

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 15.03.2018

Order Passed on 18.04.2018

WPCR No. 15 of 2012

- Saroj Shrivastava W/o Late Santosh Shrivastava, aged about 34 years, resident of Akaltara, Distt. Janjgir Champa (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, through its Principal Secretary, Department of Home Affairs, DKS Bhawan, Mantralaya, Raipur.
2. Director General Of Police, Raipur (CG)
3. The Superintendent Of Police District Janjgir Champa (CG)
4. The Superintendent Of Jail, Central Jail, District Janjgir Champa (CG)
5. The Jailor, District Jail, Janjgir Champa (CG)
6. The District Collector, Janjgir Champa (CG)
7. The Station Incharge, Police Station Janjgir Champa (CG)

---- Respondents

For Petitioner	:	Shri Sumit Singh, Advocate
For Respondents	:	Shri Vivek Sharma, Government Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

C A V Order

P. Diwaker, J

18/04/2018

1. The petitioner has filed this writ petition seeking issuance of a writ of mandamus directing an enquiry regarding custodial death of her husband namely Late Santosh Shrivastava, by a District Judge or Central Bureau of Investigation and further to direct the respondents to grant her monetary

compensation.

2. Brief facts of the case are that on 30.4.2011 the petitioner's husband namely Santosh Sriwas was admitted in District Jail, Janjgir in connection with Crime No.42/11 registered at Police Station AJAK, Janjgir for commission of offence punishable under Sections 294, 526 & 324 of the Indian Penal Code (henceforth 'the IPC') and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Death of petitioner's husband took place on 30.5.2011 while he was in custody. Soon after the death occurred, his post-mortem was conducted by a team of doctors of the District Hospital, Janjgir. The post-mortem report indicates that cause of death of petitioner's husband was the multiple injuries and their complication. A magisterial inquiry under Section 176 of the Code of Criminal Procedure, 1973 was held and the Magistrate, who conducted the magisterial enquiry, after recording statements of all the persons concerned, found that the petitioner's husband i.e. deceased detenu was assaulted by co-prisoners of the cell namely Ashwani alias Pappu Mali, Rakesh Kenwat, Maniram Sahu & Sarju Kashyap; the death of petitioner's husband took place due to delay on the part of the jail staff of District Jail Janjgir i.e. Compounder & Medical Officer posted at the relevant point of time, in providing medical treatment to the deceased; the deceased detenu was subjected to beating and for that the Guards on duty namely Bharat Das Tandon, Shri Radhe Shyam Sharma & Bhanu Pratap Das, are responsible for their lapses in not giving intimation in respect of the same to their senior officers. As per magisterial report, the Superintendent of District Jail, Janjgir has no proper control over the jail staff. The magisterial enquiry report was submitted to the State Government. Pursuant to said enquiry report, departmental action was taken against the concerned delinquent employees of District

Jail, Janjgir and the punishment of stoppage of one annual increment with non-cumulative effect was imposed on each of them. After merged enquiry, offence under Sections 302 & 201 of IPC was also registered against the aforesaid co-prisoners and after a full fledged trial, they have been found guilty of commission of murder.

3. At the outset, learned counsel for the petitioner submits that the petitioner does not want to press the relief of seeking an enquiry regarding custodial death of her husband and only wants to press the second relief which relates to grant of appropriate monetary compensation to the petitioner. In view of such submission, Relief No.1 is dismissed as such.
4. With regard to Relief No.2 relating to grant of adequate compensation, learned counsel for the petitioner submits that the jail authorities were under obligation to ensure the safety and protection of all the jail inmates, but in the present case there are serious lapses in the security on account of which the incident occurred in the barrack of jail which resulted into homicidal death of petitioner's husband. If there had been adequate security there would not have been any possibility of a prisoner being assaulted or killed by co-prisoner. He further submits that the husband of the petitioner died in judicial custody due to lack of proper medical attention or timely medical attention by the jail authorities. Since the death of the deceased had occurred in the custody due to failure of the authorities to protect him and to provide him timely medical treatment, adequate compensation should be granted to the petitioner. He further submits that the petitioner's husband was the only bread-earner in the family and after the untimely death of her husband, she has become a helpless widow with two children to be maintained. These facts may be taken into consideration while deciding the quantum of compensation to

be paid for the custodial death.

