

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1451 OF 2015

1. Shaikh Shama wd/o. Shaikh Muhammed,
Age: 27 years, Occ. : Labour,
R/o.: Koregaon, Tq. Kaij,
District Beed.
 2. Shaikh Rustam S/o. Shaikh Budan,
Age : 68 years, Occ. : Labour,
R/o.: As above.
 3. Shaikh Ayyub S/o. Shaikh Rustam,
Age : 35 years, Occ. : Labour,
R/o.: As above.
- ... Petitioners

Versus

1. The State of Maharashtra
through Police Inspector,
Police Station Shivajinagar,
Beed, Tq. and Dist. Beed.
2. The Home Minister,
The State of Maharashtra,
Through its Secretary,
Mantralaya, Mumbai.
3. The Superintendent of Police,
Beed.
4. The Deputy Superintendent of Police,
Crime Investigation Department,
Beed.
5. The Police Inspector,
Police Station, Ambajogai,
Dist. Beed.
6. Incharge of Police Station,
Shivaji Nagar Police Station,
Beed, Tq. & Dist. Beed.
7. Shankar P. Rathod,
Police Head Constable,

Age : Major, Occ: Service,

8. Shri Fufate, Badge No.1277,
Police Naik, Age Major,
Occ: Service,
9. Shri Misal, Badge No.1490,
Age: Major, Occ: Service
10. Shri Yeole, Badge No.2157,
Police Constable,
Age : Major, Occ: Service

Respondents 7 to 10 are
R/o. Shivaji Nagar Police Station,
Beed, Tq. & Dist. Beed.

... Respondents

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Mr. Saeed S. Shaikh, Advocate for the Petitioners.
Mrs. Vaishali N. Jadhav Patil, APP for Respondent Nos. 1 to 5 and 8.

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**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 10.07.2018**

**Date of pronouncing
the Judgment : 16.08.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. By way of this criminal writ petition, the petitioners are praying for transfer of investigation in respect of custodial murder of Shaikh Muhammed Shaikh Rustam from C.I.D., Beed to the Central Bureau of Investigation and for directions to the respondents to register FIR against guilty policemen namely (1) Shankar Rathod (Buckle No.502), (2) Mr. Fufate (Buckle

No.1277), (3) Misal (Buckle No.1490) and (4) police driver Yeole (Buckle No.2157) attached to the Shivajinagar Police Station, Beed for murder of Shaikh Muhammed Shaikh Rustam. The petitioners are also praying for compensation.

2. Petitioner no.1 is wife of the victim, petitioner no.2 is father and Petitioner no.3 is brother of the victim. The victim was residing with his wife at Neknoor, Taluka and District Beed. It is contention of the petitioners that on 26.08.2015, victim had left home at about 07.00 a.m. in search of labour work. On the same day at about 1.00 p.m, one of the brothers of victim received phone call from his friend informing him that the victim is hospitalized by policemen at Civil Hospital, Kaij in seriously injured condition. The petitioners along with other relatives went to the said hospital when the policemen were shifting the victim to S.R.T.R. Hospital at Ambajogai. The petitioners joined the policemen and boarded the ambulance carrying the victim to the said hospital at Ambajogai. According to the petitioners, at that time, the victim was unconscious and kept on ventilator and blood was oozing from his mouth, ears and nose. On arrival at S.R.T.R. Hospital at Ambajogai, the doctors declared the victim dead.

3. It is the contention of the petitioners that on inquiry by them, police officers concealed the real cause of death of victim and vaguely claimed that he was arrested in connection with a case of theft and during his transportation from the place of arrest to Koregaon, he jumped off the police van and received injuries. The petitioners disbelieved the said story as there was no case registered against the victim and demanded impartial investigation of custodial killing of the victim at the hands of concerned police officials. The petitioners also insisted for registration of FIR against guilty police officials which was flatly refused by the police officers. Petitioners were informed that the case is handed over to Crime Investigation Department (CID), Beed for further investigation and if found proper, offence will be registered against concerned police officials. Thereafter, the petitioners made applications to various authorities and also to the Chief Minister of Maharashtra for registering offence against guilty policemen and for transfer of investigation from CID to CBI. Petitioners also sought information under Right to Information Act, 2005 about further progress in the case. Information about postmortem report was also sought by the petitioners from Department of Forensic Medicine & Toxicology,

