

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M- 14644-2011(O&M)

Date of decision: 25.09.2017

Bhupinder Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CRM-W- 300-2011(O&M)

Bhupinder Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CRWP 655-2011(O&M)

Bhupinder Kaur

.....Petitioner

versus

State of Punjab

.....Respondents

CWP 8613-2011(O&M)

Bhupinder Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.R.S.Bains, Advocate for the petitioner
in CRM-M-14644-2011 and CWP No.8613-2013
Mr.A.D.S.Sukhija, Advocate as Amicus Curiae
Mr.C.L.Pawar, Senior Deputy Advocate General, Punjab
Mr.Anupam Gupta, Senior Advocate with
Ms.Harmanjeet Kaur and Mr.Ashok Kumar, Advocates
for respondent Nos.2 to 5 in CRM-M-14644-2011 and
CWP No.8613-2013

*1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***

*2. To be referred to the Reporters or not ? **yes***

*3. Whether the judgment should be reported in the Digest? **yes***

Kuldip Singh, J.

By this judgment I shall dispose of CRWP 655-2011, CRM-W-300-2011, CRM-M-14644-2011, CWP 8613-2011, arising out of the same facts.

In CRWP 655-2011 and CRM-W-300-2011, a letter as well as telegram was received from Bhupinder Kaur regarding taking away of her husband Sohan Singh @ Sohanjit Singh on 3.3.2011 by the police and his torture was converted into Criminal Writ Petition.

CRM-M-14644-2011, Bhupinder Kaur has filed a petition under Section 482 Cr.P.C. for direction of impartial investigation of murder of her husband Sohan Singh @ Sohanjit Singh by some independent agency like CBI, after registration of FIR against respondent nos.2 to 6 – police officials.

In CWP 8613-2011 filed under Articles 226/227 of Constitution of India, the petitioner Bhupinder Kaur prays for issuance of appropriate writ, order or direction for grant of compensation to her from the State of Punjab on account of illegal detention of her husband Sohan Singh @ Sohanjit Singh till his death.

The common facts of the case are extracted from CRM-M-14644-2011.

According to the petitioner, her husband Sohan Singh @ Sohanjit Singh was picked up on 3.3.2011 by State Operation Cell's Officers namely, Maninder Singh SP/DSP, Balbir Singh Inspector, Sukhbir Singh Sub-Inspector, Nirmal Singh Inspector and one gun man, from his in-law house i.e. Village Varpal District Amritsar at around 2.30-3.00 PM. Later on, his remand was obtained from the Court on 7.3.2011. The petitioner

had addressed the letters to various authorities on 7.3.2011 that her husband is in illegal custody of the police from 3.3.2011 and whereabouts are not being disclosed and that he would be implicated in a false case. A case No.6/11 dated 6.3.2011 under Sections 25 of the Arms Act and under Sections 467, 468, 120-B IPC was registered against unknown persons. SHO P.S. State Special Operation Cell (for short, 'SSOC') sent a notice to Bhupinder Kaur for investigation and she was directed to present at PS SSOC, Punjab Amritsar at 10.00 A.M. with a warning of initiation of legal action in case of her absence. The petitioner accompanied by Sarpanch and Member Kuldeep Singh reached the P.S. SSOC and met said Sohan Singh @ Sohanjit Singh at 2.30 P.M. Sohan Singh @ Sohanjit Singh told Kuldeep Singh that the police had brutally tortured him and requested him to do something to free him from the hands of the police officials. At that time, he was in healthy condition though seems to have been tortured and was unable to walk properly but he was able to talk. On 12.3.2011, Bhupinder Kaur received a threatening phone call from Cell Number of Nirmal Singh at about 3-4 P.M., whereby Nirmal Singh threatened Bhupinder Kaur not to do anything or take any action regarding detention of Sohan Singh @ Sohanjit Singh and also told her that Sohan Singh @ Sohanjit Singh will be released after completion of investigation. On 14.3.2011, another threatening call was received from Mobile No.8872698286 by the mother of the petitioner Jasbir Kaur. This call was made after the custodial death of Sohan Singh @ Sohanjit Singh. On 14.3.2011 around 8.56 AM, the petitioner received a phone call from Nirmal Singh from Police Station SSOC regarding death of Sohan Singh @ Sohanjit Singh stating that Sohan Singh @ Sohanjit Singh has committed suicide and simultaneously

