

IN THE HIGH COURT OF JUDICATURE
FOR RAJASTHAN AT JODHPUR

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S. B. CRIMINAL MISC. PETITION No. /2019

PETITIONER: Col. Jayant Kumar

VERSUS

RESPONDENT: The State of Rajasthan & Ors.

SYNOPSIS

- That the Petitioner in the present petition, is the father of Late Mr. Vikrant Nagaich and is a resident of Gurgaon, Uttar Pradesh. Mr. Vikrant Nagaich was a 3rd year law student, studying at National Law University, Jodhpur and was a meritorious student with an unblemished academic record. That on the evening of 13th August, 2017, he went to a restaurant situated near the university campus with his friends and then did not return on same night. Unfortunately, the deceased was found dead on the morning of 14th August at around 9 a.m., under unnatural circumstances near the railway tracks opposite to the university.
- That pursuant to this, when the university authorities were informed about the said incident, it was incumbent upon them to file an F.I.R with regard to the said incident and to inform the parents of the deceased student. However, the same was not done by the University as the authorities did not lodge any F.I.R and were even reluctant to inform the parents of the deceased, in the first place.
- That however, there is material evidence according to the Petitioner, to establish that the event of the death of deceased was not an act of suicide or accident as wrongly circulated and published in media, and there exists enormous amount of probability that it was an alleged murder committed by someone.
- That it would have been the imperative of the state police by carrying out a proper and systematic investigation, with regard to the death of the deceased but the same was not done and the state police miserably failed to fulfil its duty it owes towards the society and the obligations towards the Petitioner. The laid-back behavior of the state police can be traced from the fact that the FIR was not

filed even after several months from the death of the deceased and no investigation was thus carried out.

- That after endless efforts put by the Petitioner and the inability of the state police to carry out an effective investigation, the **FIR bearing no. 0155/2018** with respect to the present incident was finally lodged after an inordinate delay of **ten months** in the Police Station, Mandore through the order bearing no. 454 dated 27-06-2018 passed by the office of C.I.D C.B., Jaipur and **Shri. Sunil Bishnoi**, CID CB Range Cell, Jodhpur was appointed as the Investigating Officer (I.O.) to probe into the matter of the death of the deceased.
- That because of an inordinate delay in filing of the FIR by the police officials, the case has thus suffered from material infirmities and no consensus has been reached out of the investigation done by the officials of CID CB. It would be worthwhile to mention here that, apart from the statements of some of the students of the university and some other related persons, who were present with the deceased on the night of the incident, no other substantial issue has even been touched by the officials with respect to the alleged murder of the deceased, and resultantly the possible culprits are breathing in the free air and are moving and residing freely in the society, without any obstacles or resistance, whatsoever.
- That the Petitioner procured an Internal Railway Enquiry Report wherein no record of any incident of accident was reported by any member of lobby crew, locomotive drivers or guards of the trains which passed from the railway tracks on the night of 13th August, 2017 where the body of the Petitioner's son was found lying on the morning of 14th August, 2017 which clearly establishes that the death of the deceased does not occurred from the accident, as no accident took place on the tracks on that night.
- That additionally, a thorough and detailed examination of the hostel room of the deceased was conducted by the police officials, immediately pursuant to his death, and no suicide note was found to establish the contention that the son of the Petitioner committed suicide. Also that no receipt of any doctor or medication was found in his room which establish that he was suffering from depression at the time of his death, as rigorously circulated by media in its new reports.

- That however, the Petitioner left no stone unturned to accrue his right of fair and impartial investigation to be conducted by the police department and CID CB in relation to the **FIR No. 0155/2018** and has always been in constant touch both via telephonic conversations and e-mails, with various officials of the CID CB in the thirst of justice for untimely death of his deceased son and has been incessantly and perpetually furnished relevant outputs and leads to conduct the course of investigation in a material and responsible manner in order to reach a substantial outcome.
- That deeply saddened and disgruntled by the laid back, apathetic and indifferent behavior of the I.O. and the other officials of the Rajasthan Police Department, the Petitioner served representation with regard to the alleged murder of his son at the office of C.M. of Uttar Pradesh, who forwarded the representation to the C.M. of Rajasthan. The Petitioner also served various representations for his cause to various other high ranking authorities of the state of U.P. and Rajasthan including the Hon'ble Governor of Rajasthan, Chief Secretary of the Govt. of Rajasthan, among others.
- That after the loss of his only child, the Petitioner has knocked every possible door of the police officials of the state and but they have constantly failed to cater to the grievances of the Petitioner as even on today, almost one and half year has been passed since the death of the son of the Petitioner but the CID CB has failed to come out with any substantial development in terms of investigation of the alleged murder and still, the charge sheet has not been filed, and has always been ignorant and irresponsible towards the grievances of the Petitioner and has also, done an inordinate delay in conducting a fair and speedy investigation in relation with FIR No. 0155/2018.
- Thus being aggrieved by the callousness and inaction of the respondent Investigation Authorities, the present Petition is preferred before this Hon'ble Court *inter alia* on the following grounds without being prejudice to each other.