5. Learned counsel appearing on behalf of the respondents/State submits that on account of a trivial issue, the deceased was beaten by co-prisoners in the barrack of the deceased which unfortunately resulted in his death. Said incident of beating was witnessed by other co-prisoners. The accused persons were prosecuted and punished by the trial Court vide judgment dated 14.6.2012 for commission of offence under Section 302 of Indian Penal Code. He further submits that a magisterial enquiry was also ordered and the Magistrate, who conducted the enquiry, has submitted a report to the Collector recommending disciplinary action against the erring officials and pursuant to which departmental action was taken against the employees found negligent in discharge of their duties and punishment of stoppage of one annual increment with non-cumulative effect was imposed on them. He further submits that a compensation of Rs.1,00,000/- has already been granted to the petitioner being the widow of the deceased detenu and therefore now the petitioner is not entitled for further compensation. Thus, now nothing more remains for adjudication by this Court and the present petition is liable to be dismissed as having become infructuous.
6. We have heard learned counsel for the parties and perused the material on record.
7. The only question which arises for consideration in this writ petition is as to whether the petitioner is entitled to further compensation for the death of her husband.
8. A perusal of the entire material before us discloses that a team of three doctors, which conducted post-mortem examination over the body of

deceased, *prima facie* found that cause of death was cardio respiratory failure as a result of multiple injuries and its complications. Mode of death was asphyxia. Thus, there is sufficient evidence in shape of post-mortem report to suggest that the deceased had developed complications due to assaults and his death was unnatural. Based on the above finding a magisterial enquiry was ordered by the District Collector appointing the Sub Divisional Magistrate to conduct enquiry. In the course of enquiry, the Magistrate recorded statements of as many as 43 witnesses including doctors and jail inmates of the deceased. According to Dr. Mamta Singh Jagat, who was posted as Medical Officer in District Hospital, Janjgir at the relevant point of time, the deceased detenue was brought dead to the hospital. According to statements of Itwari, son of Laxman Singh, Naresh Kumar son of Bhagwan Prasad and Santosh Chandel son of Manharan Singh, inmates of deceased in the barrack, Pappu Mali (Numbardar of Cell No.1) pushed the deceased detenu down and thereafter brutally assaulted him by a club. He has further stated that said Pappu Mali also caused injuries in the ribs of the deceased by his elbow. After completion of enquiry, the Magistrate submitted his report dated 30.9.2011 (Annexure R-1) arriving at a conclusion that the deceased detenu was subjected to beatings in jail barrack by co-prisoners namely Ashwini alias Pappu Mali, Rakesh Kenwat, Maniram Sahu and Suraj Kashyap and cause of death was delay in providing medical treatment to the deceased and for that the Compounder and Medical Officer posted in the jail are responsible. The report further reveals that there was nothing to show that the deceased was subjected to any torture by jail staff. Needless to say, a prosecution had been launched in connection with the death of husband of the petitioner showing that the petitioner's husband was done to death on account of beatings and assaults by aforesaid co-prisoners. The trial

Court vide judgment dated 14.6.2012 convicted and sentenced them under Section 302/34 against which they preferred separate appeals before this Court and the same were partly allowed by converting their conviction into Section 325/34 of IPC.

9. Thus, from the material on record it is clear that when the husband of the petitioner was in custody his homicidal death took place on account of development of complication due to assaults given to him in jail by the inmates. In such a situation, the death of husband of the petitioner can be safely termed as 'custodial death'. Even though a prosecution has been launched against the co-prisoners responsible for causing injuries to the deceased detenu and they have also been punished in accordance with law, yet the jail authorities are not absolved of their responsibility to ensure his life and safety in the jail. There is no manner of doubt that due to failure on their part to take precautions and to provide sufficient security in the jail ensuring that the prisoners kept there do not get harmed and due to gross negligence on the part of the jail authorities in providing proper medical treatment to deceased detenu in the jail hospital, husband of the petitioner was subjected to serious injuries inside the jail and ultimately he succumbed to those injuries. As it was the bounden duty of the jail authorities to protect the life of an undertrial prisoner lodged in the jail and as in the instant case jail authorities had failed to ensure safety and security to the said unfortunate under-trial accused, the State being the employer of the jail authorities, must be held responsible for the custodial death of the husband of the petitioner herein. The Supreme Court and High Courts leaned in favour of holding the State responsible for the negligence of its officers. Therefore, this Court deems it fit to extract hereunder a few judgements of the Apex Court as well as High Courts.

10. Leading case dealing with custodial death and compensation is the matter of **Saheli v. Commr. of Police** reported in **(1990) 1 SCC 422**, wherein the Hon'ble Supreme Court has held thus:-

"10.It is now apparent from the report dated December 5, 1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration.

11.An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held herein before that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortuous acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her

son due to beating by the SHO of Anand Parbat Police Station, Shri Lal Singh.”

11. Another case on the subject is the matter of **Smt. Nilabati Behera alias Behera alias Lalita Behera vs. State of Orissa** reported in **AIR 1993 SC 1960** where the Hon"ble Supreme Court had occasion to give its observation on the point of custodial death. The Hon'ble Supreme Court had observed as follows;-

“16.It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is `distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy

in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights.