petitioner was threatened not to take any action regarding death of Sohan Singh @ Sohanjit Singh otherwise she will face dire consequences. Petitioner claimed that Sohan Singh @ Sohanjit Singh her husband died as a result of brutal torture and that he has been murdered and shown to have committed suicide by hanging himself from the ceiling fan with the help of Parna (headgear). She claimed that neither there was any chair nor any table or ceiling fan in the room, where Sohan Singh @ Sohanjit Singh was detained. Petitioner also disclosed that brother of Sohan Singh @ Sohanjit Singh, namely, Gurwinder Singh son of Iqbal Singh was also picked up by the police in Tarn Taran in the year 1990 without recording any FIR and was killed on 8.10.1990. Petitioner and her husband had not raised any voice against the death of Gurwinder Singh due to apprehension that the husband of the petitioner will be implicated in a false case or will be picked up by the police. Petitioner further claimed that no case was registered against her husband throughout India except one case at TADA Court in Ajmer, Rajasthan in which he himself had surrendered and remained in Jail nearly for two years and later on acquitted on 12.12.1999 by Special Court, Ajmer. The petitioner also mentioned about the injuries mentioned in the MLR which are to be discussed in the later part of the judgment. Therefore, a prayer has been made that an FIR be registered against the private respondents and matter be got investigated from some independent agency like CBI. In CWP 8613-2011, it is claimed that a compensation to the tune of Rs.50 lakhs should be awarded to her being the dependent of deceased Sohan Singh @ Sohanjit Singh.

In all the petitions, almost identical replies have been filed.

State has taken the stand that Sohan Singh @ Sohanjit Singh was wanted in

FIR No.23 dated 15.6.2010 under Sections 25, 54, 59 of Arms Act and under Sections 17, 18, 19, 20 of Unlawful Activities Prevention Act and under Section 120-B IPC registered at Police Station State Special Operation Cell, Punjab, Amritsar. He was also declared as proclaimed offender in FIR No.201 dated 18.5.2010 under Sections 3/4/5 of Explosive Act registered at Police Station Civil Lines Amritsar and efforts were being made to arrest him. A reward of Rs.one lakh was also declared for information leading to his arrest. It is claimed that Sohan Singh @ Sohanjit Singh was arrested by the State Special Operation Cell on 6.3.2011 from main Bus stand Amritsar. One .32 bore pistol along with magazines and five live cartridges were also recovered from his possession. An FIR No.6 dated 6.3.2011 under Sections 25 of Arms Act and under Sections 17, 18, 19, 20 of Unlawful Activities Prevention Act and under Sections 420, 468, 471, 120-B IPC was registered at Police Station, State Special Operation Cell. On 7.3.2011, he was got medically examined and produced before Shri Rajesh Bhagat, the learned Judicial Duty Magistrate 1st Class Amritsar. He was remanded to police custody till 15.3.2011. He was handed over to Joint Interrogation Centre for interrogation by different agencies. While in custody of Joint Interrogation Cell on 14.3.2011, he was served with morning tea at about 6.30 AM in the interrogation room. Sohan Singh @ Sohanjit Singh took a short bath and asked for sometime to perform morning prayers. The Duty Officer allowed the same and Sohan Singh @ Sohanjit Singh started with the prayer. Duty Officer came out in the corridor and when after sometime, Duty Officer came back, he found that Sohan Singh @ Sohanjit Singh has hanged himself with the overhead fan with the help of Parna (headgear). The Duty Magistrate immediately held

