

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13577 of 2010

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1. Sunaina Devi W/O Late Naresh Yadav R/O Vill.- Bishanpur, P.S.- Sono,
District- Jamui

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Jamui
3. The Superintendent of Police, Jamui
4. The Superintendent, District Jail, Jamui
5. The Officer-In-Charge, Sono Police Station, Jamui
6. The Medical Officer, District Jail, Jamui
7. The Medical Officer, Sadar Hospital, Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. VIJAY KUMAR

For the Respondent/s : Mr. (GA3)

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

C.A.V JUDGMENT

Date: 20-03-2015

1. Petitioner being widow of deceased, Naresh Yadav knocked the door of this Court under Article 226 of the Constitution of India for getting compensation to the tune of rupees twenty lacs on account of custodial death of her husband while he was lodged in Jamui District Jail in connection with Sono P.S. Case No. 120 of 2009.

2. The claim of the petitioner is that Sono P.S. Case No. 120 of 2009 was registered on 23.08.2009 for the offences punishable under Sections 147, 148, 149, 302, 307, 326, 353, 379, 120 B read with Section 26 and 27 of the Arms



Act as well as under Sections 3, 4 and 5 of Explosive Substance Act against ten named accused persons and others. At serial no. 9 of the named accused persons, the name of one accused, namely, Naresh Da was figured. On 31.03.2010 at about 10:00 AM, the husband of petitioner went to Jhajha in connection with his work but did not return till morning of 03.04.2010. Thereafter, brother of petitioner's husband filed an informatory petition in the court of Chief Judicial Magistrate, Jamui being informatory petition no. 08 of 2010 mentioning therein that his brother had gone to Jhajha on 31.03.2010 but could not return till 01.04.2010 and on 03.04.2010 he could know through newspapers that his brother Naresh Yadav had been arrested by Sri Arun Kumar Dwivedi, Officer In-charge of Sono police station two days earlier from Sohjana More and his name was shown by the police as Avinash but no information regarding his arrest was given nor any information regarding the case in which he was detained was given to him. Further case of the petitioner is that after filing of the above stated informatory petition, the husband of the petitioner was produced before the learned Chief Judicial Magistrate who remanded him to judicial custody in connection with Sono P.S. Case No. 120 of 2009. Further case of the petitioner is that on 11.04.2010, the brother



of her husband went to District Jail, Jamui to take thumb impression of petitioner's husband on Vakalatnama but he was informed by the jail authorities that his brother was ill and was vomiting blood and for treatment he had been admitted in Sadar Hospital, Jamui. Having got the aforesaid information, the brother of her husband went to concerned hospital and met his brother who informed him that police illegally arrested him and while he was in custody of the police he was badly assaulted by the police. Subsequently, on the same day, at about 03:00 to 04:00 PM, he learnt that his brother died. On 12.04.2010, brother of petitioner's husband filed a petition in the court of Chief Judicial Magistrate, Jamui stating therein that his brother died because of assault by the police and also expressed his apprehension against the administration as well as concerned doctors to this effect that post mortem report of the deceased might be manipulated. However, on 11.04.2010, Superintendent of District Jail, Jamui informed to learned Chief Judicial Magistrate, Jamui vide his letter no. 381 dated 11.04.2010 that under trial prisoner, namely, Naresh Yadav @ Avinash Da @ Doctor Sahab died on 11.04.2010 at 02:30 P.M. in Sadar Hospital, Jamui during course of his treatment and the Jail Superintendent prayed for deputation of any Judicial Magistrate



for preparation of inquest report and magisterial enquiry. Accordingly, Md. Salim, Judicial Magistrate 1st Class, Jamui was deputed for holding enquiry. The said Judicial Magistrate held enquiry on 11.04.2010 itself at 05:00 P.M. and submitted his report on 13.04.2010 arriving at conclusion that death of deceased, Naresh Yadav was unnatural.

3. Further case of the petitioner is that her husband was private compounder by profession and he had to look after petitioner and his three children as well as his old ailing parents and at the time of death, her husband was aged about only 28 years and he used to earn more than Rs. 10,000/- working as compounder.

