door of Gypsy on the direction of SI Manzoor Hasan since the legs of Shahnawaz @ Shanu were protruding from the police Gypsy (ERV-57) and started for the police station.
- (s) ERV-57 (Police Station Gypsy) followed PCR Van to PS Nand Nagri.
- (t) At 06.25 PM, Insp Tarkeshwar Singh, SHO Nand Nagri and Insp Sanjeev Kumar, Insp Investigation/ Nand Nagri along with staff were about to start for spot for the verification of DD No.84-B, as per directions of senior officers, in Govt. Vehicle vide DD No.23-A.
- (u) At 06.25 PM, Police Gypsy arrived in compound of PS Nand Nagri and all persons get deboarded along with Shahnawaz @ Shanu who was already unconscious.

- (v) After alighting from the EVR, Rabia went inside the Police Station.
- (w) Soon after PCR Van also reached PS Nand Nagri and was parked outside the gate of PS Nand Nagri.
- (x) Farah deboarded from the PCR Van and went inside the police station along with ASI Tej Singh. Thereafter, Shahshad reached Police Station and met Rabia and Farah. He came to know that Shahnawaz @ Shanu had been taken to the hospital.
- (y) While SHO Insp. Tarkeshwar Singh along with staff were leaving the Police Station vide DD No.84-B, they saw ERV coming inside the police station compound. I/C ERV apprised him that one Shahnawaz @ Shanu who was brought in ERV was not well. On this, SHO/Nand Nagri directed I/C ERV to take Shahnawaz @ Shanu to GTB hospital.
- (z) Shahnawaz @ Shanu was immediately shifted to the emergency of GTB Hospital in ERV-57 (Police Station Gypsy) accompanied by SI Manzoor Hasan, Constable Deepak and Constable Sumit.
- (aa) At about 06.35 PM PCR Baker-36, reported brief of the incident to Central Police Control Room.
- (bb) At 06.54 PM, deceased Shahnawaz @ Shanu was declared brought dead in GTB Hospital.
- (cc) Statement of Farah wife of Shamshad revealed that ERV reached Police Station before PCR. It means, ERV moved swiftly in comparison with PCR Van which moved before ERV from spot. The distance between spot to PS Nand Nagri is one (01) Kilometer and there is only one red light on Wazirabad Road in between the spot and PS Nand Nagri. The said red light has left

turn free for going towards the police station. Statement of witnesses established that the journey covered by ERV took only a few minutes.

- (dd) During examination in the intervening night of 07/08.09.2015 by Shri Achal Tyagi, Ld. MM, Karkardooma Courts, Delhi petitioner number 1 stated that at around 04.00 PM Shahnawaz @ Shanu asked one couple as to why they were fighting in public. The police officials were also present at spot at that time and asked Shahnawaz @ Shanu not to interfere. Thereafter, police officials told Shahnawaz @ Shanu that he was trying to teach law to them, he should come to PS, they will teach him law. The police officials thereafter took Shahnawaz @ Shanu and the petitioner in Police Gypsy and brought them to the PS. Shahnawaz @ Shanu became unconscious on the way as fight had ensued on the spot and the police officials were pulling and dragging him. Her clothes were also during scuffle. The police officials also slapped Shahnawaz @ Shanu and thereafter made Shahnawaz @ Shanu and her to sit in the police vehicle. The police officials took her on one side and thereafter took out lathis/wooden sticks. She has stated that Shahnawaz @ Shanu had taken beer at his house, however, he was not drunk. She has stated that Shahnawaz @ Shanu was unconscious when the police vehicle reached at PS. She also stated that no one from her house was present in the PS besides herself.
- (ee) Further, during her subsequent examination on 16.09.2015 by Shri Achal Tyagi, Ld. MM, Karkardooma Courts, Delhi petitioner number 1 stated that on 07.09.2015, she along with her husband were going to see her sister when they saw a fight going on near red light of Gagan Cinema. Shahnawaz @ Shanu stopped there and asked Farah, whom he knew, to get down

from the police vehicle and to settle the dispute amicably with her husband. It is further stated that on this, the police officials, who were 4 to 5 in number started beating Shahnawaz @ Shanu with hands. It is stated that after some time, other police officials also came at the spot and they also started beating Shahnawaz @ Shanu. The police officials thereafter took out *dandas* and started beating Shahnawaz @ Shanu. Shahnawaz @ Shanu was made to sit in the police Gypsy and besides Shahnawaz @ Shanu, there were five other police officials at the back of Gypsy. It is stated that while coming to PS Nand Nagri, three police officials sat on the chest of Shahnawaz @ Shanu despite her objection. At the PS Shahnawaz @ Shanu was taken out from the police vehicle and thereafter, she was not allowed to see her husband as she was taken inside the PS by the lady Constable and she was informed that her husband Shahnawaz @ Shanu became unconscious and shifted to hospital.

