

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
 CRIMINAL WRIT JURISDICTION
 W.P. (CRL.) NO. _____ OF 2020

IN THE MATTER OF:

KISMATUN

...Petitioner

Vs.

STATE OF NCT OF DELHI & ORS.

...Respondent

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973, SEEKING INTER-ALIA AN APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION FOR CONSTITUTION OF A SPECIAL INVESTIGATION TEAM AND THAT THE INVESTIGATION OF CRIME IN FIR 75/2020, P.S. BHAJANPURA DATED 28.02.2020 BE MONITORED BY THIS HON'BLE COURT.

TO,

THE HON'BLE CHIEF JUSTICE,

AND HIS COMPANION JUSTICES OF THE HON'BLE HIGH COURT OF DELHI,

THE HUMBLE PETITION
 OF THE PETITIONER HEREIN,

MOST RESPECTFULLY SHEWETH:

1. That the present petition is being filed by the unfortunate widowed mother of deceased Faizan, who was targeted, brutally assaulted, injured by police men and then subsequently illegally detained at P.S. Jyoti Nagar by the police thereby denying him critical medical care which resulted in his death, seeking *inter-alia* court monitored timely investigation by a court appointed SIT, in furtherance of the right to a fair and impartial investigation as well as the right to justice under Articles 21 and 14 of the Constitution of India.

Description of parties

2. That the Petitioner is Kismatun, aged 61 years, the widowed mother of deceased Faizan who was brutally assaulted and murdered by policemen.
3. That the Respondents to the present petition are:
 - 3.1. The State of NCT of Delhi, through the Home Department, GNCTD.
 - 3.2. The Investigating Officer, Special Investigation Unit - I, Crime Branch, New Delhi, investigating FIR No. 75/20 dt. 28.02.2020, P.S. Bhajanpura, u/Sec 147/148/149/302 IPC.
 - 3.3. The Station House Officer (S.H.O.), P.S. Jyoti Nagar, being the officer in-charge of the police station where deceased Faizan was illegally detained and denied critical medical care on 24.02.2020 and 25.02.2020.

BRIEF FACTS

4. That the brief facts giving rise to the present petition are set out below:
 - 4.1. That the Citizenship Amendment Bill, 2019, was introduced in the Lok Sabha on 09.12.2019 and passed on the same day. The same was passed by the Rajya Sabha on 11.12.2019 and received the assent of the President on 12.12.2019.
 - 4.2. That the promulgation of the Citizenship Amendment Act, 2019, led to nationwide protests against the new law which introduced differential criterion premised on religion for bestowing citizenship, which was thus far a secular construct in India. Since mid December, 2019, many women led anti-CAA protests were taking place in different parts of Delhi, including in North East Delhi. One such protest was ongoing at Kardampuri Colony *puliya* or bridge, in which a large number of local women participated.
 - 4.3. On 24.02.2020, around 3:00-3:30 pm, Faizan's mother, the Petitioner herein, was participating in the women's anti-CAA protest at Kardampuri bridge. On that day there were at least a hundred women, both Hindu and

Muslim, present there. Around 4:00pm that evening a huge mob accompanied by the Delhi Police was seen proceeding towards the site of the protest at Kardampuri bridge. The mob was sloganeering "*Jai Shree Ram*" and pelting stones. Tear gas shells were also hurled towards the protest site. At this, all the women and others present at the protest site started running towards their respective homes through the bylanes. Communal riots had broken out in different parts of North East Delhi by then.

4.4. On reaching home, the Petitioner learnt that her son Faizan, after returning home from work had freshened up, changed his clothes and left the house looking for her. The Petitioner's son Faizan was 23 years old and worked at a meat shop at the Ghazipur Mandi. Faizan had been working there for approximately a year. Everyday he would leave for work in the morning around 5:00 am and return home in the afternoon between 2:00 - 4:00 pm. Due to the volatile and violent condition on the streets outside on 24.02.2020; Faizan had stepped out to look for his mother but had not returned. As the violence was spreading, the Petitioner, anxious about Faizan's safety, asked her son Nadeem to call Faizan on his cell phone. Nadeem tried to call Faizan numerous times but the calls did not connect. The Petitioner and her family members were extremely scared and worried, but cognizant of the unruly mob and outbreak of violence outside, they did not think it prudent to leave their home.

4.5. It was unknown to the Petitioner at that time that the Petitioner's son Faizan (deceased victim) was nabbed and brutally assaulted by the police. After which Faizan along with some other Muslim men was dragged and dumped on the road and again beaten by the police; in this injured and helpless condition as they lay on the road they were forced to sing the

national anthem, by the police men. Faizan, along with the other men were thereafter taken to G.T.B Hospital by the police in a white police Gypsy. Here Faizan received some cursory medical treatment including stitches on his head and ear and the MLC records that he required further specialised medical treatment. However without getting Faizan further medical treatment as advised, the police took Faizan from the hospital in a grievously injured and critical condition to Jyoti Nagar Police Station and illegally detained him, thereby denying him timely critical medical care which led to his death. [True copy of MLC No. D-23 dated 24.02.2020 of Faizan, from GTB Hospital is marked and annexed as **Annexure-P1**; MLC No. D-22 of injured eyewitness Kausar Ali from GTB Hospital is marked and annexed as **Annexure-P2**]

