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

Date of Decision: 23rd July, 2024

+ W.P. (CRL) 2195/2020 & CRL.M.A. 18056/2020, CRL.M.A. 18057/2020, CRL.M.A. 2855/2021

KISMATUN

..... Petitioner

Through: Ms. Vrinda Grover, Mr. Soutik Banerjee and Ms. Devika Tulsiani, Advocates.

versus

STATE OF NCT OF DELHI THROUGH HOME DEPARTMENT & ORS.

..... Respondents

Through: Mr. Amit Prasad, SPP with Mr. Ayodhya Prasad, Ms. Ruchika Prasad, Ms. Kavya Agarwal, Ms. Chanya Jaitly, Advocates and ACP Pankaj Arora, P.S: Crime Branch.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

The present case arises in the backdrop of protests that were on-going since mid-December 2019 in certain parts of Delhi, including North-East Delhi, in the context of promulgation of the Citizenship (Amendment) Act, 2019 ('CAA').

2. The petitioner is the mother of deceased Faizan, a 23 year-old young man, who died on the intervening night of 26.02.2020 and 27.02.2020. The petitioner's allegation is that Faizan died at the hands of Delhi Police by reason of unlawful use of force and authority.



3. Respondents Nos. 1, 2 and 3 are respectively the Department of Home, Government of NCT of Delhi; the Investigating Officer of the Special Investigation Unit-I, Crime Branch, New Delhi, who is presently in-charge of the investigation *inter-alia* into Faizan’s death; and the Station House Officer of P.S.: Jyoti Nagar, Delhi.
4. The principal prayer in the petition is for the court to issue a direction constituting a ‘fresh’ Special Investigation Team (‘SIT’) comprising senior police officers with demonstrably unblemished record and credibility to carry-out an independent, impartial, professional and time-bound investigation into Faizan’s death under the supervision of this court. The petitioner also prays that this court should monitor the investigation by calling-for periodic status reports/action taken reports. The petitioner has also sought other consequential and ancillary reliefs.
5. The court has heard Ms. Vrinda Grover, learned counsel appearing for the petitioner as well as Mr. Amit Prasad, learned Special Public Prosecutor (‘SPP’) representing the respondents.

PETITIONER’S CONTENTIONS

6. The petitioner puts her case as follows :
 - 6.1. The petitioner’s son Faizan, aged about 23 years, used to work at a meat shop in Ghazipur Mandi, Delhi.
 - 6.2. On 24.02.2020, Faizan had stepped-out of his home to look for his mother since she had not returned from Kardampuri bridge, Delhi where she was participating in an anti-CAA protest alongwith many other women.



- 6.3. When the petitioner returned, she did not find Faizan at home; and though her other son Nadeem tried to call Faizan on his cell-phone, the calls did not connect. However, since in the meantime violence had broken-out around the locality, the petitioner and her other son did not think it prudent to leave their home in search of Faizan.
- 6.4. The petitioner says, that it later transpired that Faizan and some other young men belonging to the Muslim community had been dragged and dumped onto a road in the locality and had been beaten-up by the police. She further says, that in that helpless condition, as the young men lay beaten-up on the road, some policemen forced them to sing the National Anthem.
- 6.5. The petitioner contends that thereafter Faizan, alongwith the other young men, was taken to GTB Hospital in a police vehicle (a white Maruti Gypsy), where Faizan received some basic medical treatment, including stitches on his head and ear; and that Faizan was referred by the doctors at GTB Hospital for further specialised medical treatment.
- 6.6. The petitioner contends that at around 08:00 p.m. on 24.02.2020, she received information that her son Faizan was at GTB Hospital; but when the petitioner alongwith her other son Nadeem and daughter Shazia reached the hospital, they could not find Faizan in the Emergency Ward; and upon showing Faizan's photograph to the people present there, they learnt that a few young men were brought by the police to the hospital, but thereafter the police had taken them to P.S.: Jyoti Nagar. It is



alleged that therefore, instead of getting Faizan specialised medical treatment as had been advised by the attending doctors at GTB Hospital, the police took Faizan in a grievously injured condition to P.S.: Jyoti Nagar, where they detained him illegally, thereby denying him timely critical medical care, which led to his death.

- 6.7. Thereupon, the petitioner alongwith her other son Nadeem reached P.S.: Jyoti Nagar on the same night itself *i.e.*, the night of 24.02.2020, but they were not allowed to enter the police station and were stopped by a policeman stationed outside, named Sonu.
- 6.8. It is contended that at 08:00 a.m. on 25.02.2020, *i.e.*, the next day, the petitioner went back to P.S.: Jyoti Nagar to find Faizan but since she did not receive a positive response from the police, she requested for the release of her son through a local political leader, who informed her that Faizan will be released in a little while.
- 6.9. The petitioner states, that in the meantime, on the morning of 25.02.2020 certain video-footage went viral on the social media which *inter-alia* showed Faizan as one of the young men who were dragged, encircled, physically assaulted and brutally beaten-up by certain policemen, who also taunted the young men with derogatory phrases and forced them to sing the National Anthem while they were lying on the road-side in a badly beaten and injured condition. The petitioner says that the policemen had assaulted the young men, including Faizan, all



of whom belonged to a minority community, abusing them as being unpatriotic and saying that they needed to be taught a lesson.