- (ff) Petitioner No.1, during her examination, under Section 161 Cr.P.C. by the SIT, stated that policemen put Shahnawaz @ Shanu in ERV in which there were two policemen on the front seat, four in the rear cabin in addition to one lady Constable, herself and Shahnawaz @ Shanu. There were three policemen in uniform on the left hand side and one policeman in civil clothes, herself and lady Constable on the RIGHT HAND SIDE. The first policeman on the LEFT HAND SIDE (Rear Cabin) caught hold of Shahnawaz @ Shanu's hand and the policeman in the middle was beating Shahnawaz @ Shanu. The last policeman on the LEFT HAND SIDE caught Shahnawaz @ Shanu's legs. The first policeman on the LEFT HAND SIDE sat on Shahnawaz @ Shanu's chest. The person in civil clothes sitting next to her on the RIGHT HAND SIDE also started

beating Shahnawaz @ Shanu. The middle policeman on the LEFT HAND SIDE sat on Shahnawaz @ Shanu's abdomen. The policeman sitting at the end on the left hand side sat on the legs of the Shahnawaz @ Shanu and said that Shahnawaz @ Shanu should not be spared. She was taken out of PS along with Shahnawaz @ Shanu who was unconscious while deboarding from Gypsy. She further stated that the Gypsy reached Police Station Nand Nagri in 5 minutes (approx.) and Shahnawaz @ Shanu was taken out from ERV-57 (Police Station Gypsy) in unconscious condition. She was taken inside the police station by telling her that Shahnawaz @ Shanu needs to be shifted to hospital as he was unconscious.

- (gg) Further, in her statement before SDM Seemapuri, she stated that Shahnawaz @ Shanu was unconscious when he was deboarded from the ERV in Police Station.
- (hh) Perusal of statements of petitioner No.1 given before Ld. MM, SDM, Seemapuri and SIT and analysis of contents of video-clip provided by SDM Seemapuri reveals that deceased Shahnawaz @ Shanu was motionless (probably unconscious) before carrying him in Police Gypsy (ERV) on spot and he was struggling for life.
- (ii) A request has been made to the Director of CFSL, New Delhi to recreate the scene of crime and also to assist the SIT in establishing the injuries that could result from the beating as alleged by Rabia.
- (jj) From the analysis of available video-clip it has been revealed that:-
 - a. The video-clip available depicts that deceased Shahnawaz @ Shanu seems

to be motionless from 04 minutes 25 seconds onwards out of total duration of recording of 5 minute 1 second.

- b. It is also evident from the video-clip that one person (Constable Udaiveer) later on identified, was pulling Shahnawaz @ Shanu from inside the Gypsy by holding his shoulder and T-Shirt while the petitioner number 1 was pulling Shahnawaz @ Shanu out of the Gypsy.

(kk) One of the eye-witnesses Manish son of Sanjay Singh stated that deceased Shahnawaz @ Shanu was boarded in Gypsy thrice but he forcefully managed to deboard himself from the Gypsy every time. However, the video clip available clearly depicts that 4-5 policemen had to struggle very hard to put Shahnawaz @ Shanu into the Gypsy and this was done only once, not thrice as claimed by Manish.

33. On the basis of the statements of witnesses and material evidence, the status report concludes as follows:

“31. From the statements of witnesses and material evidence on record, it can be concluded that:-

- i. It is evident from the investigation conducted that ERV-57 reached on the spot coincidentally after execution of warrant of attachment, while it was on the way back to the police station.
- ii. Similarly, it is also evident that Shahnawaz @ Shanu a resident of E-2/245, Sultan Puri, Delhi also reached at the spot coincidentally while going to see his ailing sister-in-law who was admitted in Karuna Hospital. Shahnawaz @

Shanu was drunk and was using abusive language against the police persons. He was constantly trying to resist policemen who wanted to remove him from the spot since he was creating a traffic jam.

- iii. The PCR was at the spot in response to a call made by Farah while both ERV-57 (Police Station Gypsy) and deceased Shahnawaz @ Shanu reached the spot coincidentally. Staff from the police station reached the spot to manage the traffic jam created by the action of Shahnawaz @ Shanu.
- iv. Since Shahnawaz @ Shanu and ERV-57 along with its staff reached the spot coincidentally, any action on part of the policemen in the entire episode does not seem to be pre-planned.
- v. The investigation conducted so far clearly rules out any possibility of third degree or physical beating (torture) given to deceased Shahnawaz @ Shanu inside the police station Nand Nagri.
- vi. It has been established that in PCR Van Baker-36, ASI Tej Singh as In-charge, Constable Sachin as Driver and Constable Udaiveer as Gunman were present on duty during the incident on 07.09.2015. Their sitting arrangement at the time of arrival on the spot to attend the PCR call received by DD No.84-B dated 07.09.2015 Police Station Nand Nagri is attached. (Annexure-I)
- vii. It has been established that SI Rajender and Ct. Sumit went for attachment of proceedings on SI Rajender's motorcycle at Sunder Nagri, while W/Ct. Anita was sent in the Gypsy (ERV-57) to join SI Rajender and Ct. Sumit. After the execution of attachment proceedings, SI Rajender and Ct. Sumit returned to the Police Station on the motorcycle. However, W/Ct. Anita was being taken back to the Police Station