4.6. In the evening on 24.02.2020, around 8:00pm, the Petitioner received information that her son Faizan was at the G.T.B Hospital. The Petitioner, along with her son Nadeem and her daughter Shazia, reached the hospital but they could not find Faizan in the Emergency ward of the hospital. On showing his photograph to the people present there, they learnt that the police had brought a few young men to the hospital and then taken them to the Jyoti Nagar Police Station. That night itself, the Petitioner and her son Nadeem reached the Jyoti Nagar Police Station, but were not allowed to enter the Police Station and were stopped by a policeman stationed outside, named Sonu. The Petitioner begged for her son's release and to be allowed to meet her son, but her prayers fell on deaf ears. Another Muslim man who lived in Shani Bazar, Gali no. 3, was also present outside the Police Station and had come there looking for his brother. On being shown Faizan's photo, the man confirmed that when earlier he had been allowed to enter the Police Station, he had seen

Faizan there in an injured condition.

4.7. On 25.02.2020, the Petitioner went back to the Police Station at 8:00am, but since her pleas to the police officers to see her son were ignored, in desperation she went to the local AamAadmi Party leader, Sajid Khan, to request for help. After speaking to the police over phone Sajid Khan informed the Petitioner that Faizan will be released in a little while. Faizan however, was not released anytime soon.

4.8. In the morning of 25.02.2020, a video was shared on social media which became viral. The video showed that Faizan (deceased), Kausar Ali (49 years), Waseem (17 years), Rafiq and Farhan are dragged, rounded up by police personnel (at least 6), physically assaulted and brutally beaten. The police men kicked the 5 Muslim men with their boots, beat them and prodded them with their lathis and taunted them saying, "*yeh lohazaadi*", and forced them to sing the national anthem while they were lying down, beaten and injured. The taunts and abuses used by the police portrayed that the Muslim men, simply by virtue of being Muslims, were unpatriotic and were being "taught a lesson". Another video of the same incident, which surfaced later, shows a group of police personnel mercilessly beating Faizan and dragging him on the road. [True copy of the videos has been uploaded to two links where they can be viewed or downloaded, and the links are provided in a document marked as **Annexure P-3**. The Petitioner undertakes to file a CD if so directed by this Hon'ble Court, and the videos have been uploaded to links due to constraints faced in e-filing]

4.9. Around 11:00 pm in the night, the Petitioner received information that the police were going to release Faizan and she was required to come and take him from Jyoti Nagar P.S. The Petitioner somehow managed to

travel to Jyoti Nagar P.S. at that late hour in an auto rickshaw with two other women, one whose son and the other whose husband were also being released by the police of Jyoti Nagar P.S. On reaching the police station, the Petitioner was made to apply her thumb impression to some papers to secure Faizan's release. However, not being able to read or write, the Petitioner is unaware of what was written on those pages.

4.10. The Petitioner was alarmed and shocked when she saw the severely wounded and injured state of her son Faizan. His clothes covered in blood were sticking to his body. He had stitches on his head and ear. His trousers were torn and he was barefoot. His body was bruised black and blue and his hands and feet were swollen so acutely that he could barely walk. Being extremely scared and worried at his grave condition the Petitioner somehow managed to get her son home.

4.11. After bringing Faizan home, the Petitioner managed to put him on the bed. Faizan was suffering from immense pain due to the wounds all over his body, and could not eat or even move. Due to his injured and pained condition, Faizan's clothes had to be cut to remove his blood soaked clothes from his inflamed body. In his wounded, painful and restless state, through laboured breaths, Faizan managed to narrate to his mother what had transpired on 24.02.2020 and 25.02.2020. As described by the Petitioner:

"On 24.02.2020 Faizan went to the Kardampuri bridge looking for me. Faizan said that a few police officers grabbed him from his neck and dragged him towards the main road in the direction of the Mohalla clinic. There around 8-10 police officers had mercilessly beat him up. Faizan said that the police had mercilessly hit him with cane batons, kicked him, and stomped with boots. He was rendered in a half dead condition after the police were done beating him and he was in so much pain that he

couldn't even stand up. Faizan said that he requested the police to let him go and told them that he had not done anything, but the police did not listen to him. Faizan said that the police officers dragged another 4-5 injured men and threw them on the main road in front of the Mohalla clinic. The police then hit them with batons and asked them to sing the national anthem in their injured condition. Faizan said that his condition was so bad after the police had beaten him up that he couldn't even sing the national anthem. The police were hitting them with batons and saying, "yeh lo aazadi". Faizan said that the police had beaten him up and humiliated him because he was a Muslim. After a while the police officers took Faizan and the other men to G.T.B Hospital in a white coloured police Gypsy vehicle. Faizan told me that at the G.T.B Hospital no doctor spoke to him and all the medical inquiry and procedures were carried out by the doctors on the instructions of the police. There Faizan was given stitches to his head and ear. Faizan said that after this the police men took him and some other men to the Jyoti Nagar Police Station. Faizan told me that the police had beaten him a lot and abused him because he was a Muslim."