6.10. The petitioner has embedded two 'links' to video-footage in her petition. One of the links leads to a video-footage where a group of policemen are seen to have encircled Faizan, who is lying on the roadside; and the policemen are seen brutally beating Faizan with their batons/*lathis* and kicking him mercilessly, while Faizan is squirming and trying to save himself from the blows. The second link shows a video-footage where a group of young men are seen surrounded by a group of policemen, who are brutally beating the young men with their batons/*lathis*, while they are also kicking them and forcing them to sing the National Anthem, while hurling nasty abuses at them. The policemen are also heard mocking the young men, saying that they have lived in *this country* and yet they want *azadi*, while exhorting them to sing the National Anthem *properly*. At the same time, the policemen are heard hurling foul expletives at the young men.

6.11. Around 11:00 p.m. on 25.02.2020, the petitioner received information that the police were going to release Faizan and that she should pick him up from P.S.: Jyoti Nagar. The petitioner states that thereupon she, alongwith two other women, whose relatives were also being released at the same time, reached P.S.: Jyoti Nagar; where the police handed-over her son in a severely injured condition, barefoot and with



stitches on his head and ear, in blood-soaked clothes and torn trousers.

- 6.12. The petitioner states that she was alarmed to find that her son was severely injured; his body was badly bruised; and his hands and feet were swollen so acutely that he could barely walk. The petitioner contends that in that painful and restless state however, through laboured breaths, Faizan managed to narrate to his mother what had transpired on 24.02.2020 and 25.02.2020. The petitioner has extracted the narration in the petition.
- 6.13. On the morning of 26.02.2020, the petitioner says that she took Faizan to a local doctor, who advised her to take him to a big hospital for treatment, considering his critical condition. Faizan was thereafter taken to Lok Nayak Hospital around 01:00 p.m., where Faizan succumbed to his injuries on the intervening night of 26.02.2020 and 27.02.2020.
- 6.14. On 28.02.2020, based on an MLC bearing No. D-23 received from GTB Hospital relating to Faizan and on the basis of information of his death received from Lok Nayak Hospital, an FIR bearing No. 75/2020 was registered at P.S.: Bhajanpura under sections 147, 148, 149 and 302 of the Indian Penal Code 1860 ('IPC'), against unknown persons. A copy of FIR No. 75/2020 dated 28.02.2020 registered at P.S.: Bhajanpura ('said FIR') has been placed on record. By administrative orders issued by the Commissioner of Police, Delhi the investigation



in the said FIR (along with other FIRs relating to the North-East Delhi riots) was subsequently transferred to an SIT.

- 6.15. Apart therefrom, another FIR relating to other victims who were injured in the same incident, was also registered on the same date at the same police station.
- 6.16. Thereafter, under order dated 29.02.2020 made by the learned Chief Metropolitan Magistrate ('CMM'), Karkardooma Courts, Delhi on an application made by Faizan's brother Nadeem, post-mortem was conducted on Faizan. Post-mortem report bearing No.150/20 dated 29.02.2020 recorded the cause of death as :“... .. *cerebral injury associated with multiple blunt injuries over the body.*”; and that “... .. *All injuries are ante-mortem, 2-3 days in duration and caused by blunt force impact.*”. A copy of the post-mortem report has also been filed by the petitioner on record.
- 6.17. For completeness it may also be noted that on 17.03.2020, the petitioner received from the Delhi Government, compensation of Rs.10 lacs under the Delhi Government's Assistance Scheme for the Help of Riot Victims.
7. In the above backdrop, setting-out certain reasons, the petitioner has expressed grave apprehension that the investigation purportedly being conducted by the SIT appointed by Delhi Police is vitiated since, she contends, the investigation is neither thorough nor objective nor fair. The reliefs prayed for in the petition arise from that apprehension.
8. Upon a perusal of the petition and after hearing submissions made by learned counsel for the petitioner, it appears that the basis for the



petitioner's apprehension that investigation in the matter has not been proceeding with requisite seriousness and expedition, arises from the following *circumstances as highlighted* by the petitioner :

- 8.1. That though the said FIR was registered on 28.02.2020, the Crime Branch recorded the petitioner's statement in the matter only on 18.03.2020 *i.e.*, almost 03 weeks after the incident. It is only on that date, the police also seized the blood-stained, torn clothes worn by Faizan at the time of the incident from the petitioner.
- 8.2. That there was also another injured victim and eye-witness to the incident, by name Kausar Ali, but the police did not record his statement; and the statement of the said witness is stated to have been sent to the Crime Branch by WhatsApp on 24.03.2020 by reason of the then prevailing pandemic. The petitioner submits that Kausar Ali's statement clearly shows that Faizan (alongwith the others) was mercilessly assaulted by the police without provocation; that the errant policemen jeered, mocked and abused the victims, questioning their patriotism only because they belonged to the minority community; and also that the policemen forced the victims to sing the National Anthem, as they lay seriously injured and helpless on the roadside, encircled by and in control of the policemen.
- 8.3. That though in his statement Kausar Ali had informed the Crime Branch that he was still in possession of the clothes that he was wearing on the date of the incident, which clothes



would form material evidence in the case, the police have failed to seize those clothes from Kausar Ali till date, despite repeated reminders.