in the ERV-57 by its In-charge SI Manzoor Hassan and Driver Ct. Deepak. When the ERV-57 reached Gagan Cinema T-Point, they stopped on seeing the crowd gathered there. Thereafter, when PCR Baker-36 requested for re-enforcement from the Police Station, at Gagan Cinema T-Point, SI Rajender and Ct. Sumit were dispatched for the spot on SI Rajender's motorcycle. However, the motorcycle stopped a few meters before the Gagan Cinema T-Point because of traffic jam owing to the crowd gathered there. Therefore, SI Rajender stayed back on the motorcycle, while Ct. Sumit went to the ERV-57 on foot. The sitting arrangement of staff reached in the ERV-57 (Police Station Gypsy) that reached Gagan Cinema T-Point is attached. (Annexure-J).

- viii. The investigation shows that Shahnawaz @ Shanu was brought in Police Station Nand Nagri along with SI Manzoor Hassan on conductor seat and Constable Deepak as Driver. In the rear cabin of ERV-57 (Police Station Gypsy), on the LEFT HAND SIDE, in all probability, Constable Udaiveer was sitting behind on the first seat, Constable Sumit on the last seat by holding door of the ERV-57 (Police Station Gypsy). On the RIGHT HAND SIDE one person in civil clothes (Vinay Kumar) was seated behind the driver, petitioner number 1 was on the middle seat and lady Constable Anita was sitting along the door. Shahnawaz @ Shanu was lying on the floor in between the seats. This arrangement can be seen at (Annexure-K).

All the alleged police personnel have been suspended from duty by the concerned Disciplinary Authorities. The Director, FSL has been requested to expedite the result of exhibits i.e. Viscera, Blood, Nails, DVR and video-clip.

From the PME report dated 09.09.2015, it is clear that there are 23 injuries on the body of deceased Shahnawaz @ Shanu besides significant internal injuries on head & neck region. The statements of witnesses and material evidence has been able to establish.

- a. The position of policemen and other persons including deceased Shahnawaz @ Shanu inside the Gypsy. **(Annexure –K).**
- b. Shahnawaz @ Shanu became unconscious at some point during the scuffle when he was being lifted from the road and while he was being put inside the ERV-57 (Police Station Gypsy) and remained unconscious till he was taken out of ERV-57 (Police Station Gypsy) in the Police Station from where he was shifted to GTB Hospital where he was declared brought dead.
- c. There are contradictions in statements of the petitioner No.1, public person Vinay, public witnesses- Manish, Lokesh Mittal, Shamshad, Farah, Rihana and in the version of Ct. Sumit and Ct. Udaiveer. The contradiction has been on the variation of sitting plan inside the Gypsy [as per version of Shamshad and Ct. Sumit at (Annexure-K), as per version of Rabia at (Annexure-L), as per version of Vinay Kumar (Annexure-M) in which Shahnawaz @ Shanu was being carried to the Police Station. The contradiction are also regarding who beat Shahnawaz @ Shanu at the spot i.e. Gagan Cinema T-Point before boarding the Gypsy; alleged beatings/torture given by some of the persons sitting inside the Gypsy enroute to the police station.
- d. In the light of the above facts, it has not been possible for the SIT to come to any definite conclusion at the stage as to at what point, which action and on whose part the deceased Shahnawaz @ Shanu received the fatal injury on his body which ultimately resulted in his death. It is precisely for these reasons that a Medical Board of

eminent doctors from AIIMS has been got constituted and Director CFSL has been requested to recreate the scene of crime.

The Investigation of the case is in progress. The undersigned will abide by the directions by the Hon'ble High Court of Delhi.”

34. A close scrutiny of what has been extracted hereinabove reveals the following:-

- (i) The post-mortem examination conducted on the body of Shahnawaz Chaudhari on 09.09.2015 stated that there were 23 injuries on the body besides significant internal injuries on the head and neck region.
- (ii) It is the contention of the SIT that they have not been able to determine what caused these injuries at this point of time and further investigation is necessitated in order to conclusively determine what caused those injuries.
- (iii) It was also the contention of the SIT that Shahnawaz Chaudhari, the deceased-victim, was motionless (probably unconscious) before he was lifted into the ERV at the spot and was evidently struggling for life.
- (iv) It is theorized by the SIT that as is evident from the video clip Constable Udaiveer was pulling Shahnawaz Chaudhari from inside the ERV by holding his shoulder and T-shirt where as Rabia @ Mamta was pulling the former out of the vehicle.
- (v) It is concluded by the SIT that Shahnawaz Chaudhari, the deceased-victim, was drunk and was using abusive

language against the police personnel. (On a query from the Court it is asserted that although the post-mortem report does not state that Shahnawaz Chaudhari was drunk, the said fact cannot be conclusively determined till such time that the SIT obtains the FSL result qua the viscera in this regard.)