S.R.T.R. Medical College and Hospital, Ambajogai which was refused by letter dated 16.10.2015 stating therein that information regarding postmortem of deceased cannot be provided under Right to Information Act, 2005. However, the said department issued Death Certificate No.216 dated 07.09.2015 wherein manner of death of victim is specifically mentioned as 'unnatural'. In the backdrop of the above circumstances, the petitioners contend that even after laps of two months from the death of victim, no FIR has been registered about custodial killing and they are still being kept in dark about current status of the case. Therefore, the petitioners have preferred this criminal writ petition with the prayers as above.

4. The learned counsel for the petitioners submits in this case, there is sheer violation of fundamental right to life of the victim as provided by Article 21 of the Constitution of India. The victim was detained illegally and unlawfully by flouting the governing provisions of Criminal Procedure Code. There was no arrest panchanama and even no grounds of arrest communicated to the victim or his relatives. The policemen did not even inform the relatives of victim about his alleged arrest and the place where he was detained and was being taken.

Though there were no special circumstances to excuse the guilty policemen from abiding the statutory rules and procedure, the victim was not even produced before the concerned Magistrate.

5. The learned counsel for the petitioners further submits that the story put forth by the police cannot be trusted as the victim could not possibly have opened the door of the running police van and jumped off it in presence of three policemen while he was handcuffed as per the statement of one of the guilty policemen recorded on 26.08.2015 in respect of death of the victim. It is claimed that victim was arrested at 10.00 a.m. and they left for Koregaon at 10.30 a.m. and the incident took place at 12.30 p.m. at Massajog, Taluka Kaij which is at a distance of 50 kms. The learned counsel submits that it is highly improbable that two hours time is required for travelling the short distance of 50 kms.

6. The learned counsel for the petitioners further submits that there is deliberate delay of more than 24 hours in conducting postmortem of the victim and the postmortem report has been deliberately concealed by the police and the controlling authority

at S.R.T.R. Hospital, Ambajogai. These circumstances coupled with the documentary evidence, particularly the death certificate dated 07.09.2015 wherein it is mentioned that skull of the victim was fractured and the manner of death is unnatural, clearly establish that the victim was brutally tortured by the guilty policemen and murdered in cold blooded manner while he was in unlawful police custody. The learned counsel lastly submits that the petitioners are a poor family having no permanent source of income. The deceased victim was the only earning member in their family and due to his unlawful detention and custodial death, his family which includes his five minor children, parents and his wives are suffering from starvation. The petition may be allowed and the petitioners may be compensated for the loss occurred to them due to custodial death of the victim.

7. The learned APP for the respondent State has invited our attention to the reply filed on behalf of respondent no.4-Deputy Superintendent of Police, CID, Beed. He submits that an offence was registered under Section 379 of IPC against unknown person as regards theft of mobile phone on 25.08.2015. After verification from CCTV footage of the camera installed at the concerned area, the unknown thief was identified as Shaikh

Muhammed Shaikh Rustam (deceased). On 26.08.2015 at about 7.20 a.m., the deceased was seen by residents of the area where incident of theft had occurred and he was caught by them and brought to Shivaji Nagar Police Station, Beed. The deceased made an attempt to run away but was chased and caught by police and brought back to police station. This incident of chasing by police was witnessed by two persons whose statements are also recorded. Thereafter, at about 10.00 a.m., Police Constable Shankar Rathod prepared arrest panchanama and made entry in the arrest register, however the same was not further recorded in the station diary and the deceased was also not referred for medical examination by the concerned investigating officer. Entry in the station diary came to be taken at 10.30 a.m. for taking the accused/deceased for the purpose of recovery of stolen article allegedly concealed by him at his place of residence i.e. Koregaon. During his transportation, while the police vehicle was near village Massajog at about 12.30 p.m., the accused/victim in his attempt to escape from police custody, jumped out of the police van and sustained grievous injuries. He was immediately taken to primary Health Center at Kaij where the concerned medical officer, after administering first aid, referred him to Government

Hospital at Ambajogai considering the serious nature of injuries and his critical condition. Accordingly, he was shifted in ambulance to the Government Hospital at Ambajogai. However, on account of serious injuries, he expired prior to his admission to the said hospital.