Counsel for the Petitioner

**Mohit Singhvi/Himanshu Choudhary/
Aishwarya Anand**

To,

The Hon'ble Chief Justice and His Lordship's other companion Judges
of the High Court of Judicature for Rajasthan at Jodhpur.

MAY IT PLEASE YOUR LORDSHIPS,

On behalf of the Petitioner, it is most humbly and respectfully submitted as
under:

1. That the Petitioner in the present petition is the father of Late Mr. Vikrant Nagaich (*hereinafter referred to be the "deceased"*) and is also a Complainant in the FIR bearing no. 155/2018. The Petitioner is resident of abovementioned address hence, is a citizen of India and is entitled to the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder.
2. That Mr. Vikrant Nagaich was a 3rd year law student, studying at National Law University, Jodhpur (*hereinafter referred to be the "University"*) and was a meritorious student with an unblemished academic record. That as per factual matrix of the matter, on the evening of 13th August, 2017, he went to a restaurant situated around 300 meters from the university campus with his friends and did not return on the same night. Thereafter, in the morning of 14th August, 2017 deceased was found dead at around 9 a.m., under unnatural circumstances near the railway tracks opposite to the university.
3. That pursuant to this, when the university authorities were informed about the said incident, it was incumbent upon them to file an F.I.R with regard

to the said incident and to inform the parents of the deceased student. However, the same was not done by the university as the authorities didn't lodge any F.I.R and were even reluctant to inform the parents of the deceased, in the first place. It would be worthwhile to mention here that, in order to shy away from their liabilities and to present the incident as a case of suicide, the university authorities, passed statements in the media that the deceased was suffering from depression at the time of incident, and thus resultantly committed suicide. That the possibility of a probable train accident due to which the deceased died, was also speculated by the university authorities, as per the statements passed by them in the media.

4. That it is crucial to note here that, irrelevant statement of the University has affected this matter negatively and same is affecting till date. It happened so that, after getting statement of the University officials that, the deceased was suffering from depression at the time of incident, and thus resultantly committed, the Police authorities left this matter in hanging position by accepting frivolous and vexatious statement of the University and did not even try to cull out the validity of the statement. Not only this, even after requesting on catena of occasions FIR was also not lodged and inspite of conducting preliminary investigation, the Police authorities refused to take any action in the matter, which apparently depicts connivance between University administration & Police authorities.
5. That additionally, a thorough and detailed examination of the hostel room **(S.R.K Halls of Residence)** of the deceased was conducted by the officials of P.S. Mandore, immediately pursuant to his death, and no suicide note

was found to establish the contention that the son of the Petitioner committed suicide. In addition to that, receipt of any doctor or medication was also not found in his room which establishes that, he was suffering from depression at the time of his death, as rigorously circulated by media in its new reports.

6. That these evidence and instances, present a crystal clear picture in the sense that the death of the Petitioner's son was not merely an accident or suicide but was something more grave and profound which demanded immediate consideration and investigation of the police officials. Nevertheless, the same was not done by the officials of the police and the Petitioner was left in a hanging position, devastated and unattended, after the death of his only child.

7. That the laid-back behavior of the state police can be traced from the fact that the FIR was not filed even after several months from the death of the deceased and no investigation was carried out. It was disgusting rather than shocking for the Petitioner to get this kind of behavior or response from Police administration and, after making hand folded requests no one was inclined to lodge an FIR and to conduct preliminary investigation in the matter. Thereafter, when the Petitioner did not get any positive result from the Jodhpur Police, he approached to the officials of the Crime Investigation Department, Crime Branch, Jaipur (*hereinafter referred to as 'CID, CB'*) and narrated each and every circumstances and subsequently. Thereafter, the Respondent No. 2 vide its order dated 27-06-2018 bearing no. 454 directed to file an FIR and subsequently, an FIR **bearing no. 0155/2018** was lodged with respect to the present incident after an

inordinate delay of ten months. At initial stage Shri. Sunil Bishnoi, CID CB Range Cell, Jodhpur was appointed as the Investigating Officer (I.O.) to probe into the matter of the death of the deceased. *(A Copy of the FIR lodged in PS. Mandore dated 29-06-2018 is appended herewith and marked as Annexure-1.)*

8. That pursuant to filing of the FIR and the transfer of investigation of the matter in the hands of CID CB, the Petitioner playing a pro-active role, trying to assist the officials of Crime Branch in every possible manner, hoped for a material and efficient investigation in the matter of the alleged murder of his son, but in vain as even the officials of CID CB, failed to arrive at any substantial outcome on the basis of investigation, carried out on their part, even on the present date.

