

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO. 114/2012

Rajendra Singh
 C.P. No.11/07
 Centrail Jail Aguada
 Siquerim, Bardez,
 G O A

..

Petitioner**Versus**

State of Goa (through)
 The Superintendent of
 Central Jail, Aguada

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Respondent

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Shri A.V. Pavithran, Advocate for the petitioner.
 Shri Ryan Menezes, Amicus Curiae.
 Shri S.R. Rivonkar, Public Prosecutor for the State.

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CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ.
RESERVED ON : 06/06/2016.
PRONOUNCED ON :19/07/2016

JUDGMENT : (PER NUTAN D. SARDESSAI, J.)

1] Heard Shri A.V.Pavithran, learned Advocate for the petitioner appointed under the Free Legal Aid at his instance who relied in **Asiya Sayed Khwaja Ayub V/s. State of Maharashtra and others [MANU/MH/0818/2012] and Deputy Commissioner, Dharwad District, Dharwad and Others v/s. Shivakka(2)and Others [(2011) 12 SCC 419]**, Shri Ryan Menezes, appointed Amicus Curiae to assist the Court and Shri S.R.Rivonkar, learned Public Prosecutor on behalf of

the State and the authorities.

2] Rule. Rule made returnable forthwith with the consent of the learned counsel appearing for the parties. Shri S.R. Rivonkar, learned Public Prosecutor waives service on behalf of the State.

3] This Criminal Writ Petition is at the instance of the prisoner alleging that he was subjected to physical and mental torture apart from harassment and assault by the Prison Authority on duty and seeking the intervention of this Court by way of the remedy of a writ of Mandamus or any other appropriate writ directing the respondents to compensate him for the same apart from pressing for a strict legal action against the authorities for assault and violation of his human rights.

4] An enquiry was also conducted at the instance of the State and the report drawn by the Officer pursuant thereto which reflects that apart from recording the statements of the Jailor and the other witnesses being the Jail Guards, the statement of the petitioner came to be recorded in which he had reiterated that he had been assaulted as per the directions of the Ex-Superintendent of the Central Jail, Aguada on 30.10.2012 between 13.00 to 13.30 hours with lathis. The

Officer conducting the enquiry had besides considered the statement of the Doctor, the C.M.O. attached to the G.M.C. Hospital, Bambolim who had examined the petitioner on 31.10.2012 at 10.30 hours and who had given a history of assault by the jail guards at the prison at Central Jail, Aguada on 30.10.2012 at 13.30 hours.

5] The doctor so examined had enumerated the nature and the extent of the injuries noticed on his person upon his examination and had categorically stated that the victim i.e. the petitioner had not disclosed the name of the person who had assaulted him. Similar was the position vis-a-vis the observations of the Enquiry Officer on the examination of the Consultant Surgeon, Department of Surgery, G.M.C. Hospital Bambolim in which he too had reflected that the petitioner had not mentioned the name of any guard at the Central Jail Aguada who had purportedly assaulted him. Suffice it to say that the Enquiry Officer on a consideration of the evidence recorded by him had concluded that the petitioner had been assaulted by the Jail Authorities but the identity of such Authorities was not certain and which is otherwise confirmed from the examination of the doctors who had also been cross-examined at length.

6] It is another matter that the Enquiry Officer had not

been able to fasten the liability of the assault on the charged Officer namely the Jailor. Suffice it to say that this enquiry Report nonetheless reflects that the petitioner as a prisoner was assaulted in the jail premises for no particular reason although a case was sought to be projected on behalf of the Authorities that he was found in possession of prohibited article like a mobile and that he was issued show cause notices why action should not be taken against him in terms of the Jail Manual to deprive him of certain benefits/facilities to which he was entitled as a prisoner.

7] We have otherwise perused the Report of the learned Additional Sessions Judge which had been drawn pursuant to the directions issued by this Court in which the learned Additional Sessions Judge had recorded the statement of the petitioner apart from the Jail Officials. The learned Additional Sessions Judge in her Report had observed that the Jail Authorities had showed ignorance about the incident of assault on the petitioner by the Jail Authorities in the office of the Superintendent. However, only one Jailor had submitted before her that the petitioner had been escorted to the office of the Superintendent on 30.10.2012 and thereafter enquiries were made by the Jailor V. Gawas from the petitioner and in his presence the Jailor V. Gawas had ordered the jail guards to

assault the petitioner.

