

CWP No.20644 of 2015 (O&M)

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

CWP No.20644 of 2015 (O&M)

Date of decision:04.07.2016

Gurbaj Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gurinder Singh Hayer, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner is the son of Hardev Singh (since deceased), who died on 11.02.2013, in the alleged suspicious circumstances while serving the sentence for an offence committed under Section 138 of the Negotiable Instruments Act, 1881 in the Sub-Jail, Sri Muktsar Sahib. An enquiry was conducted by Rakesh Sharma, the then Chief Judicial Magistrate, Sri Muktsar Sahib on 07.08.2013, in which he has allegedly made the following observations:-

“As per report of chemical examiner from Exhibit 2 to 5 pesticide Organophosphorous was found and the subsequent opinion of board opined the cause of death as result of cardio respiratory failure as a result of poisoning by Organophosphorous. No separate Executive Magistrate conducted parallel enquiry. Therefore, as per scope of the section, I am submitting my enquiry report which is that Hardev Singh was undergoing sentence under section 138 of NI Act, died unnatural death. It is to be seen:

1. From where the organophosphorous entered into jail premises?

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2. It is to be seen where exactly Hardev Singh fainted and was taken to hospital?
3. Where is kitchen garden? As per report there is no kitchen garden in enclosed jail.
4. Whether is it a case of suicide or poisoning in food? If it is a case of poisoning by consumption of food, no other person had similar symptoms or was effected.
5. Whether the convict meet any person on that day who provided him food which he had consumed due to which he had died?
6. Whether it is a case of suicide? If it is a case of suicide, where could the prisoner have access to pesticide organophosphoros.

Now all the above said aspect is a matter of investigation, which can only be carried out by registering F.I.R. and further proceeding according to law.”

It is alleged that an FIR No.171, under Section 306 IPC was registered against unknown persons at Police Station City, Sri Muktsar Sahib on 19.09.2013. The petitioner has alleged that his father died under mysterious circumstances in jail complex and without proper investigation, the case has been registered under Section 306 IPC in order to shield the real culprits. It is also alleged that the petitioner and his family members have not been compensated for the death of his father by the State Government and has, thus, made twin prayers, for the issuance of a writ in the nature of *mandamus* to direct respondent No.2 to register a case under Section 302 IPC against the persons/officials responsible for the alleged murder of his father and to direct respondent No.1 to pay the compensation to the petitioner of ₹15 lacs.

After notice, an affidavit of Kuldeep Singh Chahal, IPS, Senior Superintendent of Police, Sri Muktsar Sahib, has been filed on behalf of

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respondent Nos.1 to 4 in terms of an order passed by this Court on 08.10.2015 regarding status of investigation in the FIR No.171 dated 19.09.2013 . It is averred in the affidavit that the preliminary investigation has been conducted by ASI Chanchal Singh, Police Station City, Sri Muktsar Sahib but the truth was not brought out and, thus, one Special Investigating Team consisting of SHO, PS City, Sri Muktsar Sahib and DSP (Sub Division), Sri Muktsar Sahib was constituted for the thorough investigation. It is further averred that the statement of various persons including the jail inmates were recorded and after completion of investigation, the investigation report No.1812-R/DSP/SMS dated 20.11.2015 has been prepared, as per which deceased Hardev Singh died during custody in the jail, while working in the nursery/bagichi of sub jail, due to carelessness and negligence and also because of lack of supervision by Warder Nachhattar Singh and Shivraj Singh Nandgarh, the then Deputy Superintendent Sub Jail, Sri Muktsar Sahib, due to which the convict Hardev Singh consumed some poisonous substance and died. It is further averred that on the report of the SIT, the matter was referred to the D.A. Legal, Sri Muktsar Sahib for his opinion, who gave his legal opinion on 26.11.2015 that as per the report of the SIT, offence under Section 120B, 306 IPC and under Section 540(5) of the Jail Manual is found to have been committed by the erring employees and recommended for further investigation. It is further alleged that a direction to the SP(H), DSP(D) and SHO (Sadar), Sri Muktsar Sahib was issued to visit the spot personally to enquire the matter and report. The aforesaid officers visited the spot, again, thoroughly investigated the matter and submitted their report

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No.2060/R/SP(H) dated 08.12.2015 that as there was no boundary wall over the area of nursery of Sub Jail, Sri Muktsar Sahib which has been covered with the safety wire and agricultural fields and residential houses are situated near the nursery area. The farmers used to throw the insecticides containers after its use and the adjoining residents also used to throw the acid, fennel, pesticides, used to be placed in the wheat after their use near the nursery of jail which used to scatter into the nursery area due to the speedy winds, through rainy water or by the animals, which are used to be destroyed by the jail employees on noticing such facts. It was concluded that on 11.02.2013, when convict Hardev Singh son of Mahinder Singh (since deceased) was working with the other convicts in the nursery of Sub Jail, Sri Muktsar Sahib, then he, escaping the eyes of the Warder, took some poisonous substance into his possession and on the pretext of drinking water went to the water motor located there and consumed the poisonous substance and died.