8. Learned APP further submits that, considering that the death of accused occurred while he was in police custody, inquiry into the same was handed over to CID, Beed immediately i.e. on 27.08.2015. The documents seized during the inquiry, the statements of witnesses and the medical evidence clearly indicate that the deceased died due to injuries suffered by him on account of his act of jumping out of the running police van. During inquiry, it is also revealed that the deceased had criminal history and on 26.08.2015 in the morning also he attempted to flee from police custody and it was his second attempt to flee from police custody when he suffered grave injuries resulting in his death.

9. Learned APP further submits that, on the direction of Superintendent of Police, Beed, a departmental inquiry was also conducted by Sub Divisional Police Officer, Ambajogai against

three police personnel who accompanied the deceased at the time of incident. On the basis of departmental inquiry, the Superintendent of Police, Beed has penalized the three police personnel namely Head Constable S. H. Rathod, Police Naik N. D. Misal and Police Nike R. V. Fufate with stoppage of their annual increments for two years by holding them guilty of negligence and dereliction of duty which resulted into unfortunate death of the deceased. Learned APP submits that a parallel inquiry as regards death of deceased is also being conducted by the Sub Divisional Magistrate, Ambajogai and the report of the same is awaited, after receipt of which, if found necessary, the same would be forwarded to the National Human Rights Commission, New Delhi for further orders and directions. Thus, the learned APP submits that the instant criminal writ petition claiming compensation is premature and does not merit consideration.

10. We have carefully considered the submissions made by the learned counsel for respective parties. With their able assistance, we have perused the memo of petition, grounds taken therein, annexures thereto and also the reply affidavit.

11. In the facts of the present case, on the basis of the compliant lodged by one advocate Tejas Neharkar, who is journalist by profession, on 25.8.2015, a crime No. 251 of 2015 for the offence punishable under Section 379 of I.P.C. came to be registered with Shivaji Nagar police station, Beed against an unknown thief for having committed theft of mobile handset worth Rs.19,000/- of the complainant Tejas Neharkar. On the next day, i.e. on 26.8.2015 in between 6.00 a.m. to 6.30 a.m. after viewing the C.C. T.V. footage the complainant and his associates had noticed involvement of deceased Shaikh Muhammed Shaikh Rustam in the alleged commission of crime of theft and on their own, the complainant and his associates apprehended deceased Shaikh Muhammed and brought him to Shivaji Nagar police station, Beed around 7.30 a.m. Deceased Shaikh Muhammed thus was kept in detention in the police station. At about 7.45 a.m. deceased Shaikh Muhammed had attempted to escape from the police station and in that attempt, he was caught by the police constable, who was present in the police station and again brought to the police station. Deceased Shaikh Muhammed was tied to one table in the police station with the help of a rope. Around 9.00 a.m., police head constable Mr. Shankar Rathod, who was assigned with the investigation of crime No. 251 of 2015 (theft complaint of mobile) had arrived in the police station. According to the said police head constable Shankar Rathod, he had

prepared an arrest panchanama around 10.00 a.m. and after noticing the same *modus oprendi* in the commission of theft of mobile handsets belonging to different persons and the different crime numbers registered in that regard, the police head constable Shankar Rathod took deceased Shaikh Muhammed in a police vehicle bearing No. MH-23-F-5234 to the native place of deceased Shaikh Muhammed i.e. village Koregaon alongwith the police staff and also panch witnesses. On way, after crossing village Massajog up to 1.5 to 2.00 kilometers, at about 12.30 p.m. when residential house of deceased Shaikh Muhammed remained at a distance of one kilometer, deceased Shaikh Muhammed jumped from the moving police vehicle and in that process he sustained severe injuries. He had sustained injuries on his head and on various parts of the body. He was immediately taken to civil hospital, Kaij and therefrom to S.R.T.R. Medical College and Hospital, Ambajogai. Deceased Shaikh Muhammed though admitted for some time in S.R.T.R. Medical College and Hospital, Ambajogai and he remained there on ventilator, after some time, the treating doctor had declared him dead. The petitioners, particularly the petitioner No.3 had expressed concern about the death of his brother and alleged that his brother Shaikh Muhammed was in fact murdered by the police staff by extending severe beatings to him.