- 8.4. That the Crime Branch then examined the petitioner again, as well as Faizan's brother Nadeem, on 07.04.2020.
- 8.5. That by reason of the foregoing circumstances, on 06.06.2020 the petitioner filed two applications before the learned CMM : one, being an application under section 156(3) of Code of Criminal Procedure 1973 ('Cr.P.C.');
- and the second, an application under section 91 read with section 156(3) Cr.P.C. In the second application, the petitioner had *inter-alia* sought for preservation of certain records relating to P.S.: Jyoti Nagar and P.S.: Bhajanpura, including the daily diary/general diary/station diary, duty-roster, vehicle logbooks, and other records and documents for the period 23.02.2020 to 27.02.2020, including the names, postings and other relevant details of policemen deployed from both police stations on riot-control duty. In response to the latter application however, the police filed a status report/reply on 22.07.2020 taking the stand that the police records sought by the petitioner were "... ..*irrelevant and are not warranted for the purpose of investigation of the instant case.*". The petitioner states, that surprisingly, in their affidavit dated 12.03.2021 filed before this court, the Crime Branch states that on 24.02.2020 *i.e.*, on the day of the incident, the CCTVs at P.S.: Jyoti Nagar were not working due to some technical fault.



8.6. That the police have also taken the stand that though two of the young men were kept under treatment at GTB Hospital, the three others namely Faizan, Rafique and Wasim, were discharged after administering them initial treatment; and that they were brought to P.S.: Jyoti Nagar since *they* were reluctant to go back to their respective homes in view of the communal tension prevailing and the rioting that was going-on in the area; and that it was for this reason that Faizan was also permitted to stay overnight at P.S.: Jyoti Nagar *as per his own wishes* and for his own safety and security. Furthermore, the police have said that Faizan and Rafique's parents only visited P.S.: Jyoti Nagar late at night on 25.02.2020, at which time they were handed custody of the young men. The relevant para of status report/reply dated 22.07.2020 reads thus :

“10. That as regards the allegations of illegal confinement/detaining of deceased Faizan at Police Station Jyoti Nagar, during investigation it has emerged that out of the above 5 (five) individuals namely Faizan, Farhan, Kauser, Rafique and Wasim, who were taken to GTB Hospital on 24.02.2020 for treatment by the staff of Police Station Jyoti Nagar, Farhan and Kauser were kept under treatment by GTB Hospital, whereas other three namely Faizan, Rafique and Wasim were discharged after giving initial treatment. All the above 3 persons (Faizan, Rafique and Wasim) were reluctant to go to their respective homes in view of Communal tension and rioting in the area. Accordingly, as per their own wish they were permitted to stay at Police Station Jyoti Nagar for their own safety and security.

“11. That on 24.02.2020, parents of Wasim visited Police Station and he was handed over safely to them, whereas parents of Faizan and Rafique visited Police Station Jyoti Nagar only on 25.02.2020 at late night, who were



then handed over the custody of Faizan & Rafique respectively”

(emphasis supplied)

The petitioner states that what is recorded by the police in status report/reply dated 22.07.2020 raises serious questions, since the circumstances described in the status report are quite unbelievable.

- 8.7. That based on what the police had informed that court, in order dated 22.07.2020, the learned CMM, North-East, Delhi went-on to record as follows :

“... .. Further during investigation neither any Government installed CCTV nor any private CCTV was found installed in the area. In regard to documents of PS it has been stated that documents/registers which the applicant has requested to preserve are irrelevant for the purpose of investigation. As far as, CCTV footage of PS Jyoti Nagar is concerned it has been submitted that on the date of the incident CCTV cameras installed at PS Jyoti Nagar were not working.”

(emphasis supplied)

The petitioner states that the contention of the police that no CCTV cameras were found installed in the area and that on the fateful night of 24.02.2020 *all CCTV cameras* installed at P.S.: Jyoti Nagar were not working, raises serious suspicion as to the truthfulness of what the police have said, and as to what transpired in the police station on that night and the following day, till Faizan was handed-over to his family. Furthermore, it is submitted that the stand taken by the police that the documents and registers relating to the two police stations, which the petitioner had requested should be preserved, are



irrelevant for purposes of the investigation, also smacks of an effort on their part to cover-up what happened at the police station.

- 8.8. That when the police examined Faizan's brother Nadeem again on 06.08.2020, they showed to Nadeem video-footage of 24.02.2020 in which Faizan is seen standing, with one hand in his pocket and other holding a mobile phone, meaning thereby that Faizan was neither participating in any violence nor was he part of any mob.
- 8.9. That despite the passage of an inordinate period of time from the date of the incident, the police have failed to even identify the policemen who had humiliated and brutally assaulted Faizan (and four other young men), as plainly visible in the video-footage available in the public domain.
- 8.10. That furthermore, no action has been taken against the policemen of P.S.: Jyoti Nagar, who illegally detained Faizan at the police station and denied him timely critical medical care, which resulted in his death. The petitioner contends that only when Faizan's medical condition became precarious, did the police release him to his family, perhaps to avoid Faizan dying inside the police station. The petitioner contends that merely because Faizan died outside the police station premises does not absolve the police officers of his custodial killing.
9. Based on the aforesaid circumstances highlighted by Ms. Grover, she argues that Faizan was assaulted by policemen on 24.02.2020 in broad day-light and the act was captured on cell-phone cameras,



which videos went viral on the social-media. Counsel submits that thereafter the police carried Faizan and other injured young men from the 66-*foota* road near Mohalla Clinic in Kardampuri to GTB Hospital in a white police Gypsy *via* a route littered with several commercial establishments, petrol pumps, DMRC metro stations and various other buildings, many of which would have had CCTV cameras, but despite that, in status report/reply dated 22.07.2020 filed before the learned CMM, the police have asserted that there were no such cameras installed *en-route* in the entire area. This, counsel contends, raises series doubts about the fairness and objectivity of the investigation.