- (vi) It is also concluded by the SIT that the entire incident was not pre-planned and that any possibility of third-degree or physical beatings by the police personnel, is ruled out.

35. In this behalf it would be relevant to observe that a plain reading of the subject FIR reveals that Shahnawaz Chaudhari was fully conscious when he was hauled into the ERV and had lost consciousness by the time the vehicle reached the concerned Police Station. The testimony of the delinquent police officers, as recorded in the subject FIR, clearly supports this conclusion. Therefore, the conclusion arrived at by the SIT that Shahnawaz Chaudhari was motionless (probably unconscious) before boarding the ERV, is on the face of it contrary to the record.

36. The dismissal of allegations of physical torture, inflicted by the delinquent police personnel on Shahnawaz Chaudhari, by the SIT leave a lot to be desired. There is no officer forthcoming to explain how Shahnawaz Chaudhari sustained 23 injuries including the injuries on his head and neck

region between the time he was boarded on to the ERV and the time he was declared brought dead at the GTB Hospital. The deceased victim was admittedly in police custody throughout this period. The role of each of the delinquent police personnel during the entire incident has not been delineated in the status report. The SIT has refrained from mentioning what caused the death of Shahnawaz on that fateful day. The only submission in this behalf is that investigation is on-going.

37. I must observe that the SIT is as clueless today about what occasioned Shahnawaz Chaudhari's death as it was almost three months ago when the incident occurred. It is also incumbent upon this Court to consider the fact finding report dated 15.09.2015 authored by the Sub-Divisional Magistrate, Seemapuri in accordance with law. The report captures the chronology of events thus:-

“2. The Chronology of events

The undersigned (SDM, Seemapuri) conducted a field inquiry and recorded the statement of the victim's wife and other eye-witnesses, watched the video recording (provided by the media) of the incident and perused the post mortem report of the victim. On the basis of the inquiry the following sequence of events can be inferred/derived:-

7th September, 2015

4.30 p.m. The victim along with his wife Smt. Rabia @ Mamta and 3½ months old son left his house to

meet his relatives at Karuna Hospital, Dilshad Colony and reached Gagan Cinema T-point around 05.15 pm where he noticed an ongoing scuffle between a couple; and a police vehicle along with some police personnel was standing there. The victim tried to intervene and mediate as the lady amongst that quarreling couple was apparently known to him. This led to his altercation with the police. The police allegedly beat him up with lathis and bundled him up in the police van.

6.15 p.m. The victim and his wife were taken to the police station Nand Nagri victim's wife was left and the victim was taken to the hospital where the doctors declared him to be brought dead at 06.54 pm.

8th September, 2015

02.30 a.m. Statement of victim's wife was recorded by Metropolitan Magistrate. However, as per the statement of the victim's wife, she was not aware of the death of her husband.

03.00 a.m. The victim's wife was dropped at her parents place by the police.

03.30 a.m. The victim's wife went to GTB Hospital to find out condition of her husband. However, she could not locate her husband.

04.30 a.m. Victim's wife reached Police Station Nand Nagri to inquire about her husband. However, she was not allowed to enter the Police Station. She waited in front of the Police Station till 07.00 a.m.

07.00 a.m. Victim's wife went to her father's place in Nand Nagri and came back to Police Station Nand Nagri with her father.

08.00 a.m. The victim's wife was informed about the death of her husband by the police.

05.30 p.m. Victim's wife arrived at the scene of occurrence of the incident. Seeing her, a huge crowd gathered there. Demanding disciplinary action against the errant police officials, the public blocked the road and pelted stones on the police, leading to lathi charge by the police."

38. The Sub-Divisional Magistrate, Seemapuri highlights the initial hesitation on the part of the concerned SHO to disclose any information about the incident.

39. The statement of Rabia, the widow of the deceased extracted in the SDM's report is as follows:-

"Smt. Rabia @ Mamta wife of Late Sh. Shahnawaj Chduahary age around 36 years, r/o E-2, 245 Sultanpuri, Delhi.