12. On perusal of the papers, which are placed before us, it appears that the Deputy Superintendent of Police, C.I.D., Beed has conducted inquiry into A.D. No. 29 of 2015. Meanwhile, the concerned doctor of S.R.T.R. Medical College and Hospital, Ambajogai had conducted post mortem examination on the dead body of Shaikh Muhammed. The Inquiry Officer/Deputy Superintendent of Police, C.I.D. Beed, had recorded the statements of witnesses and had also collected various relevant documents and concluded in the inquiry by submitting a report to the Additional Director General of Police, C.I.D., Pune to the effect that deceased Shaikh Muhammed met with an accident while attempting to escape from moving police vehicle and no crime has been detected in the same. He had also submitted a report to the Sub Divisional Magistrate, Ambajogai, District Beed for grant of summary of the accidental death. It further appears that the Sub Divisional Magistrate, Ambajogai had also submitted a report on 6.7.2017 to the District Magistrate, Beed concurred with the conclusion drawn by the Inquiry Officer/Deputy Superintendent of Police, C.I.D. Beed.

13. In the case of ***D.K. Basu vs. State of West Bengal, reported in AIR 1997 SC 610***, the Supreme Court has observed that custodial death is perhaps one of the worst crimes in a civilized society. The rights inherent in Articles 21 and 22(1) of the Constitution required to be zealously and scrupulously protected.

Any form of torture of cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. The Supreme Court has also noted certain instances and observed that without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. Death in custody is not generally shown in the records of the lock-up and every effort is made to make out a case that the arrested person died after he was released from custody or in the like manner. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched

by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death as the police lock-up where generally torture or injury caused is away from the public gaze and the witnesses are either police men or co-prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police. The instant case is the classic example of aforesaid observations made by the Supreme Court. On careful scrutiny of almost each and every papers, statements, the documents and the record and proceedings, we have noticed serious infirmities, lacunae, suspicious circumstances in the entire process. We summarize the same in the following manner:-

- i) In view of the statements of the police staff of Shivaji Nagar police station, Beed, recorded during the course of inquiry, including the investigating officer, Police Constable Shankar Rathod, buckle No. 502, who was assigned with the investigation of crime No. 251 of 2015 (mobile theft), deceased Shaikh Muhammed was brought to police station on 26.8.2015 at about 7.30 a.m. by the complainant, his brother and some other persons, after noticing involvement of deceased Shaikh Muhammed in the said commission of alleged theft of

mobile handset belonging to the complainant Tejas Neharkar. However, said Tejas Neharkar in his statement, recorded during the course of inquiry, stated that around 8.30 a.m. he went to the concerned police station i.e. Shivaji Nagar Police station, Beed and noticed that deceased Shaikh Muhammed was kept under detention in the police station by suspecting his involvement in the aforesaid crime, registered on the basis of his complaint. It is to be mentioned here that real brother of the complainant Tejas Neharkar is working as police constable and the Inquiry Officer/Deputy Superintendent of Police, Beed has also passed some adverse remarks about him.

ii) Though deceased Shaikh Muhammed was brought to the police station at about 7.30 a.m., neither any entry about the same was taken in the register maintained at the police station nor he was kept in the police lock up.

iii) At about 7.45 a.m. deceased Shaikh Muhammed allegedly made an attempt to escape from the police station and he was chased and caught hold

by the police constable attached to the said police station and was thereafter again brought to the police station by the constable.

iv) Even thereafter, no entry was taken anywhere in any of the register of the police station, including the station diary about the said attempt of escape and chasing by the police constable and further apprehending at some distance and bringing him back to the police station.

v) Deceased Shaikh Muhammed even thereafter was not kept in the police lock up by making entry in the lock up register and with the help of rope (commonly known as bag dor) in the police station tied with the office table, in most inhuman manner (we restrain ourselves in saying that deceased Shaikh Muhammed was tied with the leg of office table like a cattle/animal). Deceased Shaikh Muhammed was kept in that position till he was taken to his native place village Koregaon for recovery of mobile handset of the crime and in connection with the recovery of mobile handsets in different crimes registered with the same police station.