10. Learned counsel for the petitioner further argues that every police vehicle has its own log-book, in which the particulars of the officers using the vehicle, including their names and designations, are recorded in addition to the route taken and the locations to which the vehicle has traveled. It is argued that therefore the occupants of the Gypsy which carried Faizan to GTB Hospital can themselves provide leads to the identity of the policemen involved in the assault. However no efforts have been made to obtain or pursue such leads.
11. Ms. Grover further argues that the duty roster of P.S.: Jyoti Nagar for the relevant period *i.e.*, for 24.02.2020 and 25.02.2020 would give the names of the policemen under whose control and supervision Faizan was detained at the police station, which would give a clue as to who denied critical medical treatment to Faizan, leading to his death. This would also indicate the names of the policemen who did not release Faizan to his family, when they visited the police station to take Faizan home.



12. It is argued on behalf of the petitioner that the stand taken by P.S.: Jyoti Nagar that the CCTVs installed in the police station were not functional on the date of the incident, simply cannot be accepted, especially in light of the observations of the Supreme Court in *Paramvir Singh Saini vs. Baljit Singh & Ors.*¹, which, in effect, entitles a victim of human rights violation in police custody, to requisition a copy of such CCTV-footage. The petitioner contends that this stand taken by the police also raises strong suspicion of wrongdoing on the part of the policemen stationed at P.S.: Jyoti Nagar during the relevant period. Counsel contends that an enquiry is warranted to check the veracity of the stand taken by the police, including by checking whether any contemporaneous record corroborates that the CCTVs at the police station were not functioning during that period. Counsel submits however, that none of this has been done by the Investigating Officer.
13. It is submitted on behalf of the petitioner that in her statement given to the police, she had narrated in detail what Faizan had told her about what transpired on 24.02.2020 and 25.02.2020, which circumstances led subsequently to his death, which narration amounts to a dying declaration in the eyes of law; and yet the police have ignored that statement in the course of the purported investigation. The petitioner contends that in her statement given to the police, she has given details of her visits to P.S.: Jyoti Nagar on 24.02.2020 and 25.02.2020, which negate the police's claim that Faizan stayed back

¹ (2021) 1 SCC 184



at the police station voluntarily; and was released to his family only on 25.02.2020 since his family had not come to the police station earlier.

14. Ms. Grover submits that the police have still not seized the blood-stained clothes that injured eye-witness Kausar Ali was wearing on the date of the incident, despite repeated requests in that behalf.
15. The petitioner also points-out that though MLC No. D-23 dated 24.02.2020 prepared at GTB Hospital records that Faizan was to be referred to Neurosurgery and Orthopaedic care, however the police failed to do so; and instead they illegally detained him at P.S.: Jyoti Nagar and released him only on 25.02.2020 at about 11:00 p.m., thereby denying him critical medical treatment, which led to his death.
16. In sum and substance, it is urged on behalf of the petitioner that since the persons responsible for Faizan's death are themselves members of the police force, and in view of the circumstances summarized above, the presumption of a 'good-faith investigation' by officers of the same police force is outweighed by the need for transparency by directing investigation by an SIT comprising officers handpicked by the court, with demonstrably unblemished record, impeccable credibility, impartiality, professionalism and competence.
17. For all the aforesaid reasons, it is argued that the investigation in the said FIR is proceeding in a partisan, compromised, lackadaisical, deliberately slow and ineffective pace, since the perpetrators of the offence are policemen, who are being shielded by the investigators.



The petitioner accordingly alleges that she has no confidence in the on-going investigation.

18. The petitioner has also relied-upon several judicial precedents and pronouncement of various courts, including the Supreme Court, to support her submissions.

RESPONDENTS' CONTENTIONS

19. In an undated status report filed on behalf of the respondents by the Assistant Commissioner of Police, Special Investigation Unit-I, Crime Branch, New Delhi, they have given their version of what had transpired in relation to the petitioner's son Faizan. This is what they say :

19.1. That *vide* DD Entry No. 141A recorded at P.S.: Bhajanpura at 0852 hours on 25.02.2020, information was received from GTB Hospital about 05 individuals, including Faizan, being admitted to that hospital since they had sustained injuries during rioting and stone pelting on the 66-*foota* road, North-East Delhi.

19.2. That the DD Entry was marked for investigation to Head Constable ('HC') Manoj Bhati from P.S.: Bhajanpura, who collected the MLCs from GTB Hospital, including Faizan's MLC, which recorded the history as "*Physical assault by MOB at near Kardampuri at around 4:00 P.M. on 24/2/2020 as stated by Pt. himself*".

19.3. That HC Manoj Bhati could not find Faizan at the hospital, and discovered that Faizan had been discharged after treatment and had left the hospital by then. Thereupon HC Manoj Bhati reached Faizan's residence but could not find him there either;



and it later transpired that the staff of P.S.: Jyoti Nagar had brought all 05 injured persons to GTB Hospital and while Farhan and Kausar were admitted, the remaining 03, including Faizan, were discharged by the hospital and were thereafter brought to P.S.: Jyoti Nagar.

