

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION - TO TRANSFER
INVESTIGATION TO CID) NO. 1013 of 2022**

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KAILASHKUMAR SHANKARLAL CHAUHAN
Versus
STATE OF GUJARAT

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Appearance:

MR RJ GOSWAMI(1102) for the Applicant(s) No. 1

for the Respondent(s) No. 2,4,5,6

MR RC KODEKAR(1395) for the Respondent(s) No. 3

MS CM SHAH, APP for the Respondent(s) No. 1,7

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 04/01/2024

ORAL ORDER

1. By invoking extra ordinary jurisdiction under Article 226 of the Constitution of India, the applicant – original informant is seeking transfer of investigation to CBI or State CID Agency in connection with the FIR registered with Khadia Police Station for the offences punishable under Sections 498A, 306, 323, 294B, 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

2. Deceased Lakshmi Piraram was married to accused Piraram Bansilal and marriage was solemnized on 29.06.2020. Deceased went to matrimonial home. Accused are residing in a joint family. On 14.05.2021, she gave a birth to a baby boy Vedansh. On 21.10.2021, deceased Lakshmi passed away and according to prosecution case, she committed a suicide by hanging at her matrimonial home. The brother of the deceased viz. Kailash Chauhan, lodged an FIR for the said offences on 22.10.2021.

Pursuant to the FIR, chargesheet on 20.12.2021, came to be filed for the aforesaid offences against six persons, who are husband and his relatives. The case was committed to the Court of Sessions at Ahmedabad and the same has been culminated into Sessions Case No.31 of 2022. The Sessions Court has framed the charge for the said offences and accordingly, the matter before the Court of Sessions is fixed for recording of material witnesses.

3. In the aforesaid facts, the brother of the deceased – applicant Kailash Chauhan being dissatisfied and aggrieved with the investigation undertaken by Khadiya Police Station, has preferred present application, seeking transfer of investigation to CBI or CID Crime.
4. This Court has heard learned counsel Mr.Brijesh Trivedi, Ms.Maithili Mehta, learned Additional Public Prosecutor for the respondent – State and Mr.R.C. Kodekar, learned Special Public Prosecutor for the respondent - CBI. The reports submitted by the Investigating Agency dated 07.12.2023 and 14.12.2023 are taken on record.
5. Mr.Brijesh Trivedi, learned counsel has submitted that the entire investigation was conducted in a casual manner and the manner in which it was carried out raises serious suspicion and doubt on the credibility of the State Investigation Agency. That during the course of investigation, representations in details were submitted twice, contending the following aspects in relation to the investigation of the case:

(a) The applicant brother and other family members after receiving the message went to the matrimonial house of the deceased where they were informed that the deceased has committed the suicide. The deceased was found on the floor as her dead body was removed and laid it down on the floor by the deceased. The applicant has taken necessary photographs of the deceased as well as ceiling of the room with hanging "dupatta" which was allegedly used by the deceased to commit a suicide. The brother found external injuries on the body of the deceased. Due to some altercation with the accused, cell phone of the husband accused was fallen down and the same was taken by the applicant brother and after seeing the contents of the cell phone he found some photographs of woman with whom the husband was having extramarital affairs. That, the accused have destroyed the necessary evidence by removing the dead body from the ceiling and the cell phone of the accused, despite being shown to the police, no any investigation on this direction was being undertaken by the police. That, the accused failed to inform the police immediately for the alleged suicide, which shows their guilty mind. That, on arrival of the police on the scene of offence, the brother of the deceased informed the police about the conduct of the accused and requested the police to collect necessary evidence. That, the FSL Officer who came at the place, had casually inspected the site. That, the brother applicant had informed the FSL Officer that due to length of dupatta, it is highly impossible to commit suicide and considering the external injuries on the neck, etc. the theory of

suicide is not believable and acceptable. That, no videography or photography being undertaken either by the FSL Officer or the State Police.

- (b) In view of the aforesaid circumstances, and considering the mental and physical cruelty and harassment meted out to the deceased, it is not a case of suicide, but it is a case of murder as well as dowry death.
- (c) By two representations, the applicant brother made a request to add Section 302 as well as Section 304(B) and considering the several lapses in the investigation, the Higher Authority was requested to transfer the investigation but somehow they did not consider the representations nor transfer the investigation to the independent agency.
6. In support of the aforesaid contentions, relying on the case of **Anant Thanur Karmuse Vs. State of Maharashtra (2023 Law Suit (SC) 173)**, it has been contended that the case is made out to transfer the investigation to CBI for *denovo* investigation as the investigation was not undertaken in a proper direction and where relevant and material evidence have not been considered at the time of investigation, the framing of charge cannot be an absolute impediment for exercising the power for just and fair investigation and fair trial.
7. Mr.R.C. Kodekar, learned Special Public Prosecutor and Ms.Maithili Mehta, learned Additional Public Prosecutor, referring the reports submitted by the police agency, have jointly submitted that no case is made out to direct the CBI for investigation as this is