There is no panchanama under Section 27 of Indian Evidence Act drawn while leaving the Shivaji Nagar Police Station, Beed.

vi) As per the statement of police Naik Babasaheb Sanap, buckle No. 638, around 10.00 a.m. the police head constable Shankar Rathod came to Shivaji Nagar police station and without taking any entry in the station diary about arrest of deceased Shaikh Muhammed and without sending deceased Shaikh Muhammed for his medical examination, took deceased Shaikh Muhammed for investigation in a police vehicle.

vii) The Inquiry Officer/Deputy Superintendent of Police, after going through the relevant record, has also concluded in the inquiry that there is no entry in the register maintained in the police station about bringing deceased Shaikh Muhammed in the police station at about 7.30 a.m. and further there is no entry about the alleged attempt made by deceased Shaikh Muhammed to escape from the police custody at about 7.45 a.m. It has also been concluded that though the arrest panchanama in respect of arrest of deceased

Shaikh Muhammed, shown to have been drawn at about 10.00 a.m. in the crime No. 251 of 2015 under Section 379 of I.P.C., neither deceased Shaikh Muhammed was sent for medical examination nor intimation about his arrest was given to his relatives.

viii) There is no entry about the arrest of deceased Shaikh Muhammed in the aforesaid crime in the station diary and after perusal of the contents of so called arrest panchanama and the statements of panch witnesses, who are none else than the driver of ambulance vehicle, we find the aforesaid arrest panchanama as highly suspicious document. The police naik Babasaheb Sanap, buckle No. 638, who was present at the relevant time in Shivaji Nagar police station, when deceased Shaikh Muhammed was taken from the police station by police head constable Rathod, has not stated in his statement, recorded by the Inquiry Officer/Deputy Superintendent of Police, C.I.D. Beed that the police head constable Shankar Rathod had drawn arrest panchanama in the police station and also about the fact that for that purpose, the police head constable Mr. Rathod has called two panch witnesses.

On the other hand, the police Naik Babasaheb Sanap has specifically stated in his statement that no entry about arrest of deceased Shaikh Muhammed was taken in the police station diary and the head constable Rathod took deceased with him without making any entry and even without taking any weapons in the police vehicle.

ix) Thereafter, head constable, Shankar Rathod alongwith Police Naik Mr. Fufate and police Naik Mr. Misal, proceeded towards village Koregaon (native of deceased Shaikh Muhammed) in a police vehicle, bearing registration No. MH-23-F-5234. According to head constable Mr. Shankar Rathod, they firstly went to police station, Kaij and with the help of police staff at police station Kaij, they had taken two panch witnesses and started proceeding to village Koregaon. However, we do not find that the statements of those panch witnesses recorded during the course of entire inquiry, who would have been the best independent witnesses to state the true facts.

x) Furthermore, on perusal of the statements of

head constable Mr. Rathod, Police Naik Mr. Fufate and police Naik Mr. Misal, it appears that handcuff and a rope (bag dor) were taken from Shivaji Nagar police station and as per the entry taken in the register and report submitted by the Police Inspector, Shivaji Nagar police station, entry about handing over handcuff and rope was taken in the relevant register, discloses that the same was handed over to one police Naik Babasaheb Sanap, buckle No. 638. However, it appears that from the extract of said register, which is a part of record that after entry dated 18.8.2015, entry about obtaining handcuff and rope (bag dor) from the police station on 26.8.2015 at about 10.05 a.m. seems to have been inserted. It further appears from perusal of said entry that said handcuff and rope was obtained by police naik Mr. Fufate and not by police naik Mr. Sanap.

xi) Deceased Shaikh Muhammed was taken in the said police vehicle by police head constable Mr. Rathod accompanied by police naik Mr. Fufate and police naik Mr. Misal and even though deceased Shaikh Muhammed was in handcuff position, tied with a rope

and made to sit on the chair in the middle portion of the police vehicle, by giving jerk, escaped and jumped from moving police vehicle. We find this as highly suspicious circumstance. There is no further reference as to what happened to the said handcuff and the rope tied to his hands. The said articles have not been seized at any time.