Around 04.30 p.m. on 07/09/2015, Rabia @ Mamta along with her husband and her kid was going to see her relative at Karuna Hospital, Dilshad Colony. They reached Gatan T-Point where her husband saw a lady named Farah standing near a PCR van. Her husband apparently knew the lady and therefore, he asked her as to why she was standing there. Police officials asked her husband, not to interfere in the matter. Her husband told the police that it was a private issue between the couple and they would sort it out at home. The police took umbrage at this and slapped him. Her husband objected to this and this led to further altercation between him and the police. Meanwhile, another police vehicle reached the spot and the police started beating her husband with

batons, hands and feet. She started shouting and begged to let her husband go, but the police kept beating him. Subsequently, they bundled him in a police vehicle and three policemen sat over him in the vehicle. She kept pleading the policemen, not to beat her husband but they kept beating him in the vehicle as well.

Around 05.30 P.M., when the vehicle arrived at police station Nand Nagri gate, police officials first de-boarded her and when she asked to de-board her husband, it was observed that he was unconscious. Police officials asked her to go inside the police station and get the entry of her name and address done and since her husband was unconscious, they were taking him to the hospital. She was made to wait at the police station where she kept inquiring about her husband but nobody disclosed her anything. Her statement was recorded by judge saab around 02.30 am. She was asked by the police not to disclose anything adverse about the police and also about the beating by the police, otherwise the parole of her husband would be jeopardized. The police also promised her to send her home along with her husband soon after recording her statement by Judge saab. Accordingly, she did not disclose all the facts before the Judge saab and only mentioned a minor scuffle with the police. Her statement was recorded under undue pressure of the police.

Around 3.00 am police officials dropped her at her parent's residence, D-3 Block/357 Nand Nagri, Delhi. From there, around 3.30 am she went to GTB Hospital to look for her husband but she could not find him.

Around 4.30 am she went to the P.S. Nand Nagri but the police officials did not allow her to go inside the police station. She kept waiting at the police station till 7.00 am in the morning. Thereafter, she called her father around 8.00 am police officials informed her that her husband was no more.

Then she went to mortuary of GTB Hospital and after seeing her husband's dead body, she went back to the spot (Gagan Cinema T-Point) in the evening and enquired from the local people if anyone has captured the incident, as she remembered some students making video clips of the incident in their mobile phones.

While she was collecting the evidence regarding the incident, a number of people gathered there and after seeing the clip of the incident, they blocked the road, later police got the blockade cleared.”

40. The fact finding report also recorded the statement of Manish, son of Sanjay Singh and Subhash, son of Ganesh Das who are allegedly eye witnesses.

41. The statement of Manish as recorded by the Sub-Divisional Magistrate in his fact finding report is at variance with the statement made by Manish subsequently before the SIT.

42. It is relevant to notice that whereas in the earlier statement Manish stated that he witnessed 4 to 5 policemen beating the victim and continuing to beat him for around 10 minutes before putting him into the police van and taking him to the Police Station, in the later statement he testifies differently and absolves the delinquent police personnel from any wrong doing.

43. Be that as it may what is more alarming is the circumstance that Subhash, son of Ganesh, a Priest by profession at the Shiv Mandir located at the site of the incident, who deposed before the Sub-Divisional Magistrate, Seemapuri that the police personnel beat-up Shahnawaz Chaudhari, who fell down on the road, at which time they promptly dragged him into the police van, has not been examined by the SIT at all. Subhash is conveniently unavailable. On a query from the Court, it has been stated that Subhash has gone back to his native village and consequently, his statement under Section 161 of the Code has not been recorded so far by the SIT.

44. Ms. Prabhsahay Kaur, learned counsel appearing on behalf of the Delhi Commission for Women has strenuously urged that the investigation be transferred to the Central Bureau of Investigation (CBI) *inter alia* for the following reasons:

- (i) The material on record *prima facie* establishes the involvement of police officials.
- (ii) The conduct of the police in illegally detaining Rabia @ Mamta, the widow of the victim, on two separate occasions overnight, at the Police Station and the deliberate delay in informing her of her husband's death, so as to persuade her to

record a statement absolving the delinquent police officials in order to secure her husband's release.

- (iii) The circumstance that an FIR has been registered, *inter alia*, against 50 people including Rabia @ Mamta for rioting and arson and then proceeding to detain Rabia @ Mamta alone.
- (iv) Despite the passage of almost three months, since the date of incident, the FIR continues to be maintained against "Unknown Persons." And despite numerous opportunities given by this court, the investigation is not complete.
- (v) The ocular testimony of Subhash is conspicuous by its absence in the status report filed by the SIT.
- (vi) Lastly, that the focus of the SIT seems to be to exonerate the police rather than find the guilty and bring them to book.

45. Mr. Colin Gonsalves, learned Senior Counsel appearing on behalf of the petitioner submitted after viewing the video clip furnished on behalf of the SIT that the said clip had been doctored, inasmuch as, parts of the video clip showing beatings inflicted on Shahnawaz Chaudhari, are not present,

which is at divergence from the copy of the video clip filed on behalf of the petitioners, which video clip is also a part of the Sub-Divisional Magistrate, Seemapuri's fact finding report.