9. That because of an inordinate delay in filing of the FIR in the present matter by the police officials, the case has thus suffered from material infirmities and no consensus has been reached out of the investigation done by the officials of CID CB. It would be worthwhile to mention here that, apart from the statements of the students of the university and some other related persons, who were present with the deceased on the night of the incident, no other substantial issue has even been touched by the officials with respect to the alleged murder of the deceased, and resultantly the possible culprits are breathing in the free air and are moving and residing freely in the society, without any obstacles or resistance, whatsoever.

10. That apart from the fact that the death of the deceased was clearly not a case of accident or suicide as wrongly published and circulated by the media, there exist ultimate possibilities that the son of the Petitioner was allegedly murdered. That it is evident from the fact that, the Petitioner with the assistance of Sh. Vijay Singh, Sr. Divisional Operations Manager, NW Railways, Jodhpur procured an Internal Railway Enquiry Report wherein no record of any incident of accident was reported by any member of lobby crew, locomotive drivers or guards of the trains which passed from the railway tracks on the night of 13th August, 2017 where the body of the Petitioner's son was found lying on the morning of 14th August, 2017 which clearly establishes that the death of the deceased does not occurred from the accident, as no accident took place on the tracks on that night. *(A Copy of the Internal Railway Enquiry Report is appended herewith and marked as Annexure-2.)*
11. That however, the Petitioner left no stone unturned to accrue his right of fair and impartial investigation to be conducted by the police department and CID CB in relation to the **FIR No. 0155/2018** and has always been in constant touch both via telephonic conversations and e-mails, with various officials of the CID CB in the thirst of justice for untimely death of his deceased son and has been incessantly and perpetually furnished relevant outputs and leads to conduct the course of investigation in a material and responsible manner in order to reach a substantial outcome. *(Copies of various E-mails furnished to officials of CID CB are appended herewith and marked as Annexure-3.)*

12. That with immense pain and hardship it is submitted that time and again, the Police officials of state and CID CB failed to appreciate the vital and active role played by the Petitioner in the investigation of the alleged murder of his only child and his consistent efforts have continuously been ignored by the officials of the Police and thus have resultantly failed, the justice delivery system of the country.

13. That deeply saddened and disgruntled by the laid back, apathetic and indifferent behavior of the I.O. and the other officials of the Police Department, the Petitioner served representation with regard to the alleged murder of his son at the office of Chief Minister of Uttar Pradesh, who forwarded the representation to the Chief Minister of Rajasthan. The Petitioner also served various representations for his cause to various other high ranking authorities of the state of U.P. and Rajasthan including the Hon'ble Governor of Rajasthan, Chief Secretary of the Govt. Of Rajasthan, among others. *(Copies of the representation served to the CM of U.P., the Forwarding letter and various other representations are appended herewith and marked as Annexure-4.)*

14. That after the loss of his only child, the Petitioner has knocked every possible door of the police officials of the state and but they have constantly failed to cater to the grievances of the Petitioner as even on today, almost one and half year has been passed since the death of the son of the Petitioner but the CID CB has failed to come out with any substantial development in terms of investigation of the alleged murder and still the charge sheet has not been filed, and has always been ignorant and irresponsible towards the grievances of the Petitioner and has also,

done an inordinate delay in conducting a fair and speedy investigation in relation with FIR No. 0155/2018.

15. Thus being aggrieved by the callousness and inaction of the respondent authority, present Petition is preferred before this Hon'ble Court *inter alia* on the following grounds without being prejudice to each other:

GROUNDS

A. That at the very first instance, it is humbly submitted that the inordinate delay caused by the Respondent Authorities in filing the F.I.R has caused material infirmities to the present case, the filing of the FIR after almost 10 months of the death of the deceased *ex facie* discloses laid back and apathetic behavior of the Respondents in conducting the investigation and has caused irreparable loss to the Petitioner which deserves interference of this Hon'ble High Court and therefore, the inaction of the police officials to take any step and not effecting a speedy and efficient probe is sheer abuse process of law and thus the instant petition deserves to be allowed on this ground alone.