“33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is

not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers. to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings."

12. In **D.K. Basu v. State of West Bengal** reported in **1997 (1) SCC 416** the Hon'ble Supreme Court has exhaustively considered this question and held that monetary compensation should be awarded for established infringement of fundamental rights under Article 21 of the Constitution of

India i.e. right to life and held thus;-

"Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society."

13. The Hon'ble Supreme Court in the decision rendered in **Malkiat Singh Vs. State of U.P.** reported in **1998 (9) SCC 351**, awarded a compensation of Rs.5 lakhs to the father whose son was killed in an alleged encounter with police.
14. In **Ajab Singh v. State of UP** reported in **(2000) 2 SCC 521** the Hon'ble Supreme Court, while considering about the compensation in respect of custodial death of a person who was remanded to judicial custody and while in jail, he was removed to hospital where he died and on consideration of post-mortem report it stated that he died due to shock and haemorrhage due to ante-mortem injuries, while ordering payment of compensation by refusing to accept the defence of the State Government, held that when such deaths occur, it is not only to the public at large that those holding custody are responsible, they are responsible also to the Courts under whose orders they hold such custody.
15. In **Meena Singh v. State of Bihar** reported in **2001 CriLJ 3573** the victim

was attacked and killed by co-prisoners by the use of chhura, iron rods and belts etc. The next of kin of the deceased were awarded compensation by the Patna High Court for the unnatural death of the victim in custody.

16. In the case of **R. Dhanalakshmi Vs. Government of Tamil Nadu** reported in **2004 W.L.R. 346**, the learned single Judge of the Court fixed a compensation of Rs.9 lakhs in respect of the custodial death taking note of age, income of the deceased, family circumstances and dependency etc, by applying the multiplier as provided under the Motor Vehicles Act .
17. The High Court of Madras in **Rajammal v. State of Tamil Nadu** reported in **(2008) 3 MLJ 167**, while considering the quantum of compensation in respect of custodial death of a person, who died due to the assault of the police personnel, held that the family of the deceased needs to be reasonably compensated and holding so, enhanced the compensation from Rs.3 lakhs to Rs.5 lakhs. For better appreciation, paragraphs 15 and 16 thereof are extracted hereunder:

"15. It is also seen from the grounds of the memorandum of appeal that the appellant's sons were aged 23, 20 and 15 years and daughters were aged 22, 18 and 17 years at the time of death of her husband. These particulars furnished by the appellant regarding her children were not disputed by the respondents in any way. Thus, it is clear that the family of the deceased is crunching under financial difficulties, presumably because of the sudden loss of the head of the family prematurely, that too in usual circumstances, which are attributed to police excesses. From the above particulars furnished by the appellant, which remain unchallenged, it is further clear that the

appellant has to give in marriage a daughter and also two sons, besides looking after her grand-son, whose parents committed suicide.

16. Considering all these facts and circumstances of the case, we consider it appropriate to enhance the compensation ordered by the learned single Judge from Rs.3 lakhs to Rs.5 lakhs as has been prayed for by the petitioner in the writ petition. This writ appeal is allowed accordingly. No Costs."

18. Likewise, in **Santosh Kumari v. State of HP** reported in **(2011) 3 MPHT 81** the victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural death while in custody, the Himachal Pradesh High Court awarded compensation to the next of kin of the deceased.
19. An unnatural death in judicial custody where one person was killed by a co-prisoner was the subject-matter of discussion in **Amandeep v. State of Punjab** reported in **2012 SCC Online P&H 19844** and the High Court of Punjab & Haryana awarded compensation to the next of kin of the deceased due to the unnatural death in custody.
20. The Hon'ble Supreme Court in its recent judgment in **Re-Inhuman Conditions in 1382 Prisons** reported in **(2017) 10 SCC 658** has discussed the need to compensate in custodial death cases in following pertinent words;-

"55. Over the last several years, there have been discussions on the rights of victims and one of the rights of victims and one of the rights of a victim of crime is to

obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims - sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

21. The above quoted judgements make it clear that for the violation of fundamental rights of a citizen by the State or its servants, in the purported exercise of their powers, the affected citizen can resort to the remedy in public law by taking recourse to Article 226 of the Constitution of India. It further makes it clear that the compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law. Thus, it is settled law that compensation can be awarded for violation of fundamental rights in public

law domain.