46. Before I proceed further, I must perform the unpleasant task of recording the response of the SIT to the circumstance that Mr. Zahid Ahmed, who claims to be an eye witness to the incident, and whose statement under Section 164 Cr.P.C. has been recorded before the concerned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi yesterday on the directions of this Court, to the effect that if the police officer concerned despite five calls did not record Mr. Ahmed's testimony, what prevented him from approaching him the concerned Magistrate in this regard. It is urged that Mr. Zahid Ahmed should have approached the concerned Magistrate under Section 156(3) of the Code if the SIT was reluctant to record his testimony.

47. A decision of the Supreme Court in **Anand Wardhan and Another vs. Pandurang and Others** reported as (2006) 1 SCC 769 has been cited on behalf of the SIT to buttress this submission. The ratio of the Hon'ble Supreme Court as recorded in the said order is to the effect that "*the law provides that if the police fails to investigate a case arising from a first*

information report lodged before it disclosing commission of a cognizable offence, it is open to the informant/complainant to move the Magistrate concerned for appropriate order under Section 156 Cr.P.C., or may file a complaint and obtain appropriate orders from him for issuance of process against the accused for trial.”

48. While there can be no quarrel with the proposition that the correct course of action in the event the police fails to carry out the investigation into a cognizable offence is to approach the concerned Magistrate under Section 156 of the Code (Reference: *Sakiri Vasu vs. State of U.P.* reported as (2008) 2 SCC 409 and *Lalita Kumari vs. Government of Uttar Pradesh* reported as (2008) 7 SCC 164), with utmost respect, the said principle has no application to the facts of the present case. The present is a case where the allegations leveled are serious and are that police officers have employed third-degree methods against an individual whose only offence was to intervene at a time when the former were berating a quarrelling couple.

49. The forcible beatings allegedly inflicted on Shahnawaz Chaudhari by the delinquent police officers and their alleged conduct in illegally detaining Rabia @ Mamta, a 28 years old woman overnight in a Police Station, contrary to the mandate of law under Section 46(4) of the Code and in the

face of all canons of justice on two separate occasions and their alleged oversight in informing her that her husband had been brought dead to the GTB Hospital at 06.54 p.m. on 07.09.2015 till 07.00 a.m. on the following day, is according to me is also the reason why the decision relied upon by the Delhi Police does not come to their aid.

50. In the landmark decision of the Supreme Court in **Rubabbuddin Sheikh vs. State of Gujarat and Others** reported as **(2010) 2 SCC 200** while considering the transfer of an investigation at the stage where the police had completed its investigation and submitted its charge sheet into the alleged fake encounter of Sohrabuddin, referred to an earlier decision of the Supreme Court in **R.S. Sodhi vs. State of U.P.** reported as **1994 Supp (1) SCC 143** wherein the Court had observed as follows:-

“2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that *since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them.* It is only with that in mind that we having thought it both advisable and desirable as well as

in the interest of justice to entrust the investigation to the Central Bureau of Investigation....”

51. It then went on to record its earlier decision in *Kashmiri Devi vs. Delhi Admn.* reported as **1988 SCC (Cri) 864** observing that:-

“56. In *Kashmeri Devi v. Delhi Admn.* [1988 Supp SCC 482 : 1988 SCC (Cri) 864 : AIR 1988 SC 1323] this Court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI Authorities or an independent agency for proper investigation of the case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge-sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case.”

52. The Supreme Court held as follows:-

“81. In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State police authorities to continue with the investigation and the charge-sheet and for a proper and fair investigation, we also feel that CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them.

82. Accordingly, in the facts and circumstances even at this stage the police authorities of the State are directed to hand over the records of the present case to the CBI Authorities

within a fortnight from this date and thereafter the CBI Authorities shall take up the investigation and complete the same within six months from the date of taking over the investigation from the State police authorities. The CBI Authorities shall investigate all aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the alleged possibility of a larger conspiracy. The report of the CBI Authorities shall be filed in this Court when this Court will pass further necessary orders in accordance with the said report, if necessary. We expect that the Police Authorities of Gujarat, Andhra Pradesh and Rajasthan shall cooperate with the CBI Authorities in conducting the investigation properly and in an appropriate manner.”

53. The Constitution Bench of the Supreme Court in *State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others* reported as (2010) 3 SCC 571 considered the issue as to whether a High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct the Central Bureau of Investigation established under the Delhi Special Police Establishment Act, 1946 to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government and concluded as follows:-

“68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

- (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory

provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

- (ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.
- (iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any

transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”.

- (iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.
- (v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.
- (vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.
- (vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police,

the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.”

54. In Dinubhai Boghabhai Solanki vs. State of Gujarat and Others

reported as **2014 (2) SCALE 629** the Supreme Court was asked to transfer the investigation into the murder of a RTI activist. Hon’ble Mr. Justice Surinder Singh Nijjar speaking for the Bench held that the High Court may transfer investigation to the Central Bureau of Investigation to instill confidence of the general public in the investigation.