- 4.12. The Petitioner took Faizan to a local doctor on 26.02.2020 in the morning, who on checking Faizan's blood pressure and noting his severely injured and critical condition asked them to go to a big hospital for treatment. Somehow an ambulance was arranged and Faizan was taken to Lok Narayan Jay Prakash Hospital around 1:00pm. Faizan succumbed to his injuries on the intervening night of 26th and 27th February, 2020.
- 4.13. On 27.02.2020, the probe into some cases connected with North East violence registered in various police stations of North-East district were transferred to the Crime Branch, Delhi Police. [True copy of Order dated 27.02.2020 issued by the Office of Respondent No. 4 is marked and annexed herein as **Annexure P-4**]
- 4.14. On 28.02.2020, at 11:30 A.M, F.I.R No. 75/2020 P.S Bhajanpura is

registered under Sections 147, 148, 149, 302 IPC against unknown persons on receipt of MLC No. D-23 of Faizan from G.T.B Hospital, and information of Faizan's death received from LNJP Hospital. Further, at 7:30 P.M, F.I.R No.79/2020 P.S Bhajanpura is registered under Sections 143, 144, 147, 148, 149, 308 IPC on receipt of MLCs from GTB Hospital of other victims injured in the same incident. [True copies of FIR 75/20 and 79/20 registered at Bhajanpura P.S., along with their true typed translated copy are marked and annexed herein as **Annexure P-5(Colly.)**]

4.15. On an application filed on behalf of Nadeem, brother of deceased Faizan, on 29.09.2020, for conducting post mortem proceedings u/Sec 176 Cr.P.C, the Ld. CMM, Karkardooma, directed that, "*guidelines of Hon'ble NHRC be followed in letter and spirit. The Medical Superintendent, LNJP Hospital is directed to ensure that the post mortem is conducted at the earliest.*" [True copy of the Order dt. 29.02.2020 passed by the Ld. CMM, Karkardooma, is marked and annexed herein as **Annexure P-6**]

4.16. The Post Mortem Report No. 150/2020 dated 29.02.2020, prepared by LNJP Hospital stated that the death of Faizan was due to cerebral injury associated with multiple blunt injuries over the body. The report further states that all injuries are ante mortem in nature, 2-3 days in duration and caused by blunt force impact. [True copy of Post Mortem report dated 29.02.2020 prepared by LNJP Hospital is marked and annexed herein as **Annexure P-7**]

4.17. On 17.03.2020, the Petitioner received compensation of Rs. 10 lakh, as per the Delhi Government's Scheme for Financial Assistance of Riot Victims.

- 4.18. On 18.03.2020, almost four weeks after the incident, Crime Branch Delhi Police recorded the statement of the Petitioner and seized the torn and bloodstained clothes worn by Faizan at the time of incident. [True copy of the Petitioner's statement along with true typed translation is marked and annexed herein as **Annexure P-8**]
- 4.19. On 24.03.2020, injured eye-witness and victim Kausar Ali's statement was sent to the Crime Branch, Delhi Police, by whatsapp, due to the Covid-19 pandemic induced lockdown. It is stated in the injured witness Kausar Ali's statement that Faizan and others were mercilessly attacked by the police without any provocation, and they were jeered, mocked abused and their patriotism questioned as they were Muslim, and so they were ordered to sing the national anthem as they lay wounded and helpless on the road, in the control and custody of the police. The statement also categorically informed the Crime Branch that Kausar Ali was still in possession of his clothes from the date of the incident, which would form relevant material evidence in the case. Till date, the clothes of Kausar Ali have not been seized by the Respondent No. 2 despite repeated reminders. [True copy of Kausar Ali's statement along with true typed translation is marked and annexed herein as **Annexure P-9**]
- 4.20. On 07.04.2020, Crime Branch, Delhi Police examined the Petitioner and Nadeem, brother of Faizan.
- 4.21. Two applications were filed on 06.06.2020 before the Ld. MM on behalf of the Petitioner, one under Section 156(3) CrPC and another under Section 91 r/w 156(3) CrPC seeking copies of Post-Mortem Report and other medical documents; and also seeking that certain necessary and relevant records, including CDR's and duty registers of police personnel be preserved for the purposes of investigation. [True copies of the two

applications filed on 06.06.2020 are marked and annexed herein as **Annexure P-10** and **Annexure P-11** respectively]

4.22. On 22.07.2020, the police filed a Status Report in the court of Ld. CMM, Karkardooma, in reply to applications filed on behalf of the Petitioner on 06.06.2020, submitting that the records are, *"irrelevant and are not warranted for the purposes of investigation of the instant case"* (Para 20. Point 6). It was also submitted in the Status Report that on the day of the incident, the CCTVs in Jyoti Nagar P.S. were not functioning. (Para 20. Point 5). The Status Report filed by the police is evasive, lacks specificity in material particulars, and *ex-facie* suggests that the police is shielding the perpetrators of the crime. With regard to the illegal detention of Faizan and other Muslim boys at the Jyoti nagar P.S., the Status Report states that,