- 19.4. That *vide* DD Entry No. 3B recorded at P.S.: Bhajanpura, it was noted that information had been received at 0300 hrs. on 27.02.2020 that Faizan had died at Lok Nayak Hospital during treatment. This DD was marked to Sub-Inspector Rahul; who could however, not find any family member of deceased Faizan when he reached the hospital. The police say that FIR No.75/2020 dated 28.02.2020 was registered under sections 147/148/149 and 302 IPC at P.S.: Bhajanpura based on the history of Faizan's treatment at GTB Hospital. They submit that thereafter, post-mortem was conducted on Faizan at Lok Nayak Hospital on 29.02.2020, which was duly video-graphed; and after completing post-mortem, the dead body was handed-over to Faizan's family.
- 19.5. That on 04.03.2020, further investigation of the case was transferred to the Special Investigation Team, Special Investigation Unit-I, Crime Branch, New Delhi and was marked to Inspector Pankaj Arora (now Assistant Commissioner of Police), who continues to be the Investigating Officer of the case till date.
- 19.6. That according to the police, after scrutinising the relevant documents, including the DD Entries at P.S.: Bhajanpura and at



P.S.: Jyoti Nagar, the statements of other injured persons and of family members of Faizan, and the statements of police officers and others, what is revealed is as follows :

19.6.1. On 24.02.2020, at about 1700 hours, riots erupted near T-point of Kardampuri *pulia* and 66-*foota* road in which 05 individuals, including Faizan, sustained injuries since they were assaulted by persons in police uniform.

19.6.2. The local policemen deployed at the spot found these individuals lying in injured condition on the 66-*foota* road, near Mohalla Clinic under the jurisdiction of P.S.: Bhajanpura; whereupon these 05 individuals were taken to GTB Hospital by the SHO, P.S.: Jyoti Nagar.

19.6.3. Thereafter, Faizan was medically examined at GTB Hospital *vide* MLC No. D-23 dated 24.02.2020 at 1955 hrs, which MLC records that the patient himself said that he had been physically assaulted by a mob near Kardampuri at about 04:00 p.m. on that date.

19.6.4. It is the respondents' case that after treatment at GTB Hospital, Faizan was discharged, with advice to attend OPD on Monday, Wednesday or Friday. They say that since the 03 persons discharged, including Faizan, were reluctant to go to their respective homes due to the prevailing communal tension, they were brought to P.S.: Jyoti Nagar for their own safety and security and were given proper food.



20. It is accordingly Mr. Prasad's contention, that despite there being allegations against policemen in the said FIR, the investigation in the case has been proceeding as expeditiously as possible and with requisite thoroughness, in accordance with law. Mr. Prasad submits that there is no basis to doubt the seriousness and sincerity with which the investigation is proceeding; and there is no reason to grant the prayers made in the petition.
21. Apart from expressing their sincerity in conducting the investigation, in the course of hearings, including in-chamber hearings given in the matter, the police have also expressed the following essential difficulties in relation to the investigation :
- 21.1. They say that they are unable to identify the policemen who are seen wielding *lathis* and kicking the young men, including Faizan, on the roadside on 24.02.2020 since, as is seen in the video-footage, all policemen on the spot are wearing riot-gear, including helmets, and therefore it is not possible to identify their faces.
- 21.2. They say that considering the scale of the riot, police contingents had been requisitioned from police stations and other outfits all over Delhi and the policemen on duty were not necessarily from the local police station. The police say accordingly, that they do not have a duty-list of the policemen who were deployed at the particular spot on the date of the incident.
- 21.3. Furthermore, they say that no CCTV-footage is available from any Government or private establishment in and around the



scene of the incident, that could help in identifying the policemen who were present at the spot.

- 21.4. They also say that no CCTV-footage is available from within P.S.: Jyoti Nagar since the entire CCTV system installed at the police station had malfunctioned that night. The police say that the DVRs/hard-disks from P.S.: Jyoti Nagar were nevertheless sent for forensic examination first to the Forensic Science Laboratory ('FSL') Rohini, Delhi who could not analyse it since they did not have the technology; and thereafter, to the National Forensic Sciences University ('NFSU') Gandhinagar, Gujarat, which laboratory has said that the DVRs were not 'powering-on'.
22. Mr. Prasad also argues that it must be appreciated that the place of the incident comes within the territorial jurisdiction of P.S.: Bhajanpura; but considering the situation at that time, the SHO and his officers from P.S.: Jyoti Nagar rescued the young men, took them to GTB Hospital and then brought them to the safety of their police station. It is submitted that otherwise there was no reason why police officers of P.S.: Jyoti Nagar would have brought these young men including Faizan to their police station, when they were found lying within the jurisdiction of P.S.: Bhajanpura.
23. In the course of the hearings, Mr. Prasad has also informed the court that they have put two policemen, a head constable and a constable, who have been identified as present at the spot at the relevant time, through a polygraph test at FSL Rohini, Delhi; and their responses during the tests have been found to be 'deceptive'. Thereafter, the said



two policemen have also been put through a voice-matching test, during which their voice samples have matched certain words that were spoken at the spot. The police have also informed the court that considering the conduct of the said two policemen, departmental proceedings have also been initiated against them, all of which goes to show the *bona-fides* of the investigation being conducted in the case. The police have also shared with the court copies of relevant documents in this behalf, from a perusal of which it is seen, that the role ascribed to the said two policemen is (only) of being present at the spot, while *other policemen* were surrounding and beating-up the victims and forcing them to sing the National Anthem.