55. In Mithilesh Kumar Singh vs. State of Rajasthan and Others

reported as **(2015) 9 SCC 795** Justice T.S. Thakur, J, as he then was, speaking for the Court, emphasized the importance of a fair and proper investigation. The Court affirmed an earlier decision in Sasi Thomas vs. State reported as **(2006) 12 SCC 421** and observed as follows:-

“15. Proper and fair investigation on the part of the investigating officer is the backbone of the rule of law. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly.”

56. The Supreme Court further cited the case of *Nirmal Singh Kahlon* (*supra*) wherein it was held:-

“28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.”

57. The Supreme Court also referred to *Babubhai vs. State of Gujarat* reported as **(2010) 12 SCC 254** wherein it was observed:-

“32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer

should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer 'is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth'. (Vide *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : 1960 Cri LJ 1239] , *Jamuna Chaudhary v. State of Bihar* [(1974) 3 SCC 774 : 1974 SCC (Cri) 250] and *Mahmood v. State of U.P.* [(1976) 1 SCC 542 : 1976 SCC (Cri) 72])

* * *

40. ... Therefore, if the court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and *ordinarily* not for reinvestigation.

41. The expression '*ordinarily*' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. '*Ordinarily*' excludes '*extraordinary*' or '*special circumstances*'. (Vide *Kailash Chandra v. Union of India* [AIR 1961 SC 1346] , *Eicher Tractors Ltd. v. Commr. of Customs* [(2001) 1 SCC 315] and *State of A.P. v. V. Sarma Rao* [(2007) 2 SCC 159 : (2007) 1 SCC (Cri) 535] .)

42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, it may direct for investigation de novo wherein the case presents exceptional circumstances.

* * *

45. Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation."

58. The majority judgment in *Mithilesh Kumar Singh* (*supra*) held as follows:-

- “11. Such being the importance of fair and proper investigation, this Court has in numerous cases arising out of several distinctly different fact situations exercised its power of transferring investigation from the State/jurisdictional police to the Central Bureau of Investigation under the Delhi Police Establishment Act. There was mercifully no challenge to the power of this Court to direct such a transfer and in my opinion rightly so as the question whether this Court has the jurisdiction to direct transfer stands authoritatively settled by the Constitution Bench of this Court in *State of W.B.v. Committee for Protection of Democratic Rights* [(2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] .
12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in

the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

13. Having said that we need to remind ourselves that this Court has, in several diverse situations, exercised the power of transfer. In *Inder Singh v. State of Punjab* [(1994) 6 SCC 275 : 1994 SCC (Cri) 1653] this Court transferred the investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, “would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter”.
14. Reference may also be made to the decision of this Court in *State of Punjab v. CBI* [(2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666] wherein this Court upheld the

order transferring investigation from the State Police to CBI in connection with a sex scandal even when the High Court had commended the investigation conducted by the DIG and his team of officers. In *Subrata Chatteraj v. Union of India* [(2014) 8 SCC 768 : (2014) 6 SCC (Cri) 116] , this Court directed transfer of the Chit Fund Scam in the States of West Bengal and Orissa from the State Police to CBI keeping in view the involvement of several influential persons holding high positions of power and influence or political clout.

15. Suffice it to say that transfers have been ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. There is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where intervention is called for, nor is it necessary for the petitioner seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.”

59. From a conspectus of the decisions above referred, the following legal situation emerges:-

- (i) The power of the High Court under Article 226 of the Constitution of India cannot be taken away, curtailed or diluted by the Delhi Special Police Establishment Act, 1946

(hereinafter referred to as 'the said Act'). The restrictions imposed by Section 6 of the said Act on the powers of the Union cannot be read as a restriction on the powers of a Constitutional Court.

- (ii) The jurisdiction exercised by the High Court under Article 226 of the Constitution of India directing the Central Bureau of Investigation to investigate a cognizable offence, alleged to have been committed within the territory of a State, without the consent of that State, will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. The High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part-III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.
- (iii) The High Court may transfer a case to the Central Bureau of Investigation after considering and in the light of the facts antecedent and attendant at any stage and even after the police has completed investigation and submitted the charge sheet.

(iv) The High Court may transfer investigation to the Central Bureau of Investigation to instill confidence of the general public in the investigation, keeping in mind the seriousness of the case having far reaching implications.

60. In the present case, Shahnawaz Chaudhari, the deceased-victim intervened on behalf of a quarrelling couple in the presence of police officers and is alleged to have been mercilessly beaten by the latter. It is further alleged that he was dragged into the police ERV, punched, kicked and sat upon (his chest) on the way to the Police Station. Shahnawaz Chaudhari is stated to have been unconscious when he was taken by the police officers from the Police Station to the GTB Hospital when he was declared brought dead. The unfortunate incident resulted in riots and the police is stated to have resorted to *lathi charge* to disburse the agitated mass.

