

Court No. - 45

WWW.LIVELAW.IN

Case :- CAPITAL CASES No. - 5183 of 2017

Appellant :- Surendra Koli

Respondent :- State Thru C.B.I.

Counsel for Appellant :- From Jail,From Jail,Mary Punch (Sheeba Jose),Mohd. Kalim

Counsel for Respondent :- A.G.A.,Amit Mishra,Gyan Prakash

Hon'ble Manoj Misra,J.

Hon'ble Sameer Jain,J.

In this matter on an application i.e. Application No.3 of 2021, under Section 91 CrPC read with Section 294 CrPC, for production of post mortem report pertaining to the victim Pinki Sarkar, on 18.11.2021, following order was passed:-

"In Re: CrI.Misc. Application No.3 of 2021.

Today an application no.3 of 2021 has been placed before us in which a prayer has been made under Section 91 CrPC read with Section 294 CrPC for production of post mortem report pertaining to the victim Pinki Sarkar.

As this appeal is connected with several other Capital sentence appeals in connection with Nithari group of cases, the second prayer in the application is to produce the remaining 15 post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (M.D., Chief Medical Superintendent, Noida), which were received by PW-26, C.B.I. Inspector Ajay Singh on 12.01.2017.

The third prayer made in this application is to require the prosecution either to admit or deny the genuineness of the post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (described above).

This application has been signed and submitted by Ms. Sheeba Jose, learned counsel appearing on behalf of the appellant (Surendra Koli).

Sri Sanjai Kumar Yadav, who appears for the C.B.I., prays for and is allowed ten days time to seek instructions and file response to this application.

Let this application be put up for consideration/orders on 29.11.2021. It is expected that the C.B.I. counsel shall provide an advance copy of the objection to the counsel representing the appellant and if there is any difficulty in service of copy in advance then learned counsel for the C.B.I. may take email address of the appellant's counsel and provide the same through email.

In the connected Capital Appeal No.4404 of 2017, Sri Omkar Srivastava who appears for Moninder Singh Pandher (co-accused) has requested that the connected appeal be taken up on 22.11.2021 as

a counsel from outside would appear to argue the appeal.

At his request, let this appeal along with connected Capital Appeal No.4404 of 2017 as well as other connected appeals be put up for further hearing on 22.11.2021."

Thereafter, on 29.11.2021, when the matter was taken up again, Sri Gyan Prakash, Senior Counsel, representing the CBI, prayed for further 10 days time to seek instructions and submit response on the application No.3 of 2021. Consequently, on 29.11.2021, we passed the following order:-

"On 18.11.2021, we had passed the following order:

"Today an application no.3 of 2021 has been placed before us in which a prayer has been made under Section 91 CrPC read with Section 294 CrPC for production of post mortem report pertaining to the victim Pinki Sarkar.

As this appeal is connected with several other Capital sentence appeals in connection with Nithari group of cases, the second prayer in the application is to produce the remaining 15 post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (M.D., Chief Medical Superintendent, Noida), which were received by PW-26, C.B.I. Inspector Ajay Singh on 12.01.2017.

The third prayer made in this application is to require the prosecution either to admit or deny the genuineness of the post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (described above).

This application has been signed and submitted by Ms. Sheeba Jose, learned counsel appearing on behalf of the appellant (Surendra Koli).

Sri Sanjai Kumar Yadav, who appears for the C.B.I., prays for and is allowed ten days time to seek instructions and file response to this application.

Let this application be put up for consideration/orders on 29.11.2021. It is expected that the C.B.I. counsel shall provide an advance copy of the objection to the counsel representing the appellant and if there is any difficulty in service of copy in advance then learned counsel for the C.B.I. may take email address of the appellant's counsel and provide the same through email.

In the connected Capital Appeal No.4404 of 2017, Sri Omkar Srivastava who appears for Moninder Singh Pandher (co-accused) has requested that the connected appeal be taken up on 22.11.2021 as a counsel from outside would appear to argue the appeal.

At his request, let this appeal along with connected Capital Appeal No.4404 of 2017 as well as other connected appeals be put up for further hearing on 22.11.2021."

Pursuant to the above order, Application No.3 of 2021 has been put before us for our orders.

WWW.LIVELAW.IN

Sri Gyan Prakash, learned Senior Counsel submits that he needs further ten days' time to seek instruction and submit response to the Application No.3 of 2021.

At this stage, Sri Yug Mohit Chaudhary, learned counsel appearing for the appellant, Surendra Koli, submits that from the testimony of PW-40 at page 633 of the paper book, it is clear that the body remains were sent for post mortem examination and from the statement of PW-26 (Inspector Ajai Singh, CBI) at page 568 of the paper book, it appears that the post mortem report etc. were taken over by the CBI from FSL, Agra. He, therefore, submits that these are vital documents, which need to be produced.

In view of the above, at the joint request of the learned counsel for the appellant and Sri Gyan Prakash, learned Senior Counsel representing CBI, put up this appeal along with other connected appeals for further hearing on 10.1.2022.