him upwards and cried for help. The Guard Incharge along with Sweeper immediately rushed and brought down Sohan Singh @ Sohanjit Singh and took him to Civil Hospital Amritsar, from where he was referred to Guru Nanak Dev Hospital, Amritsar, where he was declared brought dead. It is further stated that Judicial Inquiry was got conducted by Smt.Puja Andotra, the learned Judicial Magistrate 1st Class, Amritsar. Post mortem was also got conducted. The Inquiry Officer ruled out the allegation of custodial torture and opined that the cause of death is asphyxia i.e. due to hanging. However, the department found that the officers, who were incharge of the custody of the deceased, were found wanting in performance of their duties as they failed to perceive the mental state of the deceased. Inquiry was conducted by Shri Jamesh Masih, Deputy Superintendent of Police, Raja Sansi Airport, Amritsar and erring officers have been indicted in the departmental proceedings and accordingly punished. Human Rights Commission vide order dated 8.12.2011 also filed the complaint No.3019-1-2011 and 10331-19-2011-PCD-DV filed by the petitioner.

I have heard learned counsel for the petitioner, learned Amicus Curiae, learned State counsel as well as learned counsel for respondent nos.2 to 5 and have also critically examine the file.

First and foremost point required to be determined is as to whether the death of Sohan Singh @ Sohanjit Singh is homicidal or suicidal?

Learned counsel for respondent Nos.2 to 5 has argued at length that Sohan Singh @ Sohanjit Singh was a terrorist and that he was interrogated by different agencies i.e. Intelligence Bureau, RAW, Military Intelligence and PAP and that during such interrogation, minor injuries are

possible, though even causing of such minor injuries have been denied by the State during interrogation. Learned counsel for respondent Nos.2 to 5 while referring to terrorist activities throughout the world has pressed that no leniency is to be shown to the terrorists. With this background, it has been argued that in the post mortem as well as inquiry conducted by learned Judicial Magistrate 1st Class, Amritsar under Section 176 of Code of Criminal Procedure, it was found that death was suicidal.

On the other hand, learned counsel for the petitioner has argued that the petitioner was tortured and death is not suicidal. A copy of the post mortem report shows that age of the deceased was 56-57 years. His weight was not recorded in the post mortem report. In the post mortem report, following injuries have been recorded:-

(B) External Injuries

(Mention Type, Shape, Length x Breadth & Depth of each injury and its relation to important body landmark indicate which injuries are fresh and which are old and their duration):

(1) Reddish brown abraded ligature mark present, 2.5 cm to 3 cm in width and 13.5 cm in length present above thyroid carilage just touching adams apple, 5 cm below lobule rear on right side of 5.5 cm below on left side of neck, running obliquely along border of, ligature mark to paint in colour on sides of neck, no ligature mark present on back of head.

(2) Brownish green coloured bruise 20.5 x 14 cm present on points of outer aspect of left upper arms, irregular in shapes, old infiltrator of blood present in soft tissues.

(3) Reddish bruise 8x4.5 cm present on medial aspect of right forearm 4 cm medial to top of elbow. Old.... of blood present.

(4) Reddish brown abrasion with scab formation 0.4x0.3 cm on

back of middle inlayer of right ring.

(5)Reddish brown scabbed abrasion 0.9x0.4 cm on back of left issue in the papeyed fosse region.

(i) Injuries be given serial number and mark similarly on the diagrams attached.

(ii) In stab injuries, mention angies, margins and direction inside body.

(iii) In fire arm injuries, mention about effects of fire also.

Duration of injuries nos.:

1 and 3 within 24 hours

2 About 4-7 days old

4 to 5 About 2-4 days old

Learned counsel for the petitioner has referred to medical jurisprudence to press that it is a case of strangulation, whereby the distinction is made in hanging and strangulation, as under:-