xii) Though during the course of inquiry certain statements of some independent witnesses, travelling at the same time from the said road, stated in their statements that they have actually seen deceased Shaikh Muhammed jumping from the moving vehicle, we find no reference in entire inquiry papers as to how Inquiry Officer has independently made search of these witnesses. On the other hand, surprisingly, we find it in the statement of police head constable Shankar Rathod that even he had noted registration number of the vehicle jeep proceeding from the said road at the relevant time and accordingly Inquiry Officer has recorded statements of said persons as eye witnesses. Obviously, those so called eye witnesses must have been brought before the Inquiry Officer by the police

head constable Shankar Rathod. Furthermore, we find contradictory statements of so called independent eye witnesses. Witness Digamber Khandare has stated in his statement that he was proceeding by motorcycle at the relevant time when he witnessed actual incident, however, another eye witness Datta Khandare stated that he was proceeding in a jeep accompanied by some persons, including said Digambar Khandare. Though there is reference of one Mr. Sudarshan Deshmukh, travelling independently on his motor cycle, and whose statement was also recorded, neither he has given reference of other so called eye witnesses nor the other eye witnesses have given a reference of Mr. Sudarshan Deshmukh in their statements. Only one so called eye witness has given reference about broken handcuff and the rope. However, as stated above, the broken handcuff (if really the handcuff was taken from the police station before leaving the police station) was not seized nor there is any further reference to the said two articles i.e. handcuff and rope (bag dor). One eye witness Mr. Sudarshan Deshmukh has stated in his statement that he has seen deceased Shaikh Muhammed fallen from running vehicle, however, he

did not say that deceased has jumped from moving vehicle.

xiii) Though deceased Shaikh Muhammed was initially taken to Rural Hospital, Kaij and as per the statement of Dr. Balasaheb Sawant, attached to Rural Hospital, Kaij at that time, deceased was brought to the said hospital at about 13.00 hours and he had noted his serious condition, however, he failed to record injuries on the person of deceased Shaikh Muhammed.

xiv) As per the statement of petitioner No.3 Shaikh Ayyub, who happened to be brother of deceased Shaikh Muhammed, recorded during the course of A.D. inquiry, around 1.30 p.m., his elder brother Raju has called him on his phone and informed that deceased Shaikh Muhammed was admitted in serious condition in Rural Hospital, Kaij. Accordingly, Shaikh Ayyub went to S.R.T.R. Medical College and Hospital, Ambajogai. The elder brother Shaikh Raju had received phone call on his mobile that his brother deceased Shaikh Muhammed was admitted in Rural Hospital, Kaij and his condition is critical and accordingly he went there.

He had accompanied his brother deceased Shaikh Muhammed in an ambulance to S.R.T.R. Medical College and Hospital, Ambajogai. Only after deceased Shaikh Muhammed was taken to Rural Hospital, Kaij in serious injured condition, the concerned police, accompanied deceased Shaikh Muhammed, informed to the relatives of deceased for the first time about the condition of deceased.

xv) On perusal of the post mortem report, it appears that final opinion as to the cause of death is due to head injury in the form of fracture of skull and subdural haemorrhage with cerebral and cerebellar edema with interstitial pneumonitis and focal pulmonary edema. Deceased Shaikh Muhammed, as per the column No. 17 of post mortem report, had sustained near about 20 external injuries, including head injury, contusions, abrasions, lacerated wounds. All injuries were fresh, recent and ante mortem in nature. In response to the specific query made by Inquiry Officer, the concerned hospital by letter dated 15.2.2016 vide outward No. 100 of 2016 informed to the Inquiry Officer/Deputy Superintendent of Police that the possibility cannot be

ruled out that the aforesaid head injuries on the person of deceased Shaikh Muhammed caused by jumping from moving vehicle. It has been stated in the said reply to the queries, that *prima facie* those injuries do not appear to be the injuries caused by the beatings/physical violence.