" 5 individuals namely Faizan, Farhan, Kauser, Rafique and Wasim, who were taken to GTB Hospital on 24.02.2020 for treatment by the staff of the Police Station Jyoti Nagar, Farhan and Kauser were kept under treatment in G.T.B Hospital whereas other three namely Faizan, Rafique and Wasim were discharged after giving initial treatment. All the above three 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 or their own safety and security. ... That on 24.02.2020, parents of Wasim visited the Police Station and he was handed over safely to them, whereas the parents of Faizan and Rafique visited the Police Station Jyoti Nagar only on 25.02.2020 at late night, who were then handed over the custody of Faizan&rafique respectively" (Para 10 & 11)

[True copy of the Status report dated 22.07.2020 filed by respondent No. 2 is marked and annexed herein as **Annexure P-12**]

4.22. The Ld. Chief Metropolitan Magistrate in his Order dt. 22.07.2020,

records that pertaining to the CCTV footage of the area where Faizan was assaulted, it was submitted by the police that,

["during the investigation neither any Government installed CCTV nor any private CCTV was found installed in the area. ... 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"] [True copy of the Order dt. 22.07.2020 passed by the Ld. CMM, Karkardooma, is marked and annexed herein as **Annexure P-13**]

4.23. On 06.08.2020, Nadeem, brother of Faizan, was examined by the Crime Branch, Delhi Police. The police also showed a video to Nadeem of 24.02.2020, in which Faizan is seen standing, with one hand in his pocket and the other holding a mobile phone. Faizan at no point in the video is seen as participating in any violence or joining the mob.

4.24. On 21.08.2020, the Respondent No. 2 filed a further Status Report before the Ld. CMM, North East, Karkardooma Courts. The said report is bald, vague and evasive, and provides no assurance regarding the safe custody of documents and records. [True copy of the Status Report dated 21.08.2020 is marked and annexed herein as **Annexure P-14**]

4.25. On 09.09.2020, injured victim Kausar Ali is provided complete compensation vide order of this Hon'ble High Court in WP(C) 5578/2020. [True copy of Order dt. 09.09.2020 passed by this Hon'ble High Court is marked and annexed herein as **Annexure P-15**]

4.26. The Application dated 06.06.2020 u/Sec 91 Cr.P.C. r/w 156(3) Cr.P.C. was disposed off on 09.11.2020 with the Ld. Court recording that,

"In view of the submissions that documents / registers mentioned in Para No. 6 of the application have already been obtained and placed on record and concerned Police Stations and DCP North-East have also been requested for preservation of the same,

nothing remains to be decided in the present application.”

[True copy of the Order dated 09.11.2020 is marked and annexed herein as Annexure P-16]

4.27. That despite passage of nine months since the date of incident, the Respondents have failed to even identify the police officers who in broad daylight assaulted, thrashed and humiliated the deceased Faizan and four other Muslim men, as can be seen in the videos available in the public domain. No action has been taken against the police personnel of Jyoti Nagar P.S. either, who had illegally detained Faizan and denied him timely critical medical care which resulted in his death. The partisan, compromised, lackadaisical, knowingly slow and ineffective pace of investigation does not inspire confidence and suggests that the perpetrators, being men in uniform, are being shielded.

GROUNDS

5. That the present Petition has been filed *inter-alia* on the following grounds:

A. **BECAUSE** the Petitioner has moved this Hon'ble Court against the violation of the Right to Life under Article 21 of her young 23 year old son Faizan, whose life was arbitrarily terminated due to the acts of commission and omission of policemen on duty near Kardampuri bridge on 24.02.2020 and at Jyoti Nagar P.S. on 24.02.2020 and 25.02.2020.

RIGHT TO PROMPT AND SPEEDY INVESTIGATION

B. **BECAUSE** the Petitioner has patiently waited for over nine months, but only to realize that the investigation is lackadaisical, unprofessional, compromised, partisan and designed to shield the perpetrators of the crime. The investigation has been carried out at a snail's pace, and the Respondents are yet to name and identify a single policeman who has

perpetrated this heinous crime; or collect material evidence relevant for the case. The investigation conducted so far being no more than an eye wash, is impeding the Petitioner's right to access justice, as even after more than 9 months the criminal justice machinery has not been set in motion, due to the sham and farcical investigation.

C. BECAUSE it is settled law that the victim has a right to a prompt and speedy investigation, and any laches or delays is against the mandate of Article 21 of the Constitution as well as various provisions of the Code of Criminal Procedure. The Supreme Court in its judgment in *Vakil Prasad Singh vs. State of Bihar* has emphasized the need for speedy investigations as it is, "*mandated by the letter and spirit of the provisions of the Cr.P.C. (In particular, Sections 197, 173, 309, 437 (6) and 468 etc.) and the constitutional protection enshrined in Article 21 of the Constitution.*"

D. BECAUSE in *Zulfikar Nasir vs State of UP* (2018) SCC OnLine Del 12153, this Hon'ble Court has noted that endemic delays in the criminal justice system are likely to frustrate efforts by the victim to secure justice, and the same is likely to occur in the present case if this Hon'ble Court does not immediately intervene to correct the course of investigation.