<i>Hanging</i>	<i>Strangulation</i>
<i>1. Mostly suicidal</i>	<i>1. Mostly homicidal</i>
<i>2. Face-Usually pale and petechiae rare</i>	<i>2. Face-Congested, livid an marked with petechiae</i>
<i>3. Saliva-Dribbling out of the mouth down on the chin and chest</i>	<i>3. Saliva – No such dribbling</i>
<i>4. Neck-Stretched and elongated in fresh bodies</i>	<i>4. Neck – Not so.</i>
<i>5. External signs of asphyxia, usually not well marked.</i>	<i>5. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotio sinus effect.)</i>
<i>6. Bleeding from the nose, mouth and ears very rare.</i>	<i>6.Bleeding from the nose,mouth and ears may be found.</i>
<i>7. Ligature mark – Oblique, non continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchent like.</i>	<i>7. Ligature mark- Horizontal on transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</i>
<i>8. Abrasions and ecchymoses round about the edges of the ligature mark, rare.</i>	<i>8. Abrasions and ecchymoses round about the edges of the ligature mark, common.</i>
<i>9.Subcutaneous tissues under the mark - White,hard and glistening.</i>	<i>9. Subcutaneous tissues under the mark - Ecchymosed.</i>

<i>Hanging</i>	<i>Strangulation</i>
<i>10. Injury to the muscles of the neck - Rare.</i>	<i>10. Injury to the muscles of the neck – Common.</i>
<i>11. Carotid arteries, internal coats ruptured in violent cases of a long drop.</i>	<i>11. Carotid arteries, internal coats ordinarily ruptured.</i>
<i>12. Fracture of the larynx and trachea – Very rare and that too in judicial hanging.</i>	<i>12. Fracture of the larynx and trachea - Often found also hyoid bone.</i>
<i>13. Fracture - dislocation of the cervical vertebrae - Common in judicial hanging.</i>	<i>13. Fracture - dislocation of the cervical vertebrae - Rare.</i>
<i>14. Scratches, abrasions and bruises on the face, neck and other parts of the body - Usually not present.</i>	<i>14 Scratches, abrasions fingernail marks and bruises on the face neck and other parts of the body - Usually present.</i>
<i>15. No evidence of sexual assault.</i>	<i>15. Sometimes evidence of sexual assault.</i>
<i>16. Emphysematous bullae on the surface of the lungs - Not present</i>	<i>16. Emphysematous bullae on the surface of the lungs - May be present.</i>

Even as per police version, Sohan Singh @ Sohanjit Singh was arrested on 6.3.2011 and died on 14.3.2011. Therefore, all the said injuries are during the period in which Sohan Singh @ Sohanjit Singh was in the custody of the police. Here the complaint of the wife of the deceased is that he was picked up on 3.3.2011 from his in laws house. In these circumstances and keeping in view the allegations against him, though there is no positive proof except assertion of the petitioner herself, the possibility of his being picked up on 3.3.2011 cannot be ruled out. In any case, all the said injuries were caused during the period which Sohan Singh @ Sohanjit Singh was in the police custody.

It also comes out that under Section 176 of Code of Criminal Procedure, a Judicial Inquiry was conducted by Smt. Puja Andotra, learned Judicial Magistrate 1st Class, Amritsar, who submitted the report on 7.7.2011. In the said report, which was submitted after examining the

police officials belonging to Intelligence Bureau, Counter Intelligence, Military Intelligence, RAW and others and after critically examining Dr.Gurmanjit Rai, who conducted the post mortem and Dr.Mukhtar Singh, Medical Officer, Civil Hospital, Amritsar, it was concluded that the death was suicidal.

Statements of the various officers, during judicial inquiry who interrogated Sohan Singh @ Sohanjit Singh shows that he was interrogated by various agencies. When these are read with the post mortem report, it shows that though torture of Sohan Singh @ Sohanjit Singh is denied by police but it can be safely concluded that he was physically tortured during the custody and therefore, in addition to physical torture, psychological torture also must be there, which is usually connected with the custodial interrogation and detention. Dr.Mukhtar Singh, Medical Officer, Civil Hospital, Amritsar stated before learned Judicial Magistrate 1st Class, Amritsar that when on 14.3.2011, Sohan Singh @ Sohanjit Singh was brought in the Civil Hospital, Amritsar, there was no pulse and BP. The body was cooled, calmy and was stiffed. Eye balls were fixed, dialated and not responding to any light. In order to confirm death with ECG, Sohan Singh @ Sohanjit Singh was taken to Guru Nank Dev Hospital within 4-5 minutes. In Guru Nank Dev Hospital he was declared brought dead.