B. That the higher authorities of the university circulated statements in the media that the cause of death was suicide because of depression in order to shy away from its liability in failing to take responsible measures of the security of its students, is an irresponsible conduct and hampered the investigation of the unnatural death of the deceased in a grave manner, which deserves consideration of this Hon'ble High Court.

C. That the Hon'ble Apex Court in the case of *Sasi Thomas vs. State* reported in (2006) 12 SCC 421 has observed that,

“Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation.”

D. That the actions of media, which is regarded to be the third pillar of democracy and holds vital accountability amongst its readers, in irresponsibly circulating and publishing that the cause of death of the deceased was due to an accident only for the reason because his body was found lying near the railway tracks in utterly impetus and imprudent and shook the very foundations of the case, when they had no material information or evidence to corroborate their statements.

E. That the statements under section 161 of the Cr.P.C given by one of the friends of deceased goes on to state that when he went to 'Tafri' Restaurant on 14th August, 2017 at around 7-7:30 am in the morning which is situated near the railway tracks, in order to look for the deceased, visited the railway tracks and found nothing at that point of time and later the body of the deceased was found lying near the railway tracks at around 9:30 a.m., which clearly establishes that it was not a case of suicide or accident

and there existed something doubtful and unnatural occurrence which happened to the deceased and therefore, the same required immediate consideration of the police officials to file an FIR and carry an effective investigation in the matter, in order to catch the culprits but the same was not done and the police authorities failed to do any investigation and even failed to lodge an FIR in the matter, thereby completely abusing the process of law and helping the culprits in breathing the air freely, even today which requires immediate interference of this Hon'ble High Court and the petition deserves to be allowed on this ground alone.

F. That the Hon'ble Supreme Court in the case of *Pooja Pal Vs. Union of India* reported in (2016) 3 SCC 135,

"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or re-investigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules

as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

G. That in matters relating to section 302 of the Indian Penal Code, 1860, the purpose of the police is to file the FIR within the earliest possible time and consequentially, the investigation is started with immediate effect because failing to do the same, can result into fleeing of the culprits and a possible interference in the strong evidences relating to the case. Nevertheless, the Respondents miserably failed to pursue their duties in the first instance and even today, are hell bent upon not proceeding with any substantial investigation even after almost one and a half year, from the occurrence of the incident and the same demands expeditious consideration of this Hon'ble High Court.

H. That the Petitioner has been made to run here and there by the Respondents and only through his active involvement, he has collected evidence, which is ethically the duty of the Respondents to do, which establishes that the death of his son was not merely an accident or suicide but was an alleged murder and the Petitioner has always asked for cooperation from the Respondents in the investigation but he was left unattended and uncared for, in total ignorance of the Respondent Authorities to cater to the grievances of the Petitioner.

I. That the Hon'ble Apex Court in the case of *Samaj Parivartan Samudaya v. State of Karnataka* reported in (2012) 7 SCC 407 that:

“The basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.”

- J. That the Petitioner has continuously tried to establish conversations with the officials of the Respondents via telephone and e-mails, guiding them about the necessary and accurate steps to be taken in conducting the investigation in a speedy and efficient manner but the Respondents have time and again been successful in paying no heed to the requests of the Petitioners. That through his e-mails, the Petitioner has raised multiple requests with respect to the analysis of the crime scene, the C.D.Rs of the friends of the deceased, the C.D.Rs of the other persons concerned, who were present around the crime scene, the F.S.L analysis of the cell-phone of deceased among others, but the same has continuously been rejected by the Respondents and because of which, after almost 8 months from the filing of the FIR, no conclusive end to the investigation has ever been reached. That the inactions of the Respondents have already caused material damage to the Petitioner and therefore, the petition deserves to be allowed on this ground alone.

K. That there exists another urgency in carrying out the speedy investigation in the matter in hand, which is that all the students of the university who were present with the deceased on the day of the incident are currently studying in their last semester and will be leaving for their respective states and cities of work in the month of May, 2019, after the completion of their course. That the Respondents are yet to record the statements of many such students and if they are not taken with instantaneous effect, it would be technically and practically impossible for the students to come and record their statements, being scattered in different parts of the country. That the Respondents, are well aware of this situation and are still not willing to record the statements of these students, which is nothing but a mere tactic to delay the investigation which has already been inordinately delayed and is a sheer abuse of the process of law.