24. The police have also informed the court that the SHO, P.S.: Jyoti Nagar, who is stated to have taken the young men from the spot to GTB Hospital and then to P.S.: Jyoti Nagar, is also being put through a polygraph test, in order to elicit whether he knows the identities of the policemen involved in the matter. The police have also shared with the court order dated 20.05.2024 made by the learned CMM granting permission for conducting polygraph test on the said SHO as well as on other police officers who were posted at P.S.: Jyoti Nagar at the relevant time.
25. On the last date of hearing *i.e.*, 12.07.2024, the learned SPP has handed-up to the court certain reports of Polygraph Tests, Layered Voice Analysis Tests, Suspect Detection System Tests and Forensic Psychological Assessment Tests conducted upon 04 police officers from P.S.: Jyoti Nagar, who were in various ways concerned with the incident in question and were on duty on the night of 24.02.2020 at



that police station. The aforesaid forensic tests conducted by NFSU, Gandhinagar have returned certain findings, the details of which are not being revealed here, so as not to prejudice the on-going investigation. Learned SPP has also informed the court that 04 members of the minority community, who had ‘taken shelter’ at P.S.: Jyoti Nagar on that night are also to be subjected to certain forensic tests, which are scheduled between 29.07.2024 and 01.08.2024 at Delhi. Furthermore, learned SPP has also said that forensic tests are yet to be conducted on 02 other police officers, who were part of the staff at P.S.: Jyoti Nagar on that night but were unavailable for the tests since they were unwell.

26. It is argued that all this goes to show that investigation is being conducted with all sincerity and professionalism.

LEGAL LANDSCAPE

27. Investigation of crime lies within the domain of the jurisdictional police. Transfer of investigation to an alternate investigating agency is not a matter of routine. That being said, the Supreme Court has held that superior courts have the power to transfer investigation, though the power to transfer must be used sparingly. The contours of this power are succinctly captured in the following judicial precedents :

***Bharati Tamang vs. Union of India & Ors.*²**

“41. From the various decisions relied upon by the petitioner counsel as well as by respondents’ counsel, the following principles can be culled out.

41.1.

* * * * *

² (2013) 15 SCC 578



41.2.

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41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

(emphasis supplied)

Mithilesh Kumar Singh vs. State of Rajasthan &Ors.³

“10. I may lastly refer to the decision of this Court in Babubhai v. State of Gujarat [(2010) 12 SCC 254 : (2011) 1 SCC

³ (2015) 9 SCC 795



(Cri) 336], wherein the Court reiterated the legal position in the following words: (SCC pp. 269 & 271-72, paras 32, 40-42 & 45)

* * * * *

“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.”

* * * * *

“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.

* * * * *

“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.

(emphasis supplied)

Awungshi Chirmayo & Anr. vs. Govt. of NCT of Delhi & Ors.⁴

“13. In a seminal judgment reported as *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*, (2010) 3 SCC 571, this Court has discussed in detail inter alia the circumstances under which the Constitutional Courts would be empowered to issue directions for CBI enquiry to be made. **This Court noted that the power to transfer investigation should be used sparingly, however, it could be used for doing complete justice and ensuring there is no violation of fundamental rights.** This is what the Court said in Para 70:

“70... Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. **This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights...**

“14. The powers of this Court for directing further investigation **regardless of the stage of investigation** are extremely

⁴ 2024 SCC OnLine SC 377



wide. This can be done even if the chargesheet has been submitted by the prosecuting agency.

* * * * *

“16. It is to observe that unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. **Criminal investigation must be both fair and effective. We say nothing on the fairness of the investigation appears to us, but the fact that it has been ineffective is self evident.** The kith and kin of the deceased who live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation **and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.**”

(emphasis supplied)

28. It is extremely important to note that this case presents allegations of gross violation of human rights, inasmuch as the unlawful actions of the policemen, who are yet to be identified, were motivated and driven by religious bigotry and therefore would amount to a ‘hate-crime’. In its decision in *Tehseen S. Poonawalla vs. Union of India & Ors.*⁵, the Supreme Court has enunciated the meaning and articulated the abhorrent nature of hate-crime, in the context of mob-vigilantism and mob-violence. It must be understood that mob-vigilantism and mob-violence do not cease to be so merely because these are perpetrated, not by ordinary citizens, but by policemen themselves. If anything, the element of abomination gets aggravated if hate-crime is committed by persons in uniform. The following extracts of *Tehseen S. Poonawalla* are required to be noticed :

⁵ (2018) 9 SCC 501



“20. Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra-judicial elements and non-State actors cannot be allowed to take the place of law or the law-enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings.”

(emphasis supplied)

29. As a matter of fact, in *Tehseen S. Poonawalla* (supra) the Supreme Court has laid-down detailed guidelines as preventative measures against mob-violence⁶. Not surprisingly, the measures laid-down by the Supreme Court include placing additional responsibility on the police to ensure expeditious investigation followed by fast-track trials by the courts in cases involving mob-violence and mob-lynching. In fact, the Supreme Court has also directed strict disciplinary action against police officials who fail to prevent such incidents. The following extracts of the judgment may be noticed to this end :

“40. In view of the aforesaid, we proceed to issue the following guidelines:

* * * * *

C. Punitive Measures

“40.22. Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The

⁶ cf. para 40.1 to 40.23 of *Tehseen S. Poonawalla* (supra)



departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

“40.23. In terms of the ruling of this Court in Arumugam Servai v. State of T.N. [(2011) 6 SCC 405 : (2011) 2 SCC (Cri) 993], the States are directed to take disciplinary action against the officials concerned if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.”