61. The fact finding report of the Sub-Divisional Magistrate, Seemapuri dated 15.09.2015 noted as follows:-

“10. Conclusion

Thus, the only logical conclusion for the sudden death of an otherwise healthy person, who was taken into the custody of police and beaten up[by them is that he succumbed to the injuries caused during this beating; subsequent bundling up in the vehicle and pinning

down of the victim, by three persons, who sat on him leading to asphyxia. The fact that he was declared “brought dead” by GTB Hospital in the evening itself and non-disclosure of this news to the wife of the deceased by police till the next day only re-affirms their role.”

62. Further, the Metropolitan Magistrate during judicial enquiry recorded the following finding dated 16.10.2015:-

“In the light of the examination of witnesses and post-mortem report and other documents filed it is evident, that the deceased Shanu died due to asphyxia caused by compression of neck. The internal injuries on the next of the deceased show that force was applied by the broad object on the neck of the deceased due to which the deceased expired. The medical evidence on record clearly proves that this is not a case of natural death and rather it is a case of homicide. The issue whether it is a case of intentional killing is beyond the scope of this enquiry and can only be ascertained once proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation is carried out. The DCP concerned is accordingly directed to take appropriate action for proper investigation in the matter by registration of FIR.

Copy of this order be sent to (i) Ld. C.M.M. Shahdara KKD Delhi (2) Home Department, Government of NCT of Delhi (3) National Human Rights Commission, Faridkote House, Copernicus Marg, New Delhi (4) DCP concerned NE Distt.”

63. The status report filed on behalf of the SIT, its contents and conclusion leads to an impression that the investigating agency has not been

able to conduct itself in an impartial and fair manner. The failure on the part of the SIT to record the statement of Subhash despite a passage of three months and their reluctance to record the statement of Zahid Ahmed indicates that all is not well with the investigation.

64. In the facts and circumstances discussed hereinabove, while concluding with the investigation into the death of Shahnawaz Chaudhari is far from fair, independent, *bona fide* and prompt and whilst refraining from suggesting with the SIT should or should not have taken a particular line of investigation or apprehended any person, except in accordance with law, it is incumbent and advisable for this Court to transfer the investigation to the Central Bureau of Investigation so as to instill confidence of the general public in the investigation, bearing in mind the seriousness of the allegations leveled against the police officers.

65. Accordingly, the police authorities (SIT) are directed to hand over the record of the present case to the Central Bureau of Investigation within a week from today and thereafter the CBI authority shall take up the investigation afresh and conclude the same within a period of six months from the date of taking over the investigation from the police authorities.

66. The Central Bureau of Investigation is directed to register a RC on the basis of the subject FIR already registered.

67. I expect the police authorities in Delhi to cooperate with the CBI in conducting the investigation properly and in an appropriate manner.

68. Before parting, it is necessary for me, in view of the deposition of Mr. Zahid Ahmed, who claims to be an eye witness of the incident, to direct the DCP, North-East to provide adequate protection to him and ensure his safety.

69. The statement of Mr. Zahid Ahmed, recorded under Section 164 of the Code by the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi yesterday i.e. 02.12.2015 be handed over to the Central Bureau of Investigation.

70. All India Institute of Medical Sciences, Delhi, Central Forensic Science Laboratory, and Forensic Science Laboratory are directed to transmit their reports/opinions directly to the Central Bureau of Investigation in Delhi. The afore-stated authorities are directed to expedite their reports in view of the gravity and seriousness of the allegations leveled against the officers of the State police.

71. The present order relates to prayer clauses (a) and (b) in the present petition, which are allowed. Insofar as prayer clause (c), which relates to compensation to Rabia @ Mamta and her minor child aged six months is concerned, the Hon'ble Lieutenant Governor of Delhi and the Government of NCT of Delhi shall take a decision in this behalf expeditiously and preferably within one month from today.

72. It is hoped and expected that a humane, informed and well considered decision shall be taken, keeping in mind the facts and circumstances antecedent and attendant and the plight of the young widow and her six month old baby boy.

73. The writ petition is disposed of. Pending applications, if any, stand disposed of.

74. It is made clear that any observations made in this order are only for the limited purpose of deciding the issue whether investigation ought to be handed over to the Central Bureau of Investigation or not and shall not be construed as an expression of opinion on merits of the case.

75. A copy of this order be sent to the (i) All India Institute of Medical Sciences; (ii) Central Forensic Science Laboratory; (iii) Forensic Science

Laboratory; (iv) Director, Central Bureau of Investigation, and (v) Secretary (Home), Government of NCT of Delhi.

SIDDHARTH MRIDUL, J

DECEMBER 03, 2015

dn

