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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order delivered on: 11.05.2022

+ **W.P.(CRL) 115/2022**

AZHAR RASHEED

..... Petitioner

Through: Mr.R.D. Rana, Advocate.

versus

STATE NCT OF DELHI AND ORS.

..... Respondents

Through: Mr.R.S. Kundu, ASC for the State with Ms. Pooja, Mr. Mukul and Mr. Nitij, Advocates along with ACP Parnav Tayal, ACP B.K. Singh, Inspector Arvind Kumar, SI Sandeep Chauhan, and SI Amarpal Singh. P.S. Begampur.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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ORDER

ANOOP KUMAR MENDIRATTA, J

1. A Writ Petition (Criminal) under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been filed on behalf of the petitioner for issuing writ of *Mandamus* or any other writ/directions/order directing respondent No.4 for transfer of investigation in respect of death of Athar Rasheed (brother of the petitioner) to CBI or any other independent agency.
2. In brief, Athar Rasheed, aged about 35 years is stated to have expired due to sole negligence during the process of hair transplantation undertaken at United Hair Studio, House No.223, Pocket 26, Sector 24, Rohini, New Delhi.

It is averred that after Athar Rasheed returned back on taking treatment, he developed serious pain over his scalp followed by swelling on the face and shoulders and had to be admitted at Escorts Heart Institute and Research Centre. On 26.06.2021, Athar Rasheed passed away during course of treatment. It is also submitted that none responded from the concerned Centre and accused appear to have fled. Further, no action was taken by the police despite complaint being made on 06.07.2021 and running from pillar to post.

3. During the course of inquiry, the treatment papers at Escort Heart Institute and Research Centre were obtained which revealed that cause of death was Septic Shock with multi-organ failure in case of Stevens-Johnson Syndrome. Fortis Escorts Heart Institute further replied that it did not warrant any intimation to police since the death was due to septic shock with Stevens-Johnson Syndrome. A letter was also sent to Delhi Medical Council by police but in absence of any treatment record, they were not in a position to examine the matter.

4. In the aforesaid background, vide order dated 30.03.2022, Action Taken Report was called from the DCP. The status report has been filed today whereby it is informed that case FIR No.339/2022 dated 21.04.2022 under Sections 304/34 IPC and Sections 26/27 of Delhi Medical Council Act has been registered at Police Station Begampur and the investigation has been taken up.

It is further submitted that during the course of investigation, accused Shivam Verma was arrested who disclosed that he along with one Harish Sharma and other associates were running United Hair Studio and were

managing the day-to-day activities in its clinic. An amount of Rs.30,000/- is also stated to have been received in PayTm account from deceased Athar Rasheed against hair transplantation which was done by technicians namely Mohit and Vijay. Further, at the instance of accused Shivam Verma, the technician Vijay was also arrested and the instruments used for hair transplantation were also seized. It was revealed that accused Vijay was not having any certificate of clearance of hair transplant. It is also stated that co-accused Mohit could not be traced and the NBWs have been obtained against him.

5. On the face of record, there appears to be gross negligence as it is only pursuant to the filing of the writ petition and directions issued by this Court that the criminal process has been set into motion in respect of death of deceased Athar Rasheed who faced severe complications due to treatment at the hands of unqualified professionals. The matter has larger ramifications as number of such treatment Salons are mushrooming, wherein the self-proclaimed technicians are rendering the service of hair transplantation/aesthetic surgery which is completely in teeth of medical ethics and in defiance of standard protocol to be followed for the purpose of hair transplantation/aesthetic surgery.

6. Hair transplantation being an aesthetic surgery needs to be performed by qualified dermatologists or trained surgeons with informed consent of the patient. It is critical to evaluate the risk benefit ratio from the medical perspective. It is imperative on the persons performing the transplantation surgery to be aware of the medico legal issues. The fact that hair transplantation surgeries are being carried out in the Salons with the aid of technicians is a matter of great concern since neither they are fully qualified

nor any such procedures can be carried except under supervision of a trained surgeon or dermatologist. The case points out not merely a dereliction or negligence or standard of care required in such medical procedures but a complete medical malpractice, as the hair transplantation was not carried under medical supervision of trained and qualified professionals. The concern of this Court remains that no harm befalls on innocent patients undertaking such procedure without being aware that the same needs to be carried by professionals with requisite competence and knowledge of hair transplantation.

It appears that in the present case, neither there was informed consent of deceased, nor the risk involved in the hair transplantation was disclosed to the deceased, which resulted in acute complications finally resulting in the death of the deceased. The case also highlights the issues of medical negligence as well as medical malpractice which continues for want of any check of such Salons by the competent authorities. Medical malpractice needs to be checked even if the harm was not intentional, since the same was carried under unprofessional hands by merely delegating it to the technicians. The criminal liability in such circumstances is writ large and is much more than gross negligence or recklessness. Even if it is assumed that patient autonomy is to be accepted, it is writ large that most of the patients are still unaware that the process needs to be carried by the qualified professionals. In absence of professional medical supervision at Salons, the process may be a great risk which may lead to irreversible damage or even loss of life, as in the present case. The public at large needs to be made aware as to the implications if one proceeds with hair transplantations along with standard protocols which are needed to be followed in this regard. The

process may even require consultation and management with other specialists in case one has been suffering from co-morbidities or any other risk bearing complications. Filling up of the consent form in such cosmetic surgeries, as such, may be important to ensure that patients give an informed consent and are aware of the procedures to be followed.

7. Considering the facts and circumstances, it is imperative that necessary steps are taken by the Ministry of Health and Family Welfare, Government of India as well as Govt. of NCT of Delhi to ensure that such mushrooming Salons carrying hair transplantation procedures under unprofessional hands without requisite qualification and in absence of medical supervision, are checked. Requisite safeguards need to be ensured for safety of the persons who undertake the aforesaid treatment. Also, the public at large needs to be made aware that such hair transplantation procedures/aesthetic surgeries can be fatal at the hands of unqualified professionals, which require strict medical supervision. In case any such medical protocols have not been established for guidance of medical practitioners, the same need to be framed at national level, in view of upcoming aesthetic surgeries and hair transplantation procedures.

Necessary action in this regard be also taken up by the Commissioner of Police, Delhi to ensure that similar incidents of medical malpractice are not repeated and action is taken against such Salons wheresoever the hair transplantation treatment/aesthetic surgery is being extended at the hands of technicians or unqualified professionals without any medical supervision in defiance of established protocols and norms.

A copy of this order be accordingly forwarded to the Secretary, Ministry of Health and Family Welfare, Government of India as well as Secretary (Health), Government of NCT of Delhi, National Medical Commission, Delhi Medical Council and Commissioner of Police, Delhi for necessary action and filing of status report before the next date of hearing.

List on 27.07.2022.

MAY 11, 2022/A **ANOOP KUMAR MENDIRATTA**
(JUDGE)