VICTIM OF CUSTODIAL DEATH

E. BECAUSE Faizan was under the control and custody of the police officers from the moment he was encircled, wrongfully confined and assaulted by the police, as seen in the videos. He further remained in the police's control and custody in GTB Hospital and was illegally confined and detained in police custody at Jyoti Nagar P.S. on 24.02.2020 and 25.02.2020. It is only when Faizan's health condition became very

precarious that the Jyoti Nagar P.S. released him, perhaps to avoid the complication of having Faizan die inside the police station due to custodial violence. The mere release of Faizan from the police station, so as to ensure his place of death was outside the police station premises, does not absolve the police officers of the crime of custodial killing.

F. BECAUSE Indian jurisprudence has adopted an expansive definition of the term "custody" for the purposes of custodial death, and the wrongful confinement of Faizan while assaulting him on the road and subsequent illegal detention at the Police Station by the police, resulting in his death would amount to a custodial death in the eyes of law. Reliance is placed herein on the judgment of this Hon'ble Court in *Zulfikar Nasir vs State of UP* (Supra), wherein this Hon'ble Court has held,

"As rightly pointed out by learned counsel for the NHRC, there is a growing legal recognition that "custody" extends beyond the mere spatial construct of prisons or lockups. This was recognized by the Supreme Court, in the judgment of Justice Krishna Iyer, way back in 1980 in Niranjana Singh v. Prabhakar Rajaram Kharote AIR 1980 SC 785 where it was observed as under:

"When is a person in custody, within the meaning of s.439 Cr. P.C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of s. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocal quibbling and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation

but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law..."

G. BECAUSE the Law Commission of India (LCI) in several of its reports has emphasized that there must be an inclusive, realistic definition of the term "custody" and that such definition should acknowledge the various methods of deprivation and restraint of liberty. The LCI has in its 113th report on 'Injuries in Police Custody' (1985), the 152nd report on 'Custodial Crimes' (1995), the 185th report on the 'Review of the Indian Evidence Act' (2003) and the 273rd report on 'The Implementation of the UN Convention against Torture' (2017), emphasised this aspect. In the present case, victim Faizan's liberty stood deprived from the moment he was encircled, wrongfully confined and brutally assaulted by the police on 24.02.2020 till he was finally released on 25.02.2020 around midnight, having been denied access to critical medical care all this while.

RIGHT TO FAIR AND IMPARTIAL INVESTIGATION

H. BECAUSE the investigation conducted by the Respondent No. 2 does not inspire confidence, and there is a grave and real apprehension that the tardy investigation will shield the real perpetrators of the heinous crime, as they are policemen.

j) Deceased Faizan and four other victims were brutally assaulted by police officers on 24.02.2020 near Kardampuri bridge, close to the Mohalla Clinic. The incident occurred in broad daylight, and was also captured on cell phone cameras. Videos of the incident have gone viral, and it is clearly visible that Faizan was attacked by policemen armed with lathis (sticks). Yet, the police has conducted

a shoddy investigation and failed to identify even a single accused policeman who was on riot duty at Kardampuri bridge at the time of the incident and involved in this murderous assault.

k) The police carried Faizan and the other injured Muslim men from 66 Foot Road near Mohalla Clininc in Kardampuri to GTB Hospital, and thereafter from the hospital to Jyoti Nagar P.S in a white police Gypsy. The route taken by the police Gypsy vehicle was a public route littered with commercial establishments, petrol stations, DMRC metro stations and various other buildings which would have CCTV cameras. However, the Respondent No. 2 in its Status Report dated 22.07.2020 filed before the Ld. CMM, North East Delhi, made a generic and unsubstantiated assertion that, *“During investigation neither any government installed CCTV nor any private CCTV was found installed in the area.”* This assertion made by Respondent No. 2 is disputed by media reports that suggest that the police has arrested and identified the accused persons in other cases on the basis of CCTV footage from nearby areas. Thus, to state that there are no CCTVs installed in the area, is ex-facie false and wrong, and raises serious doubts over the fairness and accuracy of the investigation.

l) Faizan was taken from near Kardampuri Mohalla Clinic on 66 Foot Road to GTB Hospital by the police in a Police Gypsy vehicle. It is noteworthy that every police vehicle has its own log book where entries are made recording material particulars including the names and designation of officers using the same on any given day, as well as the route taken and locations travelled to. The occupants of this Gypsy vehicle can also provide clear leads

about the identity of the policemen involved in the assault and beating of Faizan and others. However the Respondent No. 2 has made no efforts to trace the same.

m) It is a matter of record that Faizan was illegally detained at Jyoti Nagar P.S. on 24.02.2020 and 25.02.2020, denying him critical medical treatment and leading to his death. The duty roster of Jyoti Nagar P.S. would reveal the names of the policemen who were stationed at Jyoti Nagar P.S. on 24.02.2020 and 25.02.2020, and the police official under whose control and supervision Faizan was illegally detained and not released to the Petitioner on 24th February night and again on 25th February morning. Yet, the Respondents have not proceeded against the said police personnel, whose names and identities are known and readily verifiable.

n) The Status Report dated 22.07.2020, very conveniently and casually states that the CCTVs in Jyoti Nagar P.S. were not functional on the date of the incident. It has been expressly stated by the Supreme Court recently in its judgment, *Paramvir Singh Saini vs Baljit Singh* (2020) SCC OnLine SC 578, that victims of human rights violations committed in police custody have a right to CCTV footage. At least, at this stage, the lack of CCTV footage despite CCTV cameras installed at Jyoti Nagar P.S. ought to lead to a strong suspicion of wrongdoing against the police officers stationed there, and their averment pertaining to CCTV cameras ought to have been independently probed and verified to rule out any foul play. The Status Report filed by Respondent No. 2 reveals that no such steps were taken to verify the same. As held vide Order dated 02.12.2020 by the Hon'ble High Court of Bombay in