8] The learned Additional Sessions Judge had considered the evidence of the three doctors who had examined the petitioner and found that though there was no fracture anywhere on the body but nonetheless he had suffered multiple bruises and he had been diagnosed as a case of assault with multiple bruises which were soft tissue injuries. Ultimate she had concluded that there were injuries on the person of the petitioner as borne out from the medical evidence apart from his statement which in the opinion of the Doctor could be caused by sticks or lathies. She too had concluded on the basis of the available evidence that he was assaulted by the Jail Authorities with dandas but had not been able to pinpoint which of the jail guards had assaulted him. The learned Additional Sessions Judge had also concluded that the higher Jail Authorities had tried to suppress the true facts of the incident and given a different colour as if the injuries suffered by the petitioner and another were in the course of fight with each other and concluded that the involvement of the Jail Authorities in assaulting the petitioner could not be at all ruled out.

9] In this backdrop, therefore, what emerges is that it

is established from the material on record that the petitioner as a prisoner undergoing the sentence of imprisonment for life was subjected to physical assault while undergoing his sentence and at the hands of the Jail Authorities for no justifiable reason.

10] In *Asiya Ayub (supra)*, the petitioner claiming to be the mother of Sayed Ayub had approached the Bombay High Court by way of the Writ Petition under Article 226 of the Constitution of India complaining about the inexplicable circumstances in which her son had disappeared while in the police custody on 6.1.2003. She had therefore prayed that the respondents must disclose the whereabouts of Sayed Yunus and to produce him before the Court forthwith. In the event he was already dead, his remains should be produced before the Court within the specified time. She further prayed that the Authorities should direct the prosecution and suspension of the respondents no.3, 9 and 10 and that the respondents be directed to pay at least ₹20,00,000/- as compensation for violation of the fundamental rights of Khwaja Yunus as well as of the petitioner guaranteed under the Constitution of India.

11] In *Asiya Ayub (supra)*, it was further prayed that a direction be issued to the respondent no.1-State of Maharashtra to extend adequate protection to Dr. Mateen who at the relevant

time was in Thane Jail alongwith her son Khwaja Yunus and who had unravelled the acts of commission and omission of the police officials about the torture caused to Khwaja Yunus as well as the other co-accused while in the police custody and the possibility of Khwaja Yunus succumbing to the injuries caused to him during the interrogation in police custody. In the brief facts of that case, a bomb blast had taken place on 2.12.2012 in which four persons were arrested from different places namely Dr. Mateen, Muzammil, Zaheer and Khwaja Yunus and charged under POTA. Khwaja Yunus was kept with the other accused at Ghatkopar Police Station and the investigation took place both at Ghatkopar Police Station and Powai Police Station and as per the petitioner, he was tortured at both these places.

12] In *Asiya Ayub* (supra), on 6.1.2003 the three accused Dr. Mateen, Khwaja Yunus and Zaheer were interrogated at Ghatkopar Police lock up from 12.30 hours. Khwaja Yunus was badly tortured by the respondents no. 10 to 14. He vomited blood and it was feared that he had died due to the police torture at the Ghatkopar Police Station. Dr. Mateen, the co-accused who was a witness had testified to this effect. Her husband had filed an application before the POTA Court for the production of his son Khwaja Yunus and other reliefs in the POTA case registered against him. The Court had ordered an

enquiry into the disappearance of Khwaja Yunus in which the co-accused Dr. Mateen and Zaheer had testified and during their deposition they had testified that they were taken to the Ghatkopar Police Station and Khwaja Yunus was beaten up where he vomited blood and possibly died.

13] In *Asiya Ayub* (*supra*), her husband had then filed the petition in the High Court for compensation and the CBI enquiry while the State has filed the petition in the High Court against the order directing them to pay ₹5000/- per month. The petition filed by her husband was allowed to be withdrawn with liberty to approach the State for transferring the investigation to the CBI. A second petition was filed. and on 25/2/2004 the prosecution stated that some clue was found about how Khwaja Yunus had disappeared and the Court granted a week's time to the CID to file the Report. During the pendency of the second petition and on 3.3.2004 the State C.I.D. claimed that they had arrested PSI Vaze – the respondent No. 5 in relation to the offence under [Section 302](#) of I.P.C. and were going to arrest three constables who killed Khwaja Yunus and there were four persons who claimed that they were taking Khwaja Yunus to Aurangabad. The State admitted that Khwaja Yunus was killed and had not absconded.