It was, thus, opined that Hardev Singh died due to consumption of some poisonous substance with water while working in the nursery of jail, while concealing himself from the Warder Nachhattar Singh No.2528 and, thus, no fault of Shivraj Singh, Superintendent of Jail, Sri Muktsar Sahib is found because it was not the duty of Shivraj Singh, Superintendent of Jail to supervise the convicts working in the nursery of jail, whereas Warder Nachhattar Singh No.2528 was duty bound to properly inspect the nursery area of jail as there is no boundary of the same and he should have been careful that there should not exist any poisonous substance. It is alleged that because of the carelessness of Warder Nachhattar Singh, an

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offence under Section 304-A IPC is made out against him, therefore, offence under Section 306/120B IPC and 540(5) of the Jail Manual are deleted from the FIR and the SHO, PS City, Sri Muktsar Sahib was directed to arrest Warder Nachhattar Singh No.2528 for the offence committed under Section 304-A IPC and to present challan in the court. It is further averred that the legal action is going to be taken against the erring employees. This affidavit was filed by the Senior Superintendent of Police, Sri Muktsar Sahib on 09.12.2015 but in the report dated 20.11.2015, the SIT made the following observations:-

- “1. The place in which convict Hardev Singh was doing his work, that place is open place in the nursery located on the outside of the jail building, which has been covered mostly by wiring for its covering, and residential houses adjoins with the same and on its back side there is agricultural land and the nursery is having no boundaries.
2. The occurrence was found to be taken place in the external side of jail building, after doing work in its Nursery, near the Water Motor installed in the Nursery, from where he was taken to Civil Hospital Sri Muktsar Sahib.
3. Nursery has been located outside of building of jail and there is no nursery in the jail.
4. Regarding this point, the written opinion regarding the death of convict Hardev Singh has sought from the team of doctors who conducted the post mortem, who have clarified in their report that the death has not occurred due to Food poisoning whereas the same has occurred due to consuming the poisonous substance.
5. Regarding this point, the Jail Register regarding the meeting with the convicts in jail, was checked as per which on 1.02.13, Gurjant Singh son of Mukhtiar Singh resident of Bhagwanpura was met with the convict Hardev Singh who is his relative. Thereafter, no meeting was found to be made by any of the person with Hardev Singh convict.

6. Regarding this point, nothing has come into picture regarding committing suicide by convict Hardev Singh. This incidence has been occurred due to the carelessness and negligence caused by the jail authorities/employees.

During investigation, the Investigating team has found that as per the jail manual, nothing was recovered from convict Hardev Singh during his personal search in Deodi of the jail, while coming out, he was sent to do the work in the nursery under the supervision of Jail Warder Nachhattar Singh No.2528 Sri Muktsar Sahib, by whom, while not performing his duty well in manner and while not getting the work conducted from the convicts under his supervision, his death has been occurred in someway due to consuming any poisonous substance, in which Warder Nachhattar Singh has done his duty with carelessness and negligent manner and Sh. Shivraj Singh Nandgarh Deputy Superintendent Sub Jail Sri Muktsar Sahib has also not done his duty and supervision in correct manner and negligence has also been committed by him. It is pertinent to mention here that during investigation, Gurbaj Singh son of deceased Hardev Singh has also got recorded in his statement that his father Hardev Singh has died due to the carelessness and negligence on the part of the employees/authorities of jail because his father was undergoing conviction in Jail and he has died in the jail custody and has sought legal action against the employees who have committed carelessness and negligence.”

He has, thus, prayed that the matter may be ordered to be re-investigated under the supervision of Senior Police Officials with a direction to constitute the another SIT and in the meantime, the petitioner may be compensated for the loss of life of Hardev Singh in custody. In support of his submission, for the purpose of compensation, the petitioner has relied upon the following judgments:-

1. **Hawa Singh and anr. vs. The State of Haryana and ors.**, 2011(2) Law Herald 1166;
2. **Harjit Kaur vs. State of Punjab and others**, 2016(1) Law Herald 604;
3. **Sunaina Devi and others vs. State of Bihar and others**, 2015(4) PLJR 277;
4. **Manjit Kaur and another vs. State of Punjab and others**, 2016(2) R.C.R. (Criminal) 383;
5. **Phoolwati vs. State (Union Territory of Chandigarh) and others**, 2008(1) R.C.R. (Civil) 139;
6. **Balwinder Kaur vs. State of Punjab and others**, 2013 (1) R.C.R. (Criminal) 51;
7. **Ajab Singh vs. State of Uttar Pradesh**, 2000 AIR (SC) 3421; and
8. **Dy. Commr., Dharwad, Dist. Dharwad and others vs. Shivakka and others**, 2012(2) R.C.R. (Criminal) 452.

Counsel for the respondents could not dispute that the death of Hardev Singh has occurred in the custody while he was serving the sentence as a convict but it is submitted that the deceased was himself responsible for taking his life as he had consumed poisonous pesticide escaping the notice of the warder while working in the garden/nursery of the sub jail. It is also submitted that a thorough investigation has been made by respondent No.2 who had already constituted a SIT and the criminal liability of the warder has been fixed, who was negligent in performance of his duties.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Insofar as the part of compensation is concerned, all the judgment relied upon by the petitioner are pertaining to compensation for

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custodial death though there is a variation in the amount of compensation, depending upon the facts of each case. In **Ajab Singh's case (supra)**, the direction was issued for registration of the case by the CBI, whereas in **Harjeet Kaur's case (supra)**, direction was issued by this Court for constitution of the SIT to probe into the matter.

Since it is not disputed that the deceased died as a convict in custody and preliminary investigation suggests that there was negligence of the warder and it is provided under Section 55-A of the Code of Criminal Procedure, 1973 that it is the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused, it would be just and expedient to award compensation of ₹7 lacs to the dependents of the deceased Hardev Singh and keeping in view the report of the Chief Judicial Magistrate, Sri Muktsar Sahib dated 07.08.2013, it is further directed that the Director General of Police, Punjab, shall constitute a SIT with high officials and action taken report be submitted to the Court within a period of six months from today.

July 04, 2016
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(Rakesh Kumar Jain)
Judge