

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No. 17585 of 2014 (O&M)
Date of decision: September 28, 2016

Allana Begum and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Gurminder Pal Singh, Advocate
for the petitioners.

Mr. P.P. Chahar, DAG, Haryana.

RAKESH KUMAR JAIN, J.

This petition is filed by the minor children of deceased Ali Jan through their grand father Abdul Rehman in which they have prayed for grant of appropriate compensation on account of death of their father Ali Jan, in custody, as under, trial prisoner in District Jail Gurgaon.

Brief facts are that Ali Jan, resident of Village Khori, Tehsil Ballabgarh, District Faridabad was confined in the District Jail Gurgaon as under trial prisoner in FIR No. 17 of 2009 registered under Sections 381/384 IPC at Police Station Bhondsi, Gurgaon.

Ali Jan was lodged in Security ward Block No. 5. It is alleged that in the evening of 19th April, 2009, as per schedule, when the ward was opened for providing water etc. to the prisoners and the prisoners were being brought out of the barracks, at that time prisoner Shahnaj @ Kala s/o Ali Mohd, co-prisoner of Ali Jan in the same barrack & block, informed the

Head Warder Jai Singh and Warder Baldev that prisoner Harjeet son of Jasram, who has been undergoing life imprisonment in the case registered under Section 498A/302/34 IPC at Police Station Sector 7, Faridabad, caused injuries on the head of Ali Jan with a brickbat. Ali Jan was immediately brought to the jail hospital where he was declared brought dead and as a result thereof, the Superintendent of Jail, got registered FIR No. 46 dated 19.4.2009 under Section 302 IPC at Police Station, Bhondsi, District Gurgaon, against Harjeet son of Jasram. A judicial inquiry was ordered by the District & Sessions Judge, Gurgaon. Head Warder Jai Singh and Warder Baldev were suspended. Sh. Pawan Kumar, Judicial Magistrate Ist Class, Gurgaon, was appointed as inquiry officer who conducted the inquiry in the matter and submitted his report dated 14th October, 2009 concluding that Ali Jan was killed by Harjeet son of Jasram by causing injuries to him.

The Governor of Haryana granted compensation of ₹1 lakh to the next of kin of Ali Jan, but his wife refused to accept the compensation. The petitioners have rather prayed for adequate compensation on account of death of their father Ali Jan, in custody as an under trial prisoner and thus, has filed the present petition in which the following order was passed by this Court on 22.12.2014:-

“Present: Mr. Gurinder Pal Singh, Advocate,
for the petitioners.

Mr. Sudeep Mahajan, Additional Advocate
General, Haryana.

The petition is for determination of compensation for the death of the petitioners' father who, when he was a prisoner, was killed by a co-prisoner. The State was

prepared to give ₹1 lakh as compensation and the petitioners have declined the offer and they have sought for compensation on the ground that the State owed a responsibility for the safety of its prisoners and a serious offence of murder on one prisoner by another was a case of dereliction of duty of the prison staff who have not exercised appropriate vigil of ensuring that there was safety amongst its inmates. I must observe that if such a care and attention had been bestowed, on the first hint of any squabble amongst the inmates, it must have been quelled immediately. I would find the State to be liable for the mishap that had taken place.

The admission of claim for compensation as a public law remedy has been favourably considered in several decisions and the law would not require to be restated. While the compensation have hovered around ₹5 lakhs to ₹ 7 lakhs in case of negligence directly attributed to the State or its functionaries, this is not a case of a death in custody by any act of a government official directly such as when the violence or torture had been practiced on an inmate by the State official. It was, on the other hand, a case of failure to notice the fight between two intimates and I will see the liability that the State has to bear to suffer some abatement, considering the fact that the State was not an aggressor but was still passively liable for what it failed to protect.

Considering the fact that there are 4 minor children, I will direct the compensation of ₹5 lakhs to be deposited with interest at 9% from the date of filing of the petition till date of deposit. The deposit in court shall be made within a

period of 8 weeks from the date of receipt of copy of this order.

I notice that the mother has not been made as a party on a plea she has remarried. It will be only appropriate that she is made as a party and a notice is served on her to state her case to the apportionment of the amount which is directed to be deposited by the State. The petitioner shall furnish to the Registry the details of her present address by 05.01.2015.

Though I am provisionally of the view that the amount of ₹5 lakhs will be appropriate to be paid by the State with interest, the party impleaded will be heard before a final decision is taken as regards the quantum.

Issue notice of the writ petition to the newly impleaded party and serve the order copy.

Adjourned to 26.02.2015.

22.12.2014

(K. KANNAN)
JUDGE”

This order was followed by orders dated 26th February, 2015 and 31st March, 2015, which are also re-produced as under:-

“Present: Mr. Gurinder Pal Singh, Advocate,
for the petitioners.

Mr. Keshav Gupta, Assistant Advocate General,
Haryana.

The counsel for the State presents a draft for ₹5,22,500/-

drawn in the name of the Registrar. The State shall deposit the same with the Registrar.

Petitioners to ascertain the correct address of 4th respondent and to furnish the same in the Registry in a week's time, failing which, the petition against the said respondent shall stand dismissed.

Issue fresh notice to 4th respondent, after the needful is done, for hearing on 31.03.2015.

Dasti notice also permitted.

26.2.2016

(K. KANNAN)
JUDGE”

Order dated 31.3.2015

“Present: Mr. Gurinder Pal Singh, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Despite service, non puts in appearance on behalf of respondent No.4.

It is the contention of the counsel for the petitioners that petitioners who are all minors are virtually starving as their grand-father is unable to sustain them.

Keeping in view the peculiar facts and circumstances and also keeping in view the fact that respondent No.4, the mother of the petitioners, has not come forth to this Court, direction is issued to the respondent-State to pay an amount of ₹5,000/- as monthly compensation till the next date of hearing to the petitioners through their grand-father. The amount of ₹5,000/- for the next month be released on or before 15th of April, 2015 and thereafter before 7th day of each month.

List on 11.08.2015, for further consideration.

Copy of this order be given *dasti* to the counsel for the parties under signatures of the Special Secretary of this Court.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

March 31, 2015”

Learned counsel for the petitioners has submitted that deceased Ali Jan was 28 years of age and was an able bodied person. He has left behind four minor children who are under the care and protection of their grand father as their mother has re-married. He has submitted that the deceased was the sole bread winner of the family and was a farmer earning about ₹5,000/- per month.

Learned counsel for the respondents has, however, submitted that there was no such evidence brought by the petitioners on record, but keeping in view the fact that the deceased was 28 years of age and being an able bodied person would have easily been earning ₹5,000/- per month, out of which he might have been spending 1/3rd on himself and contributing 3,750/- per month for the maintenance of his family. Thus, applying a multiplier of 16, the total compensation payable comes to ₹7,20,000/-. It is pertinent to mention here that already ₹5,22,500/- have been deposited by way of demand draft in the name of Registrar of this Court, which is lying with the Registry. Thus, the respondents are directed to pay the balance amount also to the petitioners with 9% simple interest from the date of filing of this petition till the date of realization. The entire amount shall be deposited in a fixed deposit receipt in equal share of the petitioners in a nationalized bank, which shall be paid to them on attaining the age of

majority and the interest accrued on the said amount shall be allowed to be withdrawn by their grand father for their education and maintenance. It is made clear that amount paid under order dated 31.3.2015 shall be deducted.

The writ petition stands allowed on the above terms.

September 28, 2016
prem

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No