22. Above being the position of fact and law, we have no hesitation in holding that the petitioner, who is widow of the deceased detenu, is entitled to compensation for wrongful loss of her husband and the State being the employer of the employees on account of whose negligence the death of deceased took place, is liable to pay such compensation to the petitioner.
23. Now the question is what should be the amount of compensation. The Courts have time and again deprecated such conduct on the part of the police / jail officials, which is spelt out above, and therefore the compensation, which is to be awarded, should also have a deterrent effect on the State so that its officers should not be encouraged to indulge in such acts which may result in loss of a human life, a fundamental right guaranteed under the Constitution of India. Therefore, taking into consideration the facts and circumstances of the case, in particular the fact that the petitioner and her children have lost the estate, love & affection, and dependency due to untimely death of deceased Santosh Sriwas at the age of 38 years on account of negligence on the part of the employees of the State and further considering the fact that the petitioner lost her consortium at the age of 33 years, we are inclined to issue a writ of mandamus directing the respondent-State to pay a consolidated compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs) to the petitioner within a period of eight weeks from the date of this order, failing which this amount will carry interest at the rate of 9% per annum from the date of passing of this order. Any amount of unexplained delay towards compliance of this direction will make the officials at fault responsible to pay the interest from their own pockets. The Director General of Jail, Chhattisgarh, Raipur will ensure payment of the compensation awarded within the time limit specified. The amount of compensation awarded is in

addition to Rs.1,00,000/- already paid to the petitioner by the State Government. This apart, the State Government to pay litigation cost of Rs.25,000/- (Rupees Twenty Five Thousand) to the petitioner within a period of two months from the date of passing of this order.

24. Article 21 of the Constitution declares that "no person shall be deprived of his life or personal liberty except according to procedure established by law". This right to life and liberty guaranteed by Article 21 is so fundamental and basic that no compromise is possible with this right. It is 'non-negotiable'. Thus, this is the minimum requirement which must be guaranteed to enable a citizen to live with human dignity. In other words, one of the fundamental rights guaranteed to a person under the Constitution is protection of life which the State is bound to provide. Even in a prison a convict or under-trial prisoner is very well entitled to his precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life. Likewise, there are legal provisions contained in the statutes relating to the prison and the prisoners prescribing that the prisoners should be provided with adequate necessary facilities like safety, security & medical treatment. Apart from the constitutional safeguards, the jail manuals and the rules framed enjoin the officials administering the jails to ensure safety of prisoners. The prisoners being entrusted to their care is entitled to protection etc. and it is the responsibility of jail officials to ensure the life and safety of every inmate of the jail. The jail authorities are not absolved of this responsibility merely because the prisoners are under trial or had been convicted by a Court of law and were serving sentence. Hence, it is the bounden duty of the Jail authorities, being custodian, not only to provide safety and security to the life of prisoners but also to provide adequate medical facilities to them, while they are in jail. It is always to be kept in mind that the prisoners are the responsibility

of the Government and to provide adequate security, safety and medical treatment to the prisoners in jail is a duty cast upon the Government. Merely because the prisoner is a class which is for the time being condemned by the society and it is kept away from it, the prisoners do not cease to be the human beings. It is true that the prisoners are deprived of their personal liberty in accordance with the procedure established by law. However, their right to life enshrined in Article 21 of the Constitution of India cannot be ignored. They are also entitled to have proper protection to their life and medical treatment for curing them from the ailments with which they are suffering. They have a right to live with human dignity. The Hon'ble Apex Court in its various decisions has held that the right of life includes right to live with human dignity and it is the duty of the State Government to treat the convicts with human dignity and to provide them bare necessities of life.

25. We, therefore, direct the Director General (Jail), Chhattisgarh to issue necessary directions to all the jail authorities to take care and ensure safety & security of the prisoners in jail and also to ensure that adequate medical facilities are provided to the prisoners whenever required. He shall ensure that particular jail has got the basic minimum facilities for timely treatment of prisoners such as modern medical equipments, medicines, fully-equipped ambulance with driver round the clock, medical staff, nursing staff as well as administrative staff, and if not, then to take remedial steps wherever necessary. The jail authority shall also be directed to ensure that jail doctor is on duty on rotation basis throughout day and night, besides nursing and para-medical staff and that all the inmates of jail are medically treated well and their grievances are addressed to and in case, an undertrial prisoner or a convict complains of any kind of illness and the duty doctor is of the opinion that immediate

hospitalisation is necessary, he/she should be taken to the Government Hospital forthwith.

26. At the same time, the Director General (Jail), Chhattisgarh is also directed to see whether withholding of one annual increment of erring officials by way of punishment is proportionate to their act or not.
27. The Director General (Jail), Chhattisgarh is directed to submit action taken report to this Court.
28. In the result, the writ petition stands allowed to the extent indicated above.
29. A copy of this order be handed over to the learned Government Advocate for early compliance of the direction.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-