

ITEM NO.16

COURT NO.13

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 551/2022

(Arising out of impugned final judgment and order dated 21-09-2021 in WPMB No. 21319/2021 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

NASIMA

PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

(IA No.10079/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.10080/2022-EXEMPTION FROM FILING O.T. )

Date : 21-04-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI  
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Mehmood Pracha, Adv.  
Ms. Vidushi Bajpai, Adv.  
Mr. Vaibhav Upadhyaya, Adv.  
Mr. Jatin Bhat, Adv.  
Mr. Sanawar, Adv.  
Ms. K. V. Bharathi Upadhyaya, AOR

For Respondent(s) Mr. V.K. Shukla, Sr. Adv.  
Mr. Vinod Diwakar, AAG  
Mr. Adarsh Upadhyay, AOR  
Mr. Yashasvi Virendra, Adv.  
Ms./Mr. Pranjal Sharma, Adv.  
Mr. Aman Pathak, Adv.

Ms. Aishwarya Bhati, Ld. ASG  
Ms. Ruchi Kohli, Adv.  
Mr. Rajan Kr. Chourasia, Adv.  
Ms. Archana Pathak Dave, Adv.  
Mr. Siddhanth Kohli, Adv.  
Mr. Bhuvan Kapoor, Adv.  
Mr. Aman Sharma, Adv.  
Mr. Arvind Kumar Sharma, AOR

Ms. Vanshaja Shukla, AOR  
Mr./Ms. Sajal S., Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The mother who has lost her grown-up son Mohd. Faizal, made a complaint that her son was brutally murdered in police custody on 21<sup>st</sup> May, 2021 at Police Station Bangermau, District Unnao, Uttar Pradesh, by the local police officials.

On her aforesaid complaint FIR No.160 of 2021 came to be registered on 21<sup>st</sup> May, 2021 under Section 302 IPC at Police Station Bangermau, District Unnao. The inquest report under Section 174 Cr.P.C. was also prepared at the same time on 21<sup>st</sup> May, 2021 and post-mortem on the body of the deceased was conducted on 22<sup>nd</sup> May, 2021 and the report indicates 14 ante-mortem injuries on the body of the deceased are as under:

- i) Injury No.1 Contused swelling and 20 cm x 6 cm x 5 cm present over RT side temporo parietal region over seal just above RT ear.
- ii) Contusion 33 cm x 3 cm over back of chest just below lower end of scapula.
- iii) Contusion 29 cm x 3 cm below 2.5 cm from injury no.2.
- iv) Contusion 23 cm x 3 cm below 3.5 cm from injury no.3.
- v) Contusion 20 cm x 3 cm below 2 cm from injury no.4.
- vi) Contusion 9 cm x 3 cm below 1.5 cm from injury no.5.
- vii) Contusion 7 cm x 3 cm below 2 cm from injury no.6.
- viii) Contusion 5 cm x 3 cm below 3 cm from injury no.7.

- ix) Contusion 22 cm x 3 cm below 1 cm injury no.8.
- x) Contusion 8 cm x 3 cm from injury no.9.
- xi) Contusion 9 cm x 3 cm below 2 cm from injury no.10.
- xii) Contusion 14 cm x 3 cm over back of LT upper leg.
- xiii) Contusion 2 cm x 2 cm just back of RT Auxilla margin.
- xiv) Contusion 4 cm x 2 cm below 6 cm from injury no.13.

The complaint of the petitioner at the very threshold was that her complaint is against local police officials who were present in the police station Bangermau, under whose custody her son was brutally murdered, the investigation which has been undertaken by the Circle Officer attached to the Police Station Bangermau, District Unnao, will not be fair and transparent, but the administration has not paid any heed to her request and without any loss of time just after recording the statements of the police personnel of the police station, hardly any statement of independent witness being recorded, charge-sheet was filed against Constable Vijay Chaudhary and Home Guard Satya Prakash under Section 304 IPC on 6<sup>th</sup> August, 2021.