I have also critically examined the statement of Dr.Gurmanjit Rai, Associate Professor Government Medical College, Amritsar, who headed the Medical Board to conduct post mortem of the deceased. The videography of the postmortem was conducted and the post mortem was conducted in the presence of learned Judicial Magistrate 1st Class, Amritsar, wife of the deceased Bupinder Kaur and Sarpanch of Village Varpal

Mr.Jaspal Singh. The doctor has mentioned about the injuries and stated that spinal caloum and spinal cord were not opened as they were not required. It is also stated that all the injuries are anti mortem in nature. As per report of the chemical examiner, no poison was detected. According to the opinion of the doctor, the death was due to asphyxia, due to hanging. Injury No.1 was sufficient to cause death in ordinary course of nature. Probable time elapsed between injury and death was just few minutes. During further examination by the Inquiry Officer, he clarified that there was no injury on the left leg except abrasion on the back of the left knee. There was no mark of electric shock. He clarified that it is a clear cut case of hanging and no sign of strangulation was present.

Learned counsel for the petitioner has contended that Sohan Singh @ Sohanjit Singh was tortured and hanged to death. There are different versions whether any chair or table were present or not. Photographs of the place of occurrence were not taken.

I am of the view that possibility of murder is ruled out from several facts. The deceased was in the police custody and the police knew that if he is killed during police remand, they will be hauled up for murder. Secondly, he was interrogated by different Intelligence agencies and in such circumstances, the police will not be foolish enough to murder Sohan Singh @ Sohanjit Singh while in police custody. Thirdly, the medical evidence in the form of statements of Dr.Gurmanjit Rai and other doctor Dr.Rajeev Arora, which clearly shows that the deceased died of hanging. Keeping in view the medical evidence, minor discrepancies here and there, are to be ignored. Therefore, I concur with the findings of the Inquiry report of Smt.Puja Andotra, learned Judicial Magistrate 1st Class, Amritsar that the

deceased died due to hanging and it is a case of suicide.

Now, next question would arise as to whether the petitioner is entitled to compensation?

Learned counsel for respondent Nos.2 to 5 has stated that the petitioner is not entitled to any compensation, while reiterating that Sohan Singh @ Sohanjit Singh was a terrorist and was required to be interrogated thoroughly. It is stated that the Punjab Police is not at fault. Various agencies of the Central Government also interrogated Sohan Singh @ Sohanjit Singh i.e. Intelligence Bureau, RAW, Military Intelligence as well as PAP. Therefore, the Punjab Police is not liable to pay any compensation. Some mental stress is likely during custodial interrogation. Therefore, the State cannot be held liable to pay any compensation. As an alternative plea, it is stated that if at all, this Court feels that without fixing any responsibility, some ex-gratia payment is to be made, the Court may award Rs.five lakhs as compensation to the widow of the deceased Sohan Singh @ Sohanjit Singh as ex-gratia payment.

Learned counsel for respondent Nos.2 to 5 referred to the authority of Constitution Bench in Kartar Singh vs. State of Punjab, (1994) 3 Supreme Court Cases 569. A perusal of the said authority shows that the said authority is regarding the Terrorist and Disruptive Activities (Prevention) Act, 1985 and did not specifically deal with grant of compensation in case of custodial death of a person accused of unlawful activities.

Learned counsel for respondent Nos.2 to 5 has also produced authority in Extra-Judicial Execution Victim Families Association and another vs. Union of India and another, (2016) 14 Supreme Court Cases

536, which is regarding killing of some persons by the armed forces in the State of Manipur.

Learned counsel for the petitioner has also referred to the request for remand, wherein certain allegations of terrorist unlawful activities have been levelled against the petitioner.

I am of the view that the request for remand merely contained allegation and cannot be taken to be gospel truth for the purpose of determining payment of compensation to the family of the deceased, for custodial death.