4. Counter affidavit has been filed on behalf of the respondent no. 3, Superintendent of Police, Jamui and it has been averred in the aforesaid counter affidavit that petitioner's husband was arrested on 02.04.2010 by the S.H.O., Sono police station and forwarded to judicial custody on 03.04.2010 in connection with Sono P.S. Case No. 120 of 2009 and furthermore, it has also been averred that no record regarding the so-called assault to the deceased was available in his office and moreover, in Magisterial enquiry the cause of death of the deceased was found to be unnatural and, therefore, taking

sympathetic view request letter no. 55/Legal Cell dated 06.11.2014 has already been sent to District Magistrate, Jamui for needful.

5. Separate affidavit has been filed on behalf of respondent no. 4, the Superintendent, District Jail, Jamui and it has been averred in the aforesaid counter affidavit that brother of the deceased had come to Jamui Jail and he was informed by the Jamui Jail authorities that his brother was in Sadar Hospital Jamui. It has further been averred that the jail authorities including the doctor of the jail took proper care of the deceased while he was lodged in the jail and there was no negligence on the part of the jail administration.

6. Learned counsel appearing for the petitioner submits that it is an admitted position that petitioner's husband died while he was lodged in jail in connection with Sono P.S. Case No. 120 of 2009 though he was not named accused of the aforesaid case nor any cogent evidence was found against him. It is further pointed out by him that the Judicial Magistrate deputed to conduct magisterial enquiry regarding the death of petitioner's husband recorded the statements of jail doctor, doctor of Sadar Hospital, Jamui, one Home guard of the jail as well as others and before the aforesaid enquiring Magistrate, the



jail doctor, namely, Dr. Saiyed Naushad Ahmad stated that deceased was brought to Jamui Jail on 03.04.2010 and he had noticed mark of assault on the person of the deceased and, thereafter, he provided some pain killer to him. The aforesaid doctor also stated before the enquiring Magistrate that on 11.04.2010, the deceased was suffering from fever, cough, body pain and he was vomiting blood and when his condition started deteriorating, he was referred to Sadar Hospital, Jamui on 11.04.2010 at about 01:00 PM. It is further contended by learned counsel for the petitioner that Dr. Rajesh Kumar who gave treatment to deceased in Sadar Hospital, Jamui disclosed the cause of death of the deceased as Cardiac respiratory failure. The post mortem report of the deceased was prepared and in the aforesaid post mortem report, the cause of death was found excessive bleeding due to assault to the deceased.

7. Learned counsel appearing for the petitioner submits that in Magisterial enquiry, it was found that cause of death of the deceased was unnatural and he developed complication due to assault. It is further contended by him that admittedly, the deceased died while he was in custody and it is established in magisterial enquiry that his death was unnatural and before his death he was badly assaulted. Therefore, it is the

incumbent duty of the State Government to compensate the family members of the deceased.

8. Learned counsel appearing for the petitioner referred decision of **D.K. Basu vs. State of West Bengal reported in AIR 1997 SC, 610** in which at para 22 of the aforesaid judgment it has been held by the Apex Court of this country as follows :-

22. Custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. The rights inherent in Articles 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. We cannot whisk away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the



spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws.

9. Learned counsel for the petitioner also relied upon decision of **Ajab Singh and another vs. State of Uttar Pradesh and others reported in AIR 2000 SC, 3421** in which the Apex Court of this country directed the State Government of Uttar Pradesh to pay rupees five lacs as compensation to legal representatives of the deceased in a case of custodial death. Learned counsel for the petitioner on the strength of aforesaid decisions submitted that petitioner is entitled to get compensation from the State Government.

10. On the other hand, learned counsel appearing for the State refuted the above stated submissions arguing that it has not been established as yet as to whether deceased died due to assault or due to any other reasons and unless it is established that the deceased died due to negligence or torturous act of employees of the State Government, the petitioner is not



entitled to get any compensation. Continuing his submission, he submitted that in post mortem examination, the cause of death of the deceased was found his cardiac respiratory failure and admittedly, there was no abrasion or visible injury on the person of the deceased. He further submitted that deceased was a hardcore naxalite but even then, the Superintendent of Police, Jamui has already written letter to District Magistrate, Jamui for needful taking sympathetic view and the matter is still under process.