Wajid vs State of Maharashtra (Crl WP No. 1111/2020), if the police's submission that CCTV was not working on a date when there have been alleged human rights violations committed in the police station is believed, then the whole purpose behind installation of CCTVs would be defeated. The Hon'ble High Court further held that there must be an enquiry to check the veracity of such submissions, including but not limited to inspection of documents to check whether any contemporaneous record corroborates such a claim as made by the police. In the present case, the Status Report filed by Respondent No. 2 reveals that no efforts were made to verify such claims, and only a bald submission was made before the Ld. Court stating that the CCTV installed in Jyoti Nagar P.S. was not working on 24.02.2020 and 25.02.2020.

- o) The detailed description and narration of relevant facts by Faizan to the Petitioner on the intervening night of 25th-26th February, 2020, of the cause and circumstances which led to his death amounts to a Dying Declaration in the eyes of law. The Petitioner in her statement to the police has stated the facts and details narrated by Faizan in his dying declaration, yet the Respondents have only parroted the police narrative pertaining to the illegal detention of Faizan at Jyoti Nagar P.S. in their Status Report dated 22.07.2020. The statement of the Petitioner details her visits to Jyoti Nagar P.S. on 24.02.2020 and 25.02.2020, which is a direct refutation of the police's claim that Faizan stayed at Jyoti Nagar P.S. voluntarily and was released only on 25.02.2020 because his family did not come to the police station earlier. The police's

claim belies logic and is patently an afterthought to prop up a false counter - narrative regarding Faizan's illegal detention, denial of timely and urgent medical treatment, which led to his death.

p) That injured eyewitness Kauser Ali's blood-soiled clothes from the date of the incident have still not been seized by the Respondent No. 2, despite repeated requests and reminders made by the victim for almost six months.

q) That the post mortem report of the deceased Faizan clearly reveals that the cause of death was "*cerebral injury associated with multiple blunt injuries over the body.*" It further states that "*the pattern of injuries are consistent with assault.*" The report further states that all injuries are ante mortem in nature, 2-3 days in duration and caused by blunt force impact. The opinion of the medical expert is thus consistent with the dying declaration of Faizan, where he narrates the assault on him by police officers.

r) That the MLC No. D-23 records that Faizan was required to be referred to Neurosurgery and Orthopaedic care, but the police denied him critical medical treatment and illegally detained him at Jyoti Nagar P.S.. It is the admitted case of Jyoti Nagar P.S. officers that Faizan was kept in the police station on 24.02.2020 and 25.02.2020 and released only around 11pm on 25.02.2020.

I. **BECAUSE** the Petitioner's right to a fair and impartial investigation is an inalienable facet of the right to life and the right to equal protection of the law, as is guaranteed under Articles 14, 15, and 21 of the Constitution of India. In the circumstances of this case, the tardy and biased investigation conducted by the Respondent No. 2, will result in a complete failure of justice. The Hon'ble Supreme Court in *Babubhai v*

State of Gujarat (2010) 12 SCC 254 while discussing the right to a fair investigation has held,

“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 rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere.”

The above position of law was reaffirmed and quoted by the Hon'ble Supreme Court in *Hema v State* (2013) 10 SCC 192 and *Karan Singh v State of Haryana* (2013) 12 SCC 529.

NEED FOR IMPARTIAL PROBE BY COURT APPOINTED SIT

J. BECAUSE in a case of the present nature, where the accused persons are policemen, it is pertinent to note that a majority of the possibly incriminating material evidence in the form of official records continues to be in the custody and under the control and supervision of the accused police officers. This leaves the said evidence prone to manipulation and tampering, and poses a grave and continuing threat to justice.

- a) That the Petitioner had filed an application on 06.06.2020 before the Ld. CMM (North East), seeking that certain relevant documents pertaining to Jyoti Nagar P.S. and Bhajanpura P.S. be secured and kept in safe custody for the purpose of investigation in the murder of Faizan. To the Petitioner's surprise, the Respondent No. 2 took an adversarial and hostile approach, stating in its Status Report dated 22.07.2020 that,

“The documents / registers, which the applicant has requested to preserve are irrelevant and are not warranted for the purposes of the investigation into the instant case.”

- b) That the Petitioner impressed upon the Ld. Court that the said documents were directly relevant, and thereafter the Respondent No. 2 was directed to file specific reply regarding the preservation of documents. However, on 21.08.2020, the Respondent No. 2 filed a bald, omnibus and vague reply, which provides no assurance that the relevant documents have been preserved. The reply states,

“...during investigation all records which is relevant from PS Jyoti Nagar and PS Bhajanpura, has already been procured and placed on case records.”

- c) The Respondent No. 2's reluctance to make any specific and pointed averment qua documents mentioned in the application filed by the Petitioner fails to inspire confidence, and suggests that relevant documents may not have been preserved and placed in safe custody.