14] In *Asiya Ayub* (*supra*), Their Lordships observed that it would not be necessary to examine whether death of Khwaja Yunus occurred in the police lock up or while he was taken to Aurangabad because of torture and assault on him by the concerned Police Officials during the journey or that the police officials destroyed the evidence of that offence. Even without going into those matters, the petitioner ought to have succeeded in getting compensation as it was common ground that Khwaja Yunus was untraceable and presumed to be dead while in police custody. The question at large before the High Court was whether she was entitled to the compensation of ₹20,00,000/- for violation of the fundamental rights guaranteed to Khwaja Yunus as well as to herself. In her petition as well as in the affidavit she had asserted that her family was fully dependent on him and who was providing financial support. He used to send approximately ₹20,000/- per month to the family and had promised even to send more amount every month after he resumed work.

15] *Asiya Ayub* (*supra*), stated that she had lost her son who was hardly 27 years' old and had still a larger part of his life to live. She has suffered tremendous mental torture and agony due to the events and circumstances in which her son had disappeared. Thus, her fundamental rights guaranteed

by the Constitution had been abridged. Accordingly, she was entitled to the compensation of ₹20,00,000/-. She had also asserted in her affidavit that Khawja Yunus was a Sales Engineer with a Dubai-based company and had a starting salary of 3000 Dirhams per month (approximately thirty nine thousand Indian Rupees) which was revised to 3300 Dirhams after completion of six monthly probationary period and he was likely to get promotion very soon when his salary would have been between ₹70,000/- to ₹80,000/- per month. Moreover, her husband had died during the pendency of the petition.

16] In *Asiya Ayub* (supra), it was not disputed that Khwaja Yunus possessed a Degree of Engineering and he was employed in a company at Dubai as a Sales Engineer. It was a common ground that he was picked up by the police while he was returning from Chikaldhara and brought to Mumbai and in the police custody since then. He never returned home alive nor had he contacted any relatives or friends. Considering his qualification and his young age at the time of his death while in police custody, coupled with the fact that the petitioner and his family were entirely dependent on his income and support and also because he was gainfully employed at Dubai earning a respectable salary, Their Lordships held that they had no hesitation in accepting her claim of compensation of ₹20,00,000/-.

17] In *Asiya Ayub (supra)*, the accused had apparently gone missing while in the police custody and there were statements to confirm that that he was tortured and beaten up by the police officials and that in all probability he was dead while in the police lock up. There were factors brought in on oath by the petitioner to show that he was a qualified person gainfully employed in a company in Dubai as a Sales Engineer with specific earnings and that there was a revision in his income and besides he had also been promoted. It was also brought out before the Court that the family was dependent on his earnings and in the peculiar circumstances, therefore, she was granted the compensation of ₹20,00,000/-. This judgment is therefore clearly distinguishable and cannot buttress the case of the petitioner to seek for compensation on account of the injuries inflicted on his person which is not commensurate with the nature and extent of the injuries suffered by him during his incarceration in custody.

18] In *Deputy Commissioner, Dharwad District, Dharwad and others (supra)*, the deceased one B was mercilessly beaten by one S. The police instead of arresting S wrongfully confined B who died in police custody. An F.I.R. was lodged under Section 342 of I.P.C. The Deputy Commissioner of Police granted ex gratia compensation of ₹1,00,000/- to the respondents no.1 to 5 who were the dependents of B. The High

Court in addition awarded the compensation of ₹3,00,000/- and the matter travelled to the Supreme Court. In the brief facts Basappa Kurti, the husband of the respondent no.1 and the father of the respondents no.2 to 5, was allegedly mercilessly beaten by Subhash Desai, President of Amminabhavi Panchayat, District Dharwad after tying him to a telephone pole in front of his house in the village.