xvi) We find no response from the concerned Hospital about the injuries, like contusions on the person of deceased Shaikh Muhammed whether those are possible by fall from moving vehicle. It is also pertinent to note here that the aforesaid hospital consisting of a team of experts, has merely informed that *prima facie* the injuries on the person of deceased Shaikh Muhammed are not possible to be sustained by beatings. It is expected from the medical expert to express opinion as to the probable cause of injury, however, to our surprise the word "*prima facie*" has been used while expressing the opinion.

xvii) We do not find that the Inquiry Officer/Deputy Superintendent of Police, C.I.D. Beed, has applied his mind to the facts and circumstances emerged during

the course of inquiry. So also the report submitted by the Sub Divisional Magistrate is nothing but in verbatim re-production of observations made by the Inquiry Officer/Deputy Superintendent of Police, C.I.D. Beed.

xviii) Though during the course of inquiry of A.D. the petitioner No.3 herein and his elder brother Raju have made serious allegations about murder of their deceased brother Shaikh Muhammed, no crime was registered on the basis of their complaint.

14. Once again it will be apt to make reference to the case of **D.K. Basu (supra)** in which the Supreme Court, by referring the observations made earlier in the case of **Joginder Kumar vs. State, reported in (1994) 4 SCC 260**, has observed in para 20, 21 and 22 of the judgment as follows:-

"20. This Court in Joginder Kumar Vs. State [1994 (4) SCC, 260] (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined :

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and

even so as to the need to effect arrest. Denying person his liberty is a serious matter."

21. *Joginder Kumar's case (supra) involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7.1.1994. On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before this Court on 11.1.1994 and in compliance with the notice, the lawyer was produced on 14.1.1994 before this court. The police version was that during 7.1.1994 and 14.1.1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenue asserted otherwise. This Court was not satisfied with the police version. It was noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed. Were important questions which required an answer. Besides, if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Gaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said:*

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

.....

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations

and responsibilities on the other; weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding with comes first-the criminal or society, the law violator or the abider....."

This Court then set down certain procedural "requirements" in cases of arrest.

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be zealously and scrupulously protected. We cannot whisk away the problem. Any form of torture of cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt of law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal court of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws."

The Supreme Court in the aforesaid case of **D.K. Basu** in para 30 of the judgment, while noticing the abuse of police powers

has made the following observations:-

“30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable form of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.”

The Supreme Court in the aforesaid case of **D.K. Basu** in para 36 laid down the following requirements to be followed in cases of arrest/detention till legal provisions are made in that behalf as preventive measures:-

“36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee

must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by at least one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting

the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board."

In para 37 of the judgment in the case of **D.K. Basu (supra)**, the Supreme court has observed that the failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

15. In the case of **Lalita Kumari vs Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1, in para 111,**

after elaborate discussion by the Full Bench on the scope of Section 154 of Code of Criminal Procedure, issued the following directions:-

“111) In view of the aforesaid discussion, we hold:-

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
- iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
- v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
- vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which*

preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above”.

16. In the instant case, after noticing the above infirmities, lacunae, suspicious circumstances and the fact that though during the course of inquiry of A.D., real brothers of deceased Shaikh

Muhammed have made allegations about murder of their brother deceased Shaikh Muhammed as a result of custodial violence, we are of the considered view that the necessary directions are required to be given for registration of crime against those police officials i.e. Mr. Shankar Rathod, buckle No. 502, Mr. R.V. Fufate, buckle No. 1277, and Mr. N. D. Misal, buckle No. 1490, then attached to Shivaji Nagar police Station, Beed, for the offence punishable under Section 302 r.w. 34 of I.P.C. We further deem it appropriate to direct respondent State of Maharashtra to entrust the investigation of the said crime to the State C.I.D. forthwith. The said investigation shall be controlled and monitored by the Additional Director General of Police, C.I.D. Pune. The Additional Director General of Police, C.I.D. Pune shall appoint an Investigating Officer not below the rank of Superintendent of Police.