K. BECAUSE the Hon'ble Supreme Court has in the past directed that when there are allegations against the police personnel, or of grave police complicity in crime, then in the interest of justice, the investigation should not be carried out by the same force so that some credibility can be attached to the same.

- a) In the present case, the accused persons are all Delhi police personnel, bound by the “*brotherhood of Khaki*” to protect each other's interests, and that does not inspire any confidence in a probe conducted by officers of the Delhi Police itself. With the

transfer of the case to the Crime Branch, and formation of two SITs, the Petitioner's hopes were raised that the nexus of the brotherhood of Khaki will be ruptured and will not come in the way of a fair investigation. However, with more than nine months having faded away and the Crime Branch failing to trace the accused officers, the Petitioner has realized that the nature and pace of investigation is headed towards shielding the accused.

- b) That the Crime Branch's approach towards the present case is symptomatic of the systemic problem of investigation against police personnel being conducted by other police officers, who may belong to the same cadre or force, or are bound by unspoken and intangible bonds of brotherhood. In such circumstances, justice can only be done if the investigation is conducted by a Special Investigation Team, whose officers are handpicked by a constitutional court to which the said team shall be accountable and answerable by filing periodic status reports. The officers entrusted with the task must have a demonstrably unblemished record, impeccable credibility and should be independent, impartial, professional and competent.
- c) The Code of Criminal Procedure, for its full and proper implementation, assumes that the law enforcement and investigative authorities shall operate in good faith. However, in special circumstances as in the present case, where the accused persons are from the police, the presumption of good faith is outweighed by the need for transparency in the investigation. The creation of special checks and balances by a constitutional court thus becomes imperative to ensure the proper functioning of the

criminal justice system in such cases, in the interest of justice, fairness and equity.

L. BECAUSE the State is under a legal duty to ensure effective conduct of investigation in a proper manner, and as held in *Bharati Tamang v. Union of India* (2013) 15 SCC 578, where “*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.*”

In the same case, it was further held that:

“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.” (Emphasis supplied)

M. BECAUSE the ends of justice will not be served if the investigation is carried on unchecked by the Respondent No.2. It is a well settled principle in law that justice must not only be done but must also be seen to be done, and in view of the averments contained in this Petition and the material on record, it is clear that the police investigation by the

Respondent No. 2 reeks of unprofessionalism or complicity and is *ex-faciemalafide*.

N. BECAUSE the present petition is being filed by a grieving mother, seeking justice for her 23 year old son who was brutally assaulted, targeted and killed by police officers, and is seeking a fair, prompt and impartial investigation. The inherent powers of this Hon'ble Court under Section 482 Code of Criminal Procedure to secure the ends of justice, would rarely find a case more befitting than the present one, for its proper and fullest use.

FIT CASE FOR EXERCISE OF INHERENT POWERS TO MONITOR INVESTIGATION

O. BECAUSE the right to justice of the present Petitioner is premised on securing a fair, independent, impartial, professional, rigorous, and prompt investigation, and the Hon'ble Supreme Court has repeatedly held that the same is wholly covered under the broad scope of Article 21 of the Constitution. In *State of West Bengal v Committee for Protection of Democratic Rights* (2010) 3 SCC 571, the Hon'ble Supreme Court has held,

“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.”

P. BECAUSE the criminal justice system is premised on the principle that

the State through its agencies and functionaries shall uphold the rights of the victim by conducting a fair, impartial and independent investigation to ensure that the accused persons are effectively prosecuted and punished. A motivated, ineffective, indifferent or partisan investigation will completely denude the prospects of an effective and successful prosecution, and in turn result in miscarriage of justice, with the perpetrators of such a heinous and barbaric crime enjoying impunity. In *Mithilesh Kumar Singh v State of Rajasthan* (2015) 9 SCC 795, the Hon'ble Supreme Court held that an "*incomplete, indifferent or ineffective investigation leads to failure of justice.*"

Q. BECAUSE it is trite in law that the conduct of the investigating agency must be transparent, impartial, independent and unquestionable, in order to ensure that the real unvarnished version of the truth is revealed. In *Karan Singh v State of Haryana* (2013) 12 SCC 529, this Hon'ble Court has categorically stated,

"The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias."

RIGHT TO ACCESS JUSTICE - ARTICLES 14 and 21

R. BECAUSE the right to access justice has been held by the Hon'ble Supreme Court of India to be an integral part of Article 14 read with Article 21 of the Constitution. As such, the Petitioner has a right under Article 226 of the Constitution of India to seek enforcement of the right to access justice.

S. BECAUSE in *Anita Kushwaha v Pushap Sudan* (2016) 8 SCC 509, it was held that,

“access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman jurisprudential maxim ubi jus ibi remedium, the development of fundamental principles of common law by judicial pronouncements of the courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilised societies and systems recognise and enforce.” In particular, the Hon'ble Supreme Court took note of the Directive Principle in Article 39-A of the Constitution which recognises the right of citizens of equal justice and free legal aid; Articles 8 and 10 of the Universal Declaration of Human Rights, 1948, which respectively read as *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law,”* and *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him”*; Article 2 of the International Covenant on Civil and Political Rights (ICCPR) that provided that *“each State party to the Covenant shall undertake that every person whose rights or freedom as recognised is violated, shall have an effective remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative*

authorities, and the State should also ensure to develop the possibilities of judicial remedies;" and various judgments of this Hon'ble Court including *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81, *Imtiyaz v. State* (2012) 2 SCC 688, *Brij Mohan v. Union of India* (2012) 6 SCC 502 and *TMBSWA v. S.C. Sekar*(2009) 2 SCC 784.

