

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 12441 of 2021

Petitioner :- Chand Miyan

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Ali Qambar Zaidi, Mohammad Danish

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Deepak Verma,J.

Heard learned counsel for the petitioner and Shri Manish Goel, learned Additional Advocate General for the State.

The instant writ petition seeks the following reliefs-

i) to issue a writ, order or direction in the nature of mandamus thereby directing the Central Bureau of Investigation (respondent no.6) to take over the investigation in Case Crime No.0631 of 2021 lodged at P.S. Kasganj, District Kasganj, U.P. and to proceed against all the concerned police officers and such other persons found to be involved ; or

ii) to issue a writ, order or direction in the nature of mandamus thereby directing the constitution of a Court Monitored by Special Investigation Team (SIT) to take over the investigation in Case Crime No.0631 of 2021 lodged at P.S. Kasganj, District Kasganj, U.P. and to proceed against all the concerned police officers and such other persons found to be involved ; or

The case is one of the custodial death. It is alleged in the petition that son of the petitioner died in the police station while in police custody.

Although, a direction has been sought for transferring the investigation to the Central Bureau of Investigation, no order is required to be passed in this regard as it is admitted to counsel for the parties that a Judicial inquiry as also a ministerial inquiry in this matter is pending consideration.

As regards, the judicial inquiry, it has been stated that till date, 7 of the 36 witnesses have been examined and that two out of the remaining witnesses are to be examined today.

Under the circumstances, it is merely observed and the concerned judicial officer is directed to expedite the proceedings and to take them to their logical conclusions as expeditiously as possible.

As regards, the ministerial inquiry, its status has not been

brought on record. However, we direct the Magistrate concerned holding the ministerial inquiry to proceed with it expeditiously and to bring it to its conclusion expeditiously preferably within a period of four weeks from the date a copy of this order is filed before him.

At this stage, what requires consideration is the prayer made by counsel for the petitioner that he is not satisfied with the post-mortem that was conducted after his son died in police custody. He has therefore, prayed for the body of the deceased to be exhumed and that a fresh post-mortem be conducted on the body preferably at the All India Institute of Medical Sciences, Delhi. He has insisted on the post-mortem being conducted outside the State of U.P. because of the alleged involvement of the police of the State of U.P.

Shri Manish Goel, learned Additional Advocate General has no objection.

We therefore, direct that the body of the deceased, Altaf shall be exhumed forthwith in the presence of Senior Superintendent of Police / Superintendent of Police, Kasganj. The body after it has been exhumed shall be sealed and immediately transported to the All India Institute of Medical Sciences, Delhi, where a post-mortem examination of the exhumed body shall be conducted in presence of a team of Doctors to be constituted by the Director of All India Medical Sciences, Delhi.

Needless to say, the entire process of unsealing and post-mortem and the subsequent sealing if any of the body, shall be videographed. High resolution still photographs of the body at various stages of the examination shall also be taken and preserved. The post-mortem report, the video footage and photograph shall be prepared in three copies. One copy shall be transmitted to this Court while one copy each shall be placed on record of the judicial and ministerial inquiries, which are stated to be pending.

This entire exercise should be completed within period of 10 days from today.

This order has been passed because it is the case of the petitioner based upon photographs brought on record, wherein the deceased, Altaf is thrown to have hung himself from a water pipe, which was installed only three feet above the ground of the toilet.

List this matter again after four weeks.

Order Date :- 10.2.2022
RKM