(emphasis supplied; bold in original)

However, far from preventing incidents of hate-crime, in the present case, admittedly *some* policemen are found to have indulged in mob-violence and mob-vigilantism *inter-alia* against the petitioner’s son.

DISCUSSION & CONCLUSIONS

30. Upon considering the material on record, and having heard learned counsel for the parties at considerable length, the following inferences arise in the present matter :
 - 30.1. The existence of 2-sets of video-footage, one, which shows Faizan alone being encircled and beaten mercilessly by policemen; and the second, which shows several young men, including Faizan, lying in an injured state on the road near Kardampuri *pulia* and the 66-*foota* road, and being surrounded and brutally assaulted by policemen, is not disputed. Even if it is assumed that Faizan and/or the other young men had sustained some injuries earlier-on during rioting, several policemen present at the spot *are clearly seen surrounding*,



dragging, kicking and striking blows on Faizan and the other young men with batons/lathis; abusing them; and ordering them to sing the National Anthem while they are lying seriously injured and helpless on the roadside. All this has admittedly happened on 24.02.2020. However, the Crime Branch of Delhi Police examined the petitioner for the first time only on 18.03.2020. More than 4½ years have elapsed since. However, not even one of the policemen involved in the abuse and assault has been conclusively identified in the course of the investigation so far. Though now the Investigating Officer informs the court that they have identified a head constable and a constable who were present at the spot, as possible suspects, it is their case that the said two policemen have given deceptive responses in their polygraph tests, though their voice samples have matched the recording in the available video-footage. The perpetrators of the crime are therefore still at large, though they are all members of the police force in Delhi.

30.2. Further, the narrative is that the SHO, P.S.: Jyoti Nagar took the injured young men to GTB Hospital in a police Gypsy but that the said police officer has been unable to identify any of the policemen who were involved in the abuse and assault. Putting the SHO through a polygraph test only now, that is more than 4 years after the date of the incident, for which requisite orders were obtained from the learned CMM on 20.05.2024, is not suggestive of the investigation being conducted with requisite promptitude.



- 30.3. It also seems implausible that Faizan’s family did not visit P.S.: Jyoti Nagar until the next night *i.e.*, the night of 25.02.2020, at which point Faizan was handed-over to his family. The narrative that Faizan’s family, namely his mother (the petitioner) and his brother, who went looking for him that night, did not approach the police station to take him home seems contrary to the ordinary course of human conduct.
- 30.4. The Patient Case Record Sheet of Lok Nayak Hospital prepared on 26.02.2020 at 7:15 p.m. records that the “*Patient presented to ortho em (with) with A/h/o Physical Assault by police in Riot (illegible). Pain & swelling over B/L leg & ankle & B/L shoulder @ 4:00 pm on 23/02/2020 (sic, 24.02.2020). Place - Near Kardampuri New Delhi. Patient was brought from Jyoti Nagar Thana to LNH Emergency without any MLC. No Referral Paper. Then patient referred to Neuros Em*”. It also records that the patient complained of pain in bilateral shoulder and pain in head with history of head injury and ear bleed, though he was conscious, oriented and alert. This happened when Faizan’s family took him to Lok Nayak Hospital on 26.02.2020, where he finally succumbed at 12:10 a.m. on 27.02.2020. This is suggestive of the fact that at the time Faizan was handed-over to his family on 25.02.2020, he was not in a good medical condition at all; and his family felt it necessary to take him soon thereafter to Lok Nayak Hospital Emergency, where he was found in need of specialized interdisciplinary medical care. If that was his medical condition, why then was



Faizan kept at P.S.: Jyoti Nagar, purportedly at his request for his own safety and welfare ? It is observed that in the prescription/discharge summary drawn at 7:55 PM on 24.02.2020, the doctors at GTB Hospital had made the following noting “*KUO/Referred to Neuro Surgery, Ortho*”; and though the record shows that subsequently, Faizan was taken to the orthopaedic department, where he was attended to (and was advised review after one week in the OPD), the record does not show that he was taken for assessment to the neurosurgery department as had been advised by GTB Hospital. It is therefore inexplicable as to why the police took Faizan to the police station instead of taking him for further treatment as per the advice of the doctors at GTB Hospital.

- 30.5. Worse still, no investigation has been conducted so far in relation to what transpired at P.S.: Jyoti Nagar after Faizan was brought there from GTB Hospital. To add to this, is the stand taken by the police that *all CCTV cameras* installed at P.S.: Jyoti Nagar were not functioning at the relevant time.
- 30.6. Evidently, Faizan did not survive the treatment at Lok Nayak Hospital and never returned home. If, as the police contend, Faizan was kept at P.S.: Jyoti Nagar at his own request and for his own safety, it is hard to believe that Faizan would not have informed the police about his place of residence and would not have called his family, if only to inform them of where he was. To say that the police would keep Faizan at the police station for his own safety, at a time when the police were overwhelmed



with responsibility by reason of the on-going riots, is also completely counter-intuitive.

30.7. The narrative that *all CCTV cameras* installed at the police station were malfunctioning at that crucial time; and that therefore no CCTV-footage is available from within the police station to show the condition of any of the persons who were there at that time, also does not inspire confidence. The CCTV-footage that would have been conclusive evidence to show what transpired at the police station at that time, is stated to be simply not available, presenting a *fait-accompli* to that extent. Not to mention, that it is the mandate of the Supreme Court in *Paramvir Singh Saini* (supra) that :

“14. The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC⁷ any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the SHO concerned shall inform the DLOC of the arrest/interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the SHO concerned has reported malfunctioning or non-functioning of CCTVs of a particular police station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

* * * * *

“16. The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every police station functioning in the respective State

⁷ District Level Oversight Committee



and/or Union Territory. Further, in order to ensure that no part of a police station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the reception area; all verandahs/outhouses, Inspector's room; Sub-Inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (not inside) washrooms/toilets; Duty Officer's room; back part of the police station, etc."

