

**IN THE SUPREME COURT OF INDIA
CRIMINALORDINARY JURISDICTION
WRIT PETITION (CRL.) No. of 2020**

[Under Article 32 of the Constitution of India]

IN THE MATTER OF:

VERSUS

1. STATE OF U.P
THRU SECRETARY HOME
LUCKNOW, U.P RESPONDENT-1

2. DIRECTOR GENERAL OF POLICE
LUCKNOW, UTTAR PRADESH RESPONDENT-2

3. PRASHANT KUMAR
ADG, LAW AND ORDER
UTTAR RADESH RESPONDENT-3

4. PRAVIN KUMAR
DISTRICT MAGISTRATE
HATHRAS, U.P RESPONDENT-4
5. VIKRAM VIR
SUPERITENDENT OF POLICE
HATHRAS, U.P RESPONDENT-5
6. PRAKASH KUMAR
ADDL. S.P, HATHRAS,U.P RESPONDENT-6
7. BHRAM SINGH
CIRCLE OFFFICER
SADABAD, HATHRAS, U.P RESPONDENT-7

WRIT PETITION UNDER ARTICLE 32 READ WITH ARTICLE 21 AND 25 OF THE CONSTITUTION OF INDIA INTER ALIA PRAYING FOR ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT(s), ORDER OR DIRECTION.

To

Hon'ble the Chief Justice And His Companion Judges of Supreme Court of India At New Delhi

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the writ petition has been filed imploring issuance of appropriate writ (s), order (s), direction(s) for conducting investigation against the callousness and highhandedness of the

State Administration in general and respondent No- 3 to 7 in particular in treating the cadaver of the victim of Hathras gang-rape and murder which has violated the basic human rights and fundamental rights of the victim deceased and his family and accordingly after investigation lodge a criminal prosecution against the erring officials.

2. QUESTIONS OF LAW:

- a) Upon investigation if the respondent nos-3 to 7 found to be guilty of treating the cadaver/corpse of the victim in an undignified manner then Whether this Hon'ble Court is duty bound under Article 32 of the constitution of India to issue direction for lodging criminal prosecution against the erring respondents under section 297 of IPC or any other germane provision of law as the state administration/Police itself being the perpetrator.
- b) Salmond the legal philosopher has said that there are three things in respect of which the concern extend and transcend even after the death i.e body, reputation and property, in such conspectus whether right to dignified cremation/burial is an integral facet of Article 21 of the constitution of India and if so then whether the said

fundamental right of the victim and her family has been denied, seized and snatched by the State Administration.

- c.) Whether customary rituals practiced and professed by Hindu family upon a dead person during cremation/last rites comes within the purview of Article 25 of the Constitution of India, if so, then whether denial to profess, participate and conduct the last rites by the Respondent No-3 to 7 is not only violative of Article 25 of the constitution of India but also is a penal offense.
- d.) Whether word and expression 'person' in Article 21 includes a dead person to whom the right to life should be extended in such a manner that his dead body is given the same respect/dignity to which such person is entitled had the person been alive subject to his customary law, tradition, culture and religion which the person profess.
- e.) The scripts, verses and stanzas of 'GARUR PURAN' the guiding granth for Hindus since time immemorial tangibly speaks that for salvation and to bestow peace to the departed soul inter-alia methodology is prescribed for cremation, last rite, any wilful transgression or omission of those customary rituals results in inflicting pain to the departed soul and the remaining alive member

of his/her family considered as sinner then whether the respondent No-3 to 7 who supervised and orchestrated the arson/torching of the dead body of victim young girl and also denying/ forcefully obstructing and locking the father and brother to participate in the cremation should be prosecuted and penalized.

- f.) In view of the Judgment reported in 1995 (3) SCC Page-248-Right to dignified life and fair treatment bestowed under Article 21 of the Constitution of India is not only available to a living man but also to his /her body after demise, Whether the acts, omission of the State Administration in general and Respondent No-3 to 7 in particular resulted in infringement of the rights of the victim deceased and his family hence they are liable for penal action.
- g.) In A.I.R 2002 SC Page-554 this Hon'ble Court acknowledge that the Government should take steps for a decent burial even to unclaimed bodies hence the case in hand which is a sordid saga of arson of the cadaver of victim of Gang rape, mutilation, amputation of tongue (by 04 co-villagers) by the respondent Nos-3 to 7 and that too after pouring highly flammable substance upon the corpse so that it turns into ashes swiftly in the intervening night i.e 2-3 AM

of 20-30 September 2020, warrants appropriate direction U/A 32 of the constitution as the felons are the State agencies.