19] In Dy. Commissioner, Dharwad (supra), on receipt of the information about the incident, the police had reached the spot and took him to the police station. However, instead of taking action against the wrongdoer, the police arrested the victim and kept him in police custody for more than 24 hours. During that period he was said to have been severely thrashed by the respondent no.6 and after torturing him for two days the police took him to the City Civil Hospital, Dharwad on 29.11.2002 where he breathed his last at 03.00 hours. A Complaint was registered against the respondent no.6 for an offence punishable under Section 342 of I.P.C. and a few days later, the Sub Divisional Magistrate-cum-Assistant Commissioner, Dharwad announced the compensation of ₹1,00,000/- to the family of the deceased realising that it was a case of custodial death.

20] In Deputy Commissioner, Dharwad (supra) feeling dissatisfied with the compensation, the respondents no.1 to 5

filed a writ petition under Article 226 of the Constitution for the issue of a mandamus to the petitioner to pay higher compensation. The learned Single Judge referred to Article 5 of the Universal Declaration of Human Rights, 1948, the judgments of the Apex Court in Nilabati Behera v. State of Orissa [AIR 1993 SC 1960], D.K. Basu v. State of W.B.[AIR 1997 SC 610] and Ajab Singh Vs. State of U.P. [AIR 2000 SC 3421] and directed the petitioners to pay ₹3,00,000/- to the respondents no.1 to 5 in addition to ₹1,00,000/- already announced by the Sub Divisional Magistrate-cum-Assistant Commissioner, Dharwad.

21] In Deputy Commissioner Dharwad, (supra) the petitioners challenged the order of the learned Single Judge in Writ Appeal and the Division Bench of the High Court approved the view taken by the learned Single Judge and dismissed the Writ Appeal observing that the deceased was within the power and control of the police and the police station for two continuous days and nights was borne out from the records and that when he was taken for medical examination the doctor had certified that he had sustained three injuries while on 29.11.2002, the Medical Officer had certified that he was brought dead to the hospital. The post-mortem examination report revealed that he had suffered multiple fractures and injuries and his death was due to shock and haemorrhage.

22] In Deputy Commissioner, Dharwad (supra), the

Hon'ble Apex Court considered its earlier judgment in Nilabai Behera where the three-Judge Bench while dealing with a case of custodial death, held that in exercise of the powers under Articles 32 and 142 of the Constitution the Court can grant appropriate relief in case of deprivation of the constitutional guarantee of life and personal liberty. The Hon'ble Apex Court also extensively referred to the Universal Declaration of Human Rights and held that the learned Single Judge had not committed any error by entertaining the writ petition filed by the respondent no.1 and the direction given by him for payment of compensation to the respondents no.1 to 5 was rightly affirmed by the Division Bench of the High Court. At the same time, it was observed that the compensation awarded by the High Court was less than just. The High Court should have taken note of the fact that the only breadwinner of the family was killed in a barbaric manner and awarded adequate compensation. Therefore, while dismissing the special leave petition and in exercise of its power under Article 142 of the Constitution, the Hon'ble Apex Court directed the petitioners to pay the total compensation of ₹10,00,000/- to the respondents no.1 to 5. This judgment too is clearly distinguishable.

23] Coming to the facts of the case and from the material on record, it has been amply borne out that the petitioner was subjected to assault while suffering his term of

life imprisonment in custody which is a clear reflection of violation of his right to life enshrined under the Constitution of India. The material on record, therefore, amply demonstrates that the petitioner was not only entitled to just compensation for the injuries inflicted unduly on him but a message was also required to be sent to the officials that such acts on their part would visit them with punitive/disciplinary action for violation of the human rights of the prisoner for no justifiable reason. It is, therefore, deemed appropriate in the circumstances to award the compensation in the amount of ₹25,000/- to the petitioner for the pain and suffering apart from the torture at the hands of jail authorities which shall be paid by the respondent-State and the same shall be recovered from the delinquent etc., after fixing the responsibility on him/them. In the result, we, therefore, pass the following order:-

ORDER

- (i) The petition is partly allowed.
- (ii) The respondents are directed to pay the compensation in the amount of ₹25,000/- to the petitioner and with liberty to recover from the delinquent official.

NUTAN D.SARDESSAI, J

F.M. REIS, J

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