It may be noticed at this stage that during the course of investigation, the statements of the persons which are recorded under Section 161 Cr.P.C., hardly any witness has supported the commission of crime which, as per her complaint, is alleged to have been committed at the police station itself.

The Petitioner was throughout knocking the doors in the first

instance to the higher authorities of the administration and when no one has listened to her request, she invoked the jurisdiction under Article 226 of the Constitution by filing of writ petition before the High Court of Judicature at Allahabad, Bench at Lucknow, wherein the petitioner had prayed that the investigation either may be transferred to CBI or to some other independent agency so that there can at least be a fair and transparent investigation in reference FIR No.160/2021, which has been registered at her instance with regard to the murder of her son, as alleged has taken place in the police custody on 21<sup>st</sup> May, 2021.

The Division Bench of the High Court remain completely oblivious of her complaint and taking note of the fact that since charge-sheet has been filed under Section 304 IPC, it was for the prosecution to invoke Section 319 of the Code to summon additional accused for trial, if considered necessary and disposed of the petition by its order dated 21<sup>st</sup> September, 2021. Later, the learned Sessions Judge, Unnao framed charge under Section 302/34 IPC on 2<sup>nd</sup> December, 2021. The said order of the High Court has been assailed by the petitioner in the present Special Leave Petition before this Court.

Notices were issued of the present Special Leave Petition by this Court on 11<sup>th</sup> February, 2022 and the respondents were called upon to file their written response and by a later order dated 21<sup>st</sup> February, 2022, this Court directed the respondents to file a complete charge sheet on the basis of which charge under Sections

302/34 IPC has been framed and also stayed further proceedings in Sessions Trial No.1059/2021 titled State vs. Satya Prakash & Ors. pending before the learned Sessions Judge, Unnao.

The term "investigation" as referred to under Section 2(h) of the Code includes collection of evidence conducted by the police officer or by any person who is authorized by the Magistrate on his behalf and that includes search for material evidence and facts to find out whether or not an offence has been committed by the accused or not.

The fair investigation is the backbone of criminal justice system and the object of the investigation is to search for the truth so that it would help in meeting the ends of justice by way of fair trail in Court. At the same time, the need to ensure fair investigation of crime is undoubtedly imperative because it protects at one level the rights of the victim and the fundamental rights of every citizen in ensuring that crime is investigated and dealt with in accordance with law.

With the assistance of the learned counsel for the State respondent, we have gone through the statements recorded by the investigating officer during investigation of various police officers under Section 161 Cr.P.C. no one has supported the case of the prosecution, but still charge-sheet was filed under Section 304 IPC and the learned Sessions Judge has framed charges later under Section 302/34 IPC. We have not been able to endorse our satisfaction of a fair and independent investigation and the manner

in which the investigation has been conducted by the Circle Officer of the police Station under whose jurisdiction the charge-sheet came to be filed on the basis of the charges later been framed under Section 302 IPC on 2<sup>nd</sup> December, 2021.

After going through the records placed before us, we are prima facie of the view that the manner in which the investigation has been conducted by the investigating officer cannot be said to be fair and impartial and the complaint of the petitioner, in our considered view, deserves indulgence of this Court.

We have an option either to send the matter to CBI for further re-investigation, but after we have heard counsel for the parties, consider it appropriate at this stage that let a senior Police Officer, Shri Bhagwan Swarup, Inspector General of Police, Intelligence, HQ, Lucknow shall personally undertake further investigation of the complaint made by the petitioner on which FIR No.160 of 2021 has been registered, in a fair and impartial manner and report be furnished to this Court within a period of eight weeks.

The respondent State is directed to hand over all the papers including charge sheet and other material in reference to FIR No.160/2021 to the officer positively within 7 days from today and shall render all assistance to him, if required.

List the matter on 19<sup>th</sup> July, 2022.

(POOJA SHARMA)  
COURT MASTER (SH)

(BEENA JOLLY)  
COURT MASTER (NSH)