(emphasis supplied)

In the present case, apart from a casual submission that a complaint had been made to a private agency for repairing the CCTV system installed at P.S.: Jyoti Nagar, there has evidently been no compliance whatsoever with the Supreme Court directions contained in para 14 of *Paramvir Singh Saini*. The police have therefore taken a very *convenient* stand in relation to the non-availability of CCTV-footage from the police station, which cannot be countenanced.

30.8. In fact, the question as to whether anything happened to Faizan when he was kept within the confines of P.S.: Jyoti Nagar overnight and until late the next day, has remained unacknowledged and un-addressed. That issue appears to have been brushed under the carpet by the police. The Investigating Officer does not appear to have recorded the statement of any independent person in relation to Faizan's medical condition and how he was treated while in detention at the police station. Even assuming that there was no custodial violence, the very fact that the police kept Faizan at the police station when he



was evidently in need of critical medical care itself smacks of criminal neglect of duty, if not something worse.

30.9. Moreover, conducting sophisticated forensic tests on police officers who were on duty at P.S.: Jyoti Nagar *at this late stage i.e., more than 04 years after the date of the incident*, when these police officers clearly ought to have been persons of interest in relation to the incident at the very inception of investigation, does not persuade the court to hold that investigation in the matter has proceeded as it should have. Suffice it to say that it would not be appropriate for this court to comment any further upon the credibility of the forensic tests so conducted, at this stage, and in these proceedings.

30.10. Lastly, the manner in which the investigation has proceeded so far does not serve the spirit of the Supreme Court's observations in *Tehseen S. Poonawalla* (supra), where the Supreme Court has said that incidents of hate-crime must be dealt with alacrity.

31. Without making too much of a harsh comment, this court is constrained to observe that the investigation in the present case has evidently been tardy, sketchy, and conveniently sparing of the persons who are suspected to be involved in brutally assaulting the petitioner's son. What is worse is that the suspects were entrusted to act as custodians of the law, and were in a position of power and authority, but seemed to have been driven by bigoted mindsets.



32. It must be recorded here that this court has refrained from engaging in any detailed consideration of the evidence collected by the Investigating Officer so far, some of which has been shared with the court during hearings ‘in-chambers’, lest further future investigation in the matter be compromised, or the trial be prejudiced.
33. It is trite to observe that expeditious, fair and complete investigation is the *sine-qua-non* of a fair trial. As held by the Supreme Court, a fair investigation, and *not just a fair trial*, is now considered part of the fundamental right enshrined in Article 21 of the Constitution⁸. The leitmotif that “*justice should not only be done, but should manifestly and undoubtedly be seen to be done*”⁹, must not be limited only to court proceedings, but must also apply *proprio-vigore* to investigation of crime. Investigation must also be seen to be fair and just. Failing that, the credibility of the justice dispensation system would suffer and the faith in the judicial process would be eroded.
34. In the present case, apart from the fact that the custodians of the law are themselves accused of having committed its breach, the perpetrators of the offence are themselves members of the agency that is investigating them. This situation does not inspire confidence. To add to this are the various anomalies and aberrations noticed in the investigation carried-out by Delhi Police so far, some of which have been highlighted above. In the opinion of this court, transfer of investigation is necessitated in the present case, to guard the

⁸*Nirmal Singh Kahlon vs. State of Punjab & Ors.*, (2009) 1 SCC 441, para 28

⁹*The King vs. Sussex Justices*, [1924] 1 K.B. 256, page 259



credibility of the investigation and to instil confidence in the victims as to the fairness of the process, if for no other reason.

35. In the circumstances, this court is persuaded to dispose-of the petition, by directing that investigation in case FIR No. 75/2020 dated 28.02.2020 registered at P.S.: Bhajanpura under sections 147, 148, 149 and 302 of the Indian Penal Code, 1860 shall *forthwith* stand transferred to the Central Bureau of Investigation, New Delhi ('CBI') for *further investigation*, in accordance with law. It is also directed that the CBI would be entitled to add to the FIR any other offence(s) as may be found to be made-out in the case. It is made clear that the investigation conducted thus far by Delhi Police, as well as all material and evidence collected and all statements recorded by them, shall form part of the records of the case, and shall be dealt-with conjointly with the material, evidence and statements that the CBI would collect/record in the *further investigation*.
36. There is no gainsaying that what the Delhi Police have done so far is 'too-little, too-late'.
37. To that end, the Investigating Officer presently seized of the investigation is directed to transfer all records, including all material and evidence collected and all statements recorded in the case so far, to the Director, CBI, New Delhi within 07 days; with a direction to the Director, CBI to assign the matter to an appropriate officer for expeditious further investigation, in accordance with law.
38. The petition is disposed of with the aforesaid directions.
39. Pending applications, if any, also stand disposed of.



40. Nothing in this judgment shall be taken as an expression of opinion by this court *on the evidence collected* in the investigation so far.

ANUP JAIRAM BHAMBHANI, J

JULY 23, 2024

ds/V.Rawat/ak