Learned counsel for the petitioner on the other hand, has referred to the recent authority of the Apex Court in Re-Inhuman Conditions in 1382 Prisons, 2017 SCC Online SC 1109. He has also referred to various decisions rendered by various Courts regarding grant of compensation. Reference may be made to few of them i.e in Parkash Kaur, Gurmeet Kaur vs. State of Punjab and others, Writ Petition (Cri) 466-07 of 1989, Paramjit Kaur vs. State of Punjab, Writ Petition (Cri) 497 of 1996, Saranjit Singh vs. State (Delhi), Writ Petition (Cri) 632 of 1992, Navkiran Singh vs. State of Punjab, Writ Petition (Cri) 242-258/1994, Parminder Kaur vs. State of Punjab and others, CWP No.8705 of 2002, Abdul Rasid Beigh vs. State, 2004 Cri L.J. 1706 and Manjit Kaur vs. State of Punjab, CRM-M No.41045-2013.

A perusal of the aforesaid authorities shows that in different cases, different compensation ranging from Rs.3 lakhs to Rs.15 lakhs was awarded by the Courts. Some of the cases relates to the year 1990. Therefore, the compensation granted in the year 1990, cannot be taken to be justified for an incident taken place in the year 2011 due to depreciation in

value of Rupee.

After going through the facts of the case, I am of the view that even if it is not proved that the respondents were directly responsible for the suicide of Sohan Singh @ Sohanjit Singh, however, it is proved that Sohan Singh @ Sohanjit Singh was in their custody. They were duty bound to ensure the proper custody and safety of Sohan Singh @ Sohanjit Singh. There was dereliction of duty, which was even found in the departmental proceedings and the guilty officials/officers were awarded punishment. When Sohan Singh @ Sohanjit Singh was in custody, he should not have been allowed Parna (headgear) with the help of which he could hang himself. Secondly, Sohan Singh @ Sohanjit Singh was apparently in stress due to persistent custodial interrogation by different agencies and duty officers should have assessed that Sohan Singh @ Sohanjit Singh being under depression could commit suicide. Further, some injuries were found on the person of Sohan Singh @ Sohanjit Singh, which are attributed to the period during which he was in police custody pointing to his torture during police custody.

I am further of the view that even if a person is accused of the crime, the law of our country presumes everybody to be innocent unless proved to be guilty. Therefore, merely from the allegations against Sohan Singh @ Sohanjit Singh made in the remand paper, it cannot be presumed that Sohan Singh @ Sohanjit Singh was guilty of the crime mentioned therein. He was presumed to be innocent unless proved to be guilty. In any case, this Court as well as Apex Court in the various cases, referred to above, have dealt with the torture during police custody.

In these circumstances, I am of the view that though no crime is

proved to have been committed by the respondents, even then widow of the deceased namely, Bhupinder Kaur is entitled to compensation on account of torture and custodial death of her husband Sohan Singh @ Sohanjit Singh, as the bread earner of the family is now dead at the age of 56-57 years and now she is to run the entire family.

Therefore, considering the parameters of compensation laid down in various cases, referred to above, I am of the view that keeping in view price index in the year 2011, a compensation of Rs.ten lakhs to the widow of Sohan Singh @ Sohanjit Singh deceased, namely, Bhupinder Kaur petitioner by the State of Punjab, which was incharge of the Special Operation Cell, Punjab, Amritsar, will meet the ends of justice. As such, the State of Punjab is directed to pay Rs.10 lakhs as compensation to Bhupinder Kaur petitioner within two months from the date of the receipt of a certified copy of this judgment, failing which, the compensation shall be paid with interest @ 9% per annum starting from two months from the date of receipt of the certified copy of the judgment till payment.

As a result of the foregoing discussion, CRWP 655-2011, CRM-W-300-2011 stands disposed of. CWP 8613-2011 is accordingly allowed to the above noted extent. CRM-M-14644-2011 is accordingly dismissed.

A copy of the order be placed on the connected case files.

25.09.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes