

CWP No.12953 of 2014

[1]

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

**CWP No.12953 of 2014
Date of decision:21.08.2017**

Asha Rani and others

...Petitioners

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Brar, Advocate,
for the petitioners.

Mr. Saurav Khurana, DAG, Punjab.

Rakesh Kumar Jain, J.

This petition is filed by the parents and brothers of deceased Sarabjit Singh, who was found hanging in the jail. Sarabjit Singh was resident of Puran Bazar, near Shivalik Mandir, Police Station Sahnewal, District Ludhiana and was admitted in Central Jail, Patiala as an under trial on 17.06.2013 in case FIR No.139 dated 15.06.2013, under Sections 15, 61, 85-B of the NDPS Act, Police Station Rajpura. It is alleged that petitioner no.1 met Sarabjit Singh on 19.02.2014 in jail. He allegedly told his mother that he is being tortured by the jail officers without any reason as they are under the impression that he was also involved in a quarrel which took place in the Jail in January 2014. The petitioners received a phone call at about 11.30 a.m. on 22.02.2014 from the jail authorities informing them that Sarabjit Singh has suffered a heart attack and is no more. The petitioners rushed to the Rajindera Hospital, Patiala at 2.00 p.m., where they found Sarabjit Singh dead.

According to the petitioners, they were not allowed to see the dead body of Sarabjit Singh. The petitioners have alleged that his son was put behind 32 Chakkian, as told by Sarabjit Singh, because of the quarrel of the jail inmates with the jail staff, which took place in January, 2014 regarding which an FIR was also got registered by the jail staff in Police Station Tripari. According to the petitioners, the ligature mark was found around the neck of the deceased, which is stated to be the handy work of the jail authorities, therefore, it is alleged that he died in custody at the hands of the jail officials. The petitioners have, thus, made the prayer for the issuance of a direction to respondents no.1 to 5 to inquire into the death of Sarabjit Singh, to register a criminal case against the guilty jail officials, to award adequate compensation and to constitute special investigation team of IPS officers to inquire into the details of torture and killing of deceased Sarabjit Singh.

In this case, notice of motion was issued on 09.07.2014. Respondents no.1 to 3 & 6 filed their joint reply, in which it was denied that Sarabjit Singh was in 32 Chakkian rather it is alleged that he was in barrack no.4. It is also denied that he was involved in the quarrel, which took place on 06.01.2014 as his name does not figure in the FIR pertaining to that incident. It was admitted that Sarabjit Singh died on 22.02.2014, not because of heart attack but he had committed suicide. It is further averred in the reply that the incident was inquired by Ms. Deepika, PCS, Judicial Magistrate 1st Class, Patiala, who had stated in her report that “ligature marks visible on the upper part of his neck going back in upward direction and no other injury or mark was visible on the body”. It is further averred that post mortem report clearly mentions that Sarabjit Singh died because of asphyxia which was ante mortem

and sufficient to cause death in ordinary course of nature. The report also clearly mentions that there was no scuffle marks on the body of the deceased. The positive case of the respondents is that Sarabjit Singh died due to hanging as he had committed suicide.

Thereafter, on 22.09.2016, this Court passed the following order:-

“After hearing the learned counsel for the parties at some length, this Court is of the considered opinion that the matter requires further examination by the higher authorities, particularly in view of the conclusions arrived at by the judicial officer in the report (Annexure R-3). It was reported to be an unnatural death.

In view of the above, Director General of Police, Punjab-respondent No.2 is directed to look into the matter, get enquired all possible angles in the case and thereafter, he shall file his own affidavit along with Action Taken Report on or before the next date of hearing.

List on 01.02.2017.”

Pursuant to the aforesaid order, the Director General of Police, Punjab, filed his affidavit dated 30.01.2017 and the following order was passed by this Court on 01.02.2017:-

“An affidavit of Mr. Suresh Arora, IPS, Director General of Police, Punjab, Chandigarh filed in the Court has been taken on record and a copy whereof has been supplied to the learned counsel for the petitioners.

As per affidavit, two months more time has been sought to complete the enquiry, whereupon, action taken report would be filed.

Mr. J.S.Brar, learned counsel appearing for the petitioners submits that as per the affidavit, the Special Investigation Team, Patiala has been constituted for the purpose of enquiring into the matter, whereas, the incident is of Patiala and the SIT is also of the same District, therefore, it should have been referred to SIT of other

District.

In view of the above, two months' time is granted for completing the enquiry.

Adjourned to 17.04.2017.”

It is averred in the affidavit that in compliance of the order dated 22.09.2016, he constituted the SIT comprising of Inspector General of Police, Zone-I, Patiala as Chairman, Deputy Inspector General of Police, Patiala Range, Patiala and Assistant Inspector General of Police, Crime Zone, Patiala as members. It is also averred that the SIT is enquiring into the matter from all angles and requested for grant of two months more time to complete the enquiry into the matter.

Thereafter, on 17.04.2017, the following order was passed by this Court:-

“Learned State counsel has passed on a communication dated 17.04.2017 from the office of Director General of Police, Punjab, Chandigarh regarding the factum of compliance of the order with regard to submission of the enquiry report on 13.04.2017, which is under consideration. He seeks two weeks time to submit the same. Photocopy of the communication has been retained.

In view of the aforementioned fact, the matter is adjourned to 03.05.2017.”

Thereafter, the Director General of Police produced before the Court the SIT report dated 29.04.2017, along with his affidavit dated 02.05.2017, and the following order was passed by this Court on 03.05.2017:-

“Report of the SIT has been filed today in the Court. Taken on record. Copy thereof has been supplied to Mr. Brar.

To come up for arguments on 25.07.2017.”

The conclusion drawn by the SIT is that the death of Sarabjit

Singh had occurred because of asphyxia due to hanging with the help of material of irregular breadth like any cloth or parna.

Counsel for the petitioners has submitted that the Judicial Magistrate 1st Class has reported that the hanging is not with the cloth or parna but by some rope or hard substance.

In this regard, the SIT has relied upon the statement of Dr. A.D. Aggarwal, who had conducted the autopsy, that the breadth of the mark/groove due to hanging ranging from 1 cm to 1.5 cm is a result of some irregular thing like some type of cloth. It has been found by the SIT that it cannot go beyond the report of the Board of Doctors who had conducted the autopsy.

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

Since it was reported not only by the Judicial Magistrate 1st Class but by the Board of Doctors as well that there was no mark of torture on the body of the deceased, therefore, the allegation of torture by the jail/police officials cannot be sustained but the fact remains that the death occurred in the custody. In this case, two theories have been propounded, one by the petitioners on the basis of the report of the Judicial Magistrate 1st Class in which she had stated that the ligature mark on the neck of the deceased cannot be of cloth but of rope or some hard substance and on the other hand, the theory of the SIT is based upon the statement of the doctor who had conducted the post mortem and stated that it could be the result of some irregular thing like some type of cloth or may be parna.

In such circumstances, where the Director General of Police has constituted the SIT of the senior officers of the rank of IGP and DIG and AIG,

the prayer made by the petitioners has been duly fulfilled and this Court cannot subscribe its view in respect of the nature of the ligature mark as to whether it was because of a rope or a cloth in view of the statement of the doctor, who had conducted the post mortem, because he is the only expert to opine about such thing and the court cannot, by naked eyes, decide the same.

Thus, in view of the aforesaid facts and circumstances, nothing remains in this case and the same is hereby disposed of with aforesaid observations.

August 21, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No