3. **BRIEF FACTS GIVING RISE TO THE WRIT PETITION;**

3.1

3.2 That Respondents are Administrative and police agency of the State of U.P.

3.3 Hence, all the Respondents are "State" within the meaning of Article 12 of the Constitution and hence amenable to Writ Jurisdiction of this Hon'ble Court.

3.4. That 2000-01 case under provisions of Schedule Caste and Schedule Tribe atrocities act was lodged by the grandfather of the victim girl naming the father of main accused Sandip, and the accused has to undergo imprisonment for three months in connection of that FIR.

The victim girl reported to have born that year in a village of Hathras, U.P which is demographically dominated by an upper caste populace.

3.5 That on 14.9.2020 as per news Paper Report narrating the content of FIR four persons namely all members of the family against whom the FIR was lodged by the grandfather of the victim, abducted the victim girl from agricultural field, gang-raped her and thereafter assaulted her, sliced her tongue, pulverized her ribs and fled from the spot leaving the girl in a vegetative state soaked in pool of blood.

It was noticed by her mother who is a chronic hearing impaired lady but somehow the girl was taken to local hospital in Hathras, then to JLN Medical College Hathras. It is stated that initially the police neither took any initiative for ascertaining about rape nor register FIR for Rape it is only after the girl regain senses

ephemerally and gave statement to the effect that she has also been gang-raped then it was added.

- 3.6 That on 27.9.2020 after two weeks the persons who perpetrated the crime were arrested.
- 3.7 That on 28.9.2020 plight of the girl deteriorated and she was taken to Sadarjung Hospital and there she succumbed.
- 3.8 That on 29.9.20 at 6.55.A.M the victim took her last breath.
- 3.9 That on 29.9.20 at 9.30 P.M Body was released from the hospital and taken out from the Hospital. It was put on an ambulance and accompanied by a Police constable from U.P police Services. Without informing or taking any of the family members of the deceased the cadaver was rushed for Hathras.
- 3.10 That on 29.9.20 at 10 P.M the father and the brother were accosted by the officials, they were pushed inside a Government Vehicle and taken to Hathras and the Vehicle was escorted by the District Magistrate, Pravin Kumar and S.P Prakash Veer. True copy of the News paper reports is annexed here to and marked as ANNEXURE-P/3 Page-22-28.
- 3.11 That on 29-30 Sep 2020 12 P.M-1 A.M Instead of taking the dead body to the family home it was straight away reached at the

cremation ground. The visuals show that the mother of the victim beseeching and imploring with the Police to put turmeric on the dead body of her daughter as part of ritual and have the last glimpse. It is seen in the visuals that the mother and the other family members leaning in front of bonnet of the government vehicle and begging. The Police officials truculently became a deaf ear and they were pushed aside from the Government vehicle.

3.12 That on 29-30 Sep 2020 3.00-3.30 AM wood and logs were already put in place by the administration, highly flammable substance not ghee was sprinkled all over the Cadaver to arson it in heinous haste. The father and brother were not allowed to come near the cremation and even not allowed to do any last rite. The mother, father and brother have been locked inside the house. The visuals shows the presence of respondents and other Police personnel. One police official was seen laughing while the corpse was being incinerated to ashes.

3.13 That on 2.10.2020 Visuals surfaced in electronic media shows that bones of the victim still scattered in the open field and there is complete embargo on the press, media, any civilian, or even law

maker to enter inside the village. This conduct is because of the inherent furtive fallacy of the administration.

3.14 The conduct of the involved officials of the government administration is a penal offense hence prosecution should be launched against the erring Government officials. Since the perpetrators are the Police officials and the administration of the state therefore nothing can be hoped from the state authority, therefore the Petitioner is constrained to file this Writ Petition.

3.15. That on 3.10.2020 left with no alternate and remediless as the State agencies himself is in hand and gloves to perpetrate the illegality with the cadaver of the victim and his family so to expect justice from them is a far cry hence this Writ.

4. **GROUND:**

That writ petition Under Article 32 of the constitution of India is based on the following amongst other grounds, which are without prejudice to one another:-

- a) Because the State Administration in general and respondent Nos -3 to 6 in particular after locking the father, mother and brother of the victim inside the house and not allowing them to perform last rites

which should mandatorily be performed by the father or the brother as per Garur Puran have committed offense.