not an exceptional case and the circumstances referred above does not fall under the rarest of rare case to refer the matter to the CBI or any other independent agency. She would further submit that in the facts of present case, the investigation was undertaken in a proper manner and the agency had collected the necessary and material evidence and finally the chargesheet for the aforesaid offences came to be filed against the accused. The representation for addition of Section 304(B) submitted by the applicant was examined at length by the authority concerned and after considering the evidence on record, the agency came to a conclusion that no offence under Section 304(B) is made out.

8. Lastly, it is submitted that by invoking Section 216 of the Code of Criminal Procedure, 1973, the applicant original informant has submitted an application before the Trial Court for addition of Section 302 of the Indian Penal Code and the same is pending for its adjudication. Thus, therefore, the grievance raised herein is pending before the Court concerned and accordingly, it can be decided by the Court concerned.
9. Having heard learned counsels for the respective parties, the issue arise for my consideration is whether in the facts and circumstances of the case, case is made out to direct the CBI to investigate the case or any independent State Agency for reinvestigation and/or denovo investigation?
10. The Apex Court has time and again dealt with the issue as to under what circumstances, the investigation can be transferred to any

other independent investigating agency. The Constitutional Court can direct the CBI to investigate the matter only in exceptional cases to do a complete justice between the parties and to instill confidence in the public mind and the said extra ordinary power must be exercised sparingly and cautiously for which, no inflexible guidelines can be laid down to decide whether or not such power should be exercised and such order shall not pass as a matter of routine or merely because a party has leveled some allegations against the agency.

11. In the facts of the present case, the Sessions Case is at the stage of recording the evidence of the expert doctor and other witnesses. It is settled proposition of law that, if the case is made out for reinvestigation or further investigation, the commencement of trial cannot be an absolute impediment for exercising the power to ensure a fair and just investigation (Anant Thanur) (Supra). Considering the grounds raised for conducting the investigation by CBI, this case does not fall under the rarest of rare case and no exceptional case is made out and thus, therefore, the prayer for transferring the investigation to the CBI having no any merits.
12. The applicant – complainant has raised the suspicion on the investigating agency mainly on the ground that, the necessary and material evidence having not been collected and though this case is dowry death and in absence of any explanation in relation to the external injuries found on the body of the deceased, the theory of suicide cannot be believed and it is a case of murder.

13. In the aforesaid factual background, it appears that the trial has begun and on 06.10.2023, the prosecution has examined Dr.Bhargav Jhaveri, at Exh.23. In the chief examination, doctor did not agree that the deceased was strangulated. The case is pending for further examination of the doctor. Unless and until cross examination of the doctor is not over, it is difficult to come to a *prima facie* conclusion that deceased has not committed a suicide. It is no doubt true that, allegation is made against the accused for demand of dowry and before investigation could complete, the applicant – complainant asked the investigating agency to add Section 304B of the Indian Penal Code. In that view of the matter, in exercise of powers under Section 216 of the Cr.P.C., the trial Court can add or alter any charges for which, the application submitted by the applicant is pending. Thus, this Court does not deem it proper to record any findings in relation to the issue of dowry death or the deceased was killed by the accused, as the matter is pending for further cross examination of the doctor and any findings would may cause prejudice either to the case of prosecution or defence. So far as allegation with respect to manner and method adopted by the investigating agency for conducting the investigation, this Court is of the view that, mere an allegation that the agency had not investigated the case properly would not be a sufficient ground for passing an order of reinvestigation or *denovo* investigation. It is alleged that the accused husband was having extra marital relation with someone. In this aspect, nothing is on record to come to a *prima-facie* conclusion that with *malafide* intention the police agency left out this aspect from the

investigation. So far as external injuries as pointed out is concerned, the trial Court after considering medical evidence, having all the powers to add or alter the charges. The other contention is that, after the birth of baby boy and considering the educational qualification of the deceased, there was no reason to commit a suicide by her. This issue is debatable and the suicidal tendency cannot be judged on this ground only, as at relevant point of time, what would be the extreme factors led the deceased to commit suicide would be difficult to judge.

14. For the reasons recorded, the applicant – original complainant is failed to make out a case to transfer the case to CBI or any other independent State Agency for further and/or reinvestigation/denovo investigation. The Trial Court is directed to decide the application for addition and alteration of charges on its own merits, in accordance with law. The observations made hereinabove are *prima-facie* in nature to decide present application.
15. Resultantly the application fails and is hereby **dismissed**.

(ILESH J. VORA,J)

P.S. JOSHI/Rakesh*