11. Having heard the rival contentions of both the parties, I went through the record. The factual position in this case is almost admitted between the parties. It is an admitted position that deceased was arrested and later on, he was remanded to jail custody in connection with Sono P.S. Case No. 120 of 2009. It is also an admitted position that while he was lodged in Jamui jail, his condition became critical and he was admitted to Jamui Sadar Hospital where he died in course of his treatment. It is also an admitted position that on the prayer of Jail Superintendent Jamui, a Judicial Magistrate was deputed to make magisterial enquiry and in course of enquiry, learned Judicial Magistrate recorded the statements of several persons including the doctors. The Jail doctor, namely, Dr. Saiyed



Naushad Ahmad stated before the learned Judicial Magistrate that deceased was brought to Jamui jail on 03.04.2010 and there was mark of assault on the person of the deceased. Furthermore, the aforesaid doctor, specifically, stated that on 11.04.2010, the condition of the deceased started deteriorating and thereafter, he was got admitted in Sadar Hospital, Jamui on the same day at about 01:00 P.M. The doctor, who conducted post mortem examination of the deceased, also admitted in course of magisterial enquiry that there was excessive bleeding due to assault and as a result of the aforesaid excessive bleeding, the deceased died due to cardiac respiratory failure. The aforesaid doctor also admitted that death of deceased was unnatural. Therefore, it is prima facie established that the deceased died while he was in custody and his death was unnatural. Furthermore, it is prima facie established that when deceased was brought to Jamui jail, there was mark of assault on his body.

12. In D.K. Basu case (Supra), the Apex Court of this country has already observed that custodial death is perhaps one of the worst crimes in a civilized society governed by the Rules of Law. Article 21 of the Constitution of India guarantees the life and personal liberty of a person and says that no person

shall be deprived of his life or personal liberty except according to procedure established by law.

13. In the present case, it is prima facie established that fundamental right of the deceased was violated by the officials of State Government while he was lodged in jail custody and, therefore, in my view, the State cannot escape from the liabilities of making payment of compensation to the legal heirs of the deceased.

14. The petitioner has, specifically, pleaded in her petition that at the time of death, the deceased was only aged about 28 years and he used to earn more than rupees ten thousand per month and petitioner, her children as well as ailing parents of the deceased were dependent upon the earning of the deceased. The petitioner has claimed compensation of rupees twenty lacs.

15. The earning of the deceased has not been disputed or challenged by the respondents and, therefore, there is nothing on the record to controvert the pleading of the petitioner in respect of earning of the deceased. Now, it is well known fact that the average age of an Indian is about 70 years. So, in my view, it is just and proper to direct the State of Bihar to pay compensation of rupees twenty lacs to the petitioner.



16. In view of the aforesaid discussions, this writ petition stands allowed and respondent no. 1, the State of Bihar, is directed to pay compensation of rupees twenty lacs to petitioner for custodial death of the deceased, Naresh Yadav within three months from today. However, it is made clear that $\frac{1}{3}^{\text{rd}}$ compensation amount shall be paid to the petitioner in cash and remaining $\frac{2}{3}^{\text{rd}}$ compensation amount shall be deposited in a Nationalized Bank in the joint account of the petitioner as well as parents of the deceased, if at the time of aforesaid deposit, the parents of the deceased are alive and if the parents of the deceased are not alive at the time of aforesaid deposit, half compensation amount shall be deposited in the Nationalized Bank in the joint account of the petitioner and her children and the income thereof shall be utilized for the benefit of children of the petitioner during the period of their minority and the children of petitioner shall be entitled to withdraw the aforesaid deposited amount after being major and remaining $\frac{1}{3}^{\text{rd}}$ amount shall be paid to the petitioner in cash. It is also made clear that the above stated compensation amount shall be without prejudice to the right of petitioner and other legal representatives of the deceased to claim compensation in law, if they are so entitled. The State of Bihar may initiate a

disciplinary proceeding against those who are found responsible for committing unnatural death of deceased, Naresh Yadav. It is also made clear that in failure of making payment of compensation amount to the petitioner in the manner as stated above within the time as fixed by this court, the petitioner shall be entitled to get interest at the rate of 9 % on the compensation amount till its realization.

17. In the aforesaid manner, this petition stands disposed of.

(Hemant Kumar Srivastava, J)

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