L. That even after being aware of the entire factual aspects of the case in hand, the Respondent more particularly the investigating officer is also not paying heed towards the urgency of completion of investigation in the matter and the loss of the Petitioner, if not done otherwise, even after that the investigation has been made in a clandestine manner and totally biased qua the Petitioner and are giving false promises & harassing the petitioner unnecessarily on one pretext or the other which is *ex-facie* arbitrary and has caused travesty of Justice.

M. That the Supreme Court in the case of *Manohar Lal Sharma vs. Principal Secretary and Ors.* reported in AIR 2014 SC 666 observed that:

"29. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The Courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the Court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens."

N. That the injuries stated in the post mortem report of the deceased which caused the death are the head and spine injuries, along with injuries sustained on the testicles of the deceased. That these injuries clearly proves, beyond prudence that they cannot be sustained by a train accident or because of suicide. That it comes out to be a possible case where the deceased was abused and murdered, eventually. That these issues requires instant indulgence of the Respondents, which they are continuously ignoring and therefore, deserves appropriate directions from this Hon'ble Court.

O. That the Internal Railway Enquiry Report procured by the Petitioner from the Railway Department, beyond any reasonable doubt establishes that on the night of 13th August to the morning of 14th August, 2017, a total number of five (5) goods and passengers trains passed from the railway tracks from where the body of the deceased was found lying and there was no information about any accident was registered by any member of lobby crew, locomotive drivers or guards of the trains and additionally, it is also stated that on that particular night, no train took more than the usual running time, which would not have been possible if an accident was occurred on that night on the railway tracks. Therefore, this situation, clearly indicates that a systematic probe in the FIR No. 0155/2018 is quintessential for resolving these questions and therefore, the Respondents in the present petition deserves appropriate directions from this Hon'ble Court for conducting an effective, immediate and speedy investigation in relation with FIR No. 0155/2018 .

P. That the Petitioner has himself collected all the documentary evidence relating to the alleged murder of his son, which was incumbent upon the Respondents to do so and has also, served various representations to the highest authorities of the states of U.P. and Rajasthan. That even after playing such a proactive and vital role in the investigation of the present case, the Respondent Authorities are hell bent upon not co-operating the Petitioner. That this is serious abuse of the process of law and deserves to be thwarted away by this Hon'ble Court by mandating the Respondent to complete the investigation within a given period of time and resultantly, present the charge-sheet.

- Q. That after almost one and half year has been passed since the death of the son of the Petitioner and it has been nearly eight months after the filing of the FIR but till today, no charge sheet has been filed in an FIR having section 302 of the Indian Penal Code, 1860 which is nothing but a mockery being made by the Respondents which targets the whole justice delivery system of the state.
- R. That the jurisdiction of this Hon'ble Court under Section 482 of the Cr.P.C. is the most effective and efficient remedy available to the Petitioner in the fact and circumstances of the case, detailed hereinabove.
- S. That the Petitioner seeks indulgence of this Hon'ble Court to amend/delete/adduce additional grounds and also to urge to raise additional pleas at the time of hearing of this Petition.
- T. That the Petitioner has not preferred any other Petition or such like proceedings in relation with **FIR No. 0155/2018** before this Hon'ble Court or any other Court.

PRAYER

In the lights of facts stated and grounds advanced, it is therefore most humbly and respectfully prayed before this Hon'ble Court that the record of the case may kindly be called for and this Hon'ble Court may be pleased to;

1. *Direct the CID CB and Investigating officer to conduct fair, effective and speedy investigation in matter relating to FIR No. 0155/2018; and*

2. *Direct the CID CB to appoint new Investigating officer and also direct to file the Investigation Report/Charge sheet in matter relating to FIR No. 0155/2018 with immediate effect within 30 days from the issuance of notice in this petition; and*
3. *Any other order which this Court may deem it fit and appropriate in the interest of justice, equity and good conscience may also be passed in favour of the humble Petitioner.*

Counsel for the Petitioner
**Mohit Singhvi/Himanshu Choudhary/
Aishwarya Anand**

Notes:

1. No such Crim. Misc. Petition has previously been filed by the Petitioner Firm before this Hon'ble Court.
2. That the Public Prosecutor has been served.
3. That the pie papers are not available, therefore, it is being typed on the stout papers.
4. That it is has been typed out by my private steno in my office.
5. It is certified that such internal and external pagination has been done in all sets of the petition.

Counsel for the Petitioner
**Mohit Singhvi/Himanshu Choudhary/
Aishwarya Anand**