It is expected that before the next date, the learned counsel for the CBI shall serve a copy of the reply to the Application No.3 of 2021 upon the counsel representing the appellant."

Thereafter, on 10.01.2022, when the matter was taken up, a request was made by Sri Gyan Prakash, learned counsel for CBI, that he has received instructions and would be in a position to file a reply or submit the post mortem report within next three weeks. On his request, the matter was posted for second week of February, 2022. The order dated 10.01.2022 is extracted below:-

"The Court has been addressed through video conferencing.

Sri Yug Mohit Chaudhary has appeared for the appellant; Sri Amit Sinha has appeared for the State; and Sri Gyan Prakash, assisted by Sri Sanjay Kumar Yadav, has appeared for the CBI.

On 29.11.2021, we had passed the following order:-

"On 18.11.2021, we had passed the following order:

"Today an application no.3 of 2021 has been placed before us in which a prayer has been made under Section 91 CrPC read with Section 294 CrPC for production of post mortem report pertaining to the victim Pinki Sarkar.

As this appeal is connected with several other Capital sentence appeals in connection with Nithari group of cases, the second prayer in the application is to produce the remaining 15 post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (M.D., Chief Medical Superintendent, Noida), which were received by PW-26, C.B.I. Inspector Ajay Singh on 12.01.2017.

The third prayer made in this application is to require the prosecution either to admit or deny the genuineness of the post mortem reports prepared in connection with Nithari group of cases under the supervision of Dr. Vinod Kumar (described above).

WWW.LIVELAW.IN

This application has been signed and submitted by Ms. Sheeba Jose, learned counsel appearing on behalf of the appellant (Surendra Koli).

Sri Sanjai Kumar Yadav, who appears for the C.B.I., prays for and is allowed ten days time to seek instructions and file response to this application.

Let this application be put up for consideration/orders on 29.11.2021. It is expected that the C.B.I. counsel shall provide an advance copy of the objection to the counsel representing the appellant and if there is any difficulty in service of copy in advance then learned counsel for the C.B.I. may take email address of the appellant's counsel and provide the same through email.

In the connected Capital Appeal No.4404 of 2017, Sri Omkar Srivastava who appears for Moninder Singh Pandher (co-accused) has requested that the connected appeal be taken up on 22.11.2021 as a counsel from outside would appear to argue the appeal.

At his request, let this appeal along with connected Capital Appeal No.4404 of 2017 as well as other connected appeals be put up for further hearing on 22.11.2021."

Pursuant to the above order, Application No.3 of 2021 has been put before us for our orders.

Sri Gyan Prakash, learned Senior Counsel submits that he needs further ten days' time to seek instruction and submit response to the Application No.3 of 2021.

At this stage, Sri Yug Mohit Chaudhary, learned counsel appearing for the appellant, Surendra Koli, submits that from the testimony of PW-40 at page 633 of the paper book, it is clear that the body remains were sent for post mortem examination and from the statement of PW-26 (Inspector Ajai Singh, CBI) at page 568 of the paper book, it appears that the post mortem report etc. were taken over by the CBI from FSL, Agra. He, therefore, submits that these are vital documents, which need to be produced.

In view of the above, at the joint request of the learned counsel for the appellant and Sri Gyan Prakash, learned Senior Counsel representing CBI, put up this appeal along with other connected appeals for further hearing on 10.1.2022.

It is expected that before the next date, the learned counsel for the CBI shall serve a copy of the reply to the Application No.3 of 2021 upon the counsel representing the appellant."

Pursuant to the above order, Sri Gyan Prakash states that he has received instructions and would be in a position to file a reply or submit the post-mortem report, as may be advised, within next three weeks. He submits that a date in the second week of February, 2022 be fixed for the said purpose.

As prayed by him, put up/list on 14th February, 2022 along with other connected appeals. In the meantime, Sri Gyan Prakash shall ensure that the application/objection, pursuant to the order dated 29.11.2021, is served upon the counsel representing the appellant, either physically or through digital mode, by 07th of February, 2022."

Today, when the matter was taken up Ms. Sheeba Jose has appeared for the appellant; and Sri Sajay Kumar Yadav has appeared for the CBI. Sri Sanjay Kumar Yadav states that he has prepared a draft reply and the same has been sent for vetting to the department concerned but response is awaited.

When we requested Sri Sanjay Kumar Yadav to give a specific date by which the response would be filed, he states that the matter may be taken up on 07th March, 2022.

On our question as to why there is so much delay in submitting reply or producing postmortem report, we could not get cogent explanation from Sri Sanjay Kumar Yadav, who represents CBI. This casual approach on the part of CBI is clearly unacceptable.

Under the circumstances, we deem it appropriate to direct that this matter along with other connected matters shall be put up on 07th March, 2022, by which date, if our earlier orders quoted above are not complied, a responsible officer of the concerned department of CBI shall be personally present in Court to submit his explanation.

Let a copy of this order be provided to Sri Sanjay Kumar Yadav for information and compliance.

Order Date :- 14.2.2022
AKShukla/-