T. BECAUSE the cruel, inhuman and degrading treatment meted out to Faizan by the police at Kardampuri bridge, as is seen in the viral video, is a violation of the right to life and right to human dignity guaranteed under Article 21 and Articles 14 and 15 of the Constitution. It is also a violation of India's international commitment under The Convention Against Torture (CAT), to which India is a signatory.

PETITIONER HAS A RIGHT TO KNOW THE TRUTH

U. BECAUSE the mother of deceased Faizan, the Petitioner herein, has a Right to Know the Truth about what happened to her son and by whom and how he was assaulted, illegally detained and killed. This right is affirmed by Articles 21 and 14 as recognized in the judgement of the Hon'ble Supreme Court of India in *EEVFAM vs Union of India* (2017) SCC OnLine SC 743, and this Hon'ble Court has the requisite powers under Article 226 and Section 482 Cr.P.C. to pass necessary directions to secure the ends of justice and protect the Petitioner's Right to Know the Truth. The Supreme Court in *EEVFAM* (Supra) has discussed the approach that constitutional courts must take in cases of alleged gross violation of human rights, and stated,

"The truth has to be found out however inconvenient it may be for the petitioners or for the respondents. In matters concerning gross violations of human rights this Court and every constitutional court should adopt an 'open door policy'"

The Hon'ble Court has further quoted a report and held,

"...The Human Rights Committee has urged a State party to the

International Covenant on Civil and Political Rights to guarantee that the victims of human rights violations know the truth with respect to the acts committed and know who the perpetrators of such acts were." It is necessary to know the truth so that the law is tempered with justice. The exercise for knowing the truth mandates ascertaining whether fake encounters or extra-judicial executions have taken place and if so, who are the perpetrators of the human rights violations and how can the next of kin be commiserated with and what further steps ought to be taken, if any."

V. BECAUSE international law recognizes the obligation of States to facilitate the victim's right to know the truth. The International Convention for the Protection of All Persons from Enforced Disappearance states: "*Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.*" Principle 4 further establishes the "victim's right to know" as an individual right:

"Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."

DISCRIMINATORY POLICE CONDUCT AND ATTITUDES

W. BECAUSE the viral video reveals a deeply disturbing biased conduct and communal attitude prevailing among the offending police personnel, who engaged in targeted violence, abuse and humiliation against members of the minority community. The nature of communal jibes, sectarian comments and humiliation meted out to Faizan and others, calls for immediate and far ranging changes in the police training to foster a sense of fraternity, community and secular , which is integral to

maintaining the unity and integrity of India and furthering the goals set out in the Preamble.

X. BECAUSE the Petitioner seeks leave to rely on additional grounds.

6. That the Petitioners have not filed any other Writ Petition before this Hon'ble court or any other court including the Hon'ble Supreme Court of India pertaining to the present cause of action.

PRAYER

That in light of the facts and circumstances of the present case and the grounds stated hereinabove, it is most humbly prayed that this Hon'ble Court may be pleased to:

- A. Pass an appropriate writ, order or direction in the nature of Mandamus or any other writ, order or direction constituting a fresh Special Investigation Team comprising senior police officers with a demonstrably unblemished track record and credibility to carry out an independent, impartial, professional and time bound investigation into FIR 75/2020, P.S. Bhajanpura dated 28.02.2020, under the monitoring of this Hon'ble Court; and
- B. Pass an appropriate writ, order or direction in the nature of Mandamus or any other writ, order or direction to ensure that investigation into FIR 75/2020, P.S. Bhajanpura dated 28.02.2020, be monitored by this Hon'ble Court by filing of periodic Status Reports before this Hon'ble Court; and
- C. Pass an appropriate writ, order or direction in the nature of Mandamus or any other writ, order or direction to Respondent No. 3 directing Respondent No. 3 to file a detailed affidavit supported by relevant material regarding the functioning of CCTV cameras in Jyoti Nagar P.S. during the month of February 2020, and in particular on 24.02.2020 and

25.02.2020; and

- D.** Pass an appropriate writ, order or direction in the nature of Mandamus or any other writ, order or direction to Respondent No. 1 directing Respondent No. 1 to file an Action Taken Report regarding the steps taken by Delhi Police in view of the partisan and biased actions and attitudes of displayed by policemen in the viral videos of 24.02.2020; and
- E.** Pass an appropriate writ, order or direction in the nature of Mandamus or any other writ, order or direction to Respondent No. 1 and 4 to place on record all Service and Conduct Rules, Regulations, Office Orders, Memorandums, etc. which prohibit and penalize discrimination, hate speech and targeted action against religious minorities by policemen on duty; and
- F.** Pass any other order, writ or direction as this Hon'ble Court may deem fit and necessary, in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND FOREVER PRAY

Through:

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NEW DELHI
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