- b) Because as per the guidelines of 'Garur Puran' the source of Hindu Cremation methodology followed since time immemorial the dead body has to be washed with holy water, ghee and vermilion, new cloth is to be wrapped, the log and wood will be brought by the family member and the body of the deceased shall be draped with the logs, thereafter and 'Mukhagni' will be given by class-I heir of the victim, father or brother in case of the victim girl herein, only ghee shall be used on the corpse, but as per video clips and news reports nothing was followed rather audaciously it is egregious to find that highly flammable substance not ghee was sprinkled on the dead body.
- c) Because 5 Judge bench of Hon'ble Apex Court in Common Cause case propounded that 'Right to die with dignity is a fundamental right, thus integral part of Article -21, right to life extend up to the point of death including dignified process of death which can very aptly be stretched to dignified burial of the dead body.

- d) Because In view of the Judgment reported in 1995 (3) SCC Page-248-Right to dignified life and fair treatment bestowed under Article 21 of the Constitution of India is not only available to a living man but also to his /her body after demise, so the acts, omission of the State Administration in general and RespondenrNo-3 to 7 in particular resulted in infringement of the rights of the victim deceased and his family hence they are liable for penal action.
- e) Because the scripts, verses and stanzas of 'GARUR PURAN' the guiding granth for Hindus since time immemorial tangibly speaks that for salvation and to bestow peace to the departed soul inter-alia methodology is prescribed for cremation, last rite, any wilful transgression or omission of those customary rituals results in inflicting pain to the departed soul and the remaining alive member of his/her family considered as sinner then the respondent No-3 to 7 who supervised and orchestrated the arson/torching of the dead body of victim young girl after sprinkling impure substance and also denying/ forcefully obstructing and locking the father and brother to participate in the cremation should be prosecuted and penalized.
- f) Because word and expression 'person' in Article 21 includes a dead person to whom the right to life should be extended in such a

manner that his dead body is given the same respect/dignity to which such person is entitled had the person been alive subject to his customary law, tradition, culture and religion which the person profess..

- g) Because customary rituals practiced and professed by Hindu family upon a dead person during cremation/last rites comes within the purview of Article 25 of the Constitution of India then denial to profess, participate and conduct the last rites by the Respondent No-3 to 7 is not only violative of Article 25 of the constitution of India but also is a penal offense.
- h) Because Upon investigation if the respondent nos-3 to 7 found to be guilty of treating the cadaver/corpse of the victim in an undignified manner then this Hon'ble Court is duty bound under Article 32 of the constitution of India to issue direction for lodging criminal prosecution against the erring respondents under section 297 of IPC or any other germane provision of law as the state administration/Police itself being the perpetrator.

5. The Petitioner herein craves the liberty of this Court to add, alter, modify or amend the grounds during the pendency of this Writ Petition, if necessary.
6. The Petitioner herein states that he has not filed a similar Writ Petition or any other Petition before this Hon'ble Court or any other Court/s involving the subject matter of this Petition, which is pending or has been disposed of.
7. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition.
8. This writ petition is made bona fide and in the interest of justice.
9. That the annexure filed with the petition are true copies of the respective originals.
10. **PRAYER**

Therefore, in the facts and circumstances of the case made above, it is respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- i) Issue Writ in the nature of Mandamus or any other writ(s) writ(s)/order(s)/direction(s) for investigation of the role of Respondent No's- 3 to 7 with regard to allegations of inhuman treatment, insult and manhandling of the cadaver of 19 year old

victim girl from Hathras, Uttar Pradesh who died on 29.9.2020 at 6.55 A.M in Safdarjung Hospital by any agency other than affiliated to Uttar Pradesh Government ,and,or;

- ii) Direct the investigating agency to get the statement of the mother, father and brother of the victim recorded before a Magistrate Under Section 164 Cr. P.C, AND,OR;
- iii) Direct the investigating agency that in the event the allegation made by the family of the victim as reported widely in Print and Electronic media is found to be true then F.IR be lodged against the erring respondents and all others whose involvement is found , and'or;
- iv) Pass such other or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY & FILED BY:

SMARHAR SINGH
Adv-On-Record for the Petitioner

Filed On: 3.10.2020