17. The Supreme Court in the aforesaid case of **D.K. Basu** in para 55 of the judgment, has made the following observations:-

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the

defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not a derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

18. So far as the prayer for grant of compensation is concerned, in the case of **Sube Singh Vs. State of Haryana and others, reported in (2006) 3 SCC 178**, in para 45, 46 and 47, the Supreme Court has made the following observations:-

“45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or

not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. Courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable Police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

47. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier para are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters. In *State of MP vs. Shyamsunder Trivedi* - 1995 (4) SCC 262, reiterated in *Abdul Gafar Khan and Munshi Singh Gautam*, this Court observed :-

"Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available..... Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues..... The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case....., often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence

available to the prosecution to directly implicate them with the torture."

19. In the case of **Smt. Nilabati Behera @ Lalita Behera vs. State of Orissa and others, reported in 1993 CRI.L.J. 2899** in para Nos. 18, 19 and 21 the Supreme Court has made the following observations:-

"18. This view finds support from the decisions of this Court in the Bhagalpur blinding cases: Kharti and Others (II) v. State of Bihar and Others, [1981] 1 S.C.C. 627 and Kharti and Other (IV) v. State of Bihar and Others, [1981] 2 S.C.C. 493, wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared 'to forge new tools and devise new remedies' for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation and Others v. Union of India and Others, [1991] 4 S.C.C. 584, Misra, C.J. stated that 'we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future..... there is no reason why we should hesitate to evolve such principle of liability....' To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

19. *We respectfully concur with the view that, the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, were more appropriate.*

21. *The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah (AIR 1983 SC 1086) and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated*

therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal (AIR 1965 SC 1039) distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

20. In the instant case, deceased Shaikh Muhammed was bread earner of the family. There are five minor children, including three daughters and two sons and widow. Deceased Shaikh Muhammed was labour by occupation. There is clear violation of mandate laid down by the Supreme Court in the case of **D.K. Basu (supra)**, as much as *prima facie*, there is sufficient material to draw inference that deceased Shaikh Muhammed was subjected to custodial violence.

21. In view of above, we deem it appropriate to direct the respondent State to pay an amount of Rs.5,00,000/- (Rupees Five lacs only) towards compensation to the petitioner Nos.1 and 2 and with direction for investment of part amount of compensation in the names of minor children of deceased Shaikh Muhammed. We also clarify that award of this compensation amount will not affect any other liability. We also deem it appropriate to initiate suo motu

contempt proceedings against respondent No.7 the police head constable, Mr. Shankar P. Rathod, buckle No. 502 for violating the mandatory direction given by the Supreme court in the case of ***D.K. Basu (supra)***.

22. In view of above discussion, we proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby allowed.
- II. The respondent State is hereby directed to pay an amount of Rs.5,00,000/- (Rupees Five lacs only) by way of compensation to petitioner No.1 and petitioner No.2, within three months from today.
 - a) Out of Rs.5,00,000/-, an amount of Rs.2,00,000/- be deposited in the name of petitioner No.1 viz. Shaikh Shama wd/o Shaikh Muhammed, in any Nationalized Bank, for a period of five years and she is entitle to withdraw the interest amount payable thereon, quarterly. An amount of Rs.50,000/- be paid to petitioner No.2.
 - b) So far as the remaining amount of Rs.2,50,000/- is concerned, the State and its authorities shall make fixed deposit of Rs.50,000/- each in the names of three minor daughters and two minor sons of petitioner No.1, for a period of five years or till they attain the age of majority, whichever occurs later.

c) The petitioner No.1 is entitled to withdraw the interest accrued on the amount kept in fixed deposits in the names of minor children.

d) The respondent State authorities shall take necessary steps in this behalf and report compliance to this Court within a period of four months from today.

e) The Respondent State is at liberty to recover the compensation amount of Rs.5,00,000/- from the erring police officials.

III. a) We direct respondent No.3 Superintendent of Police, Beed to forthwith issue suitable directions for registration of crime in the concerned police station against respondent Nos. 7 to 10 i.e. Mr. Shankar H. Rathod (Buckle No.502), Mr. Rajaram V. Fufate (Buckle No.1277), Mr. Narayan D. Misal (Buckle No.1490) and police driver Mr. Yeole (Buckle No.2157), respectively, then attached to Shivaji Nagar police Station, Beed, for the offence punishable under Section 302 r.w. 34 of I.P.C.

b) On registration of crime as above, we direct the respondent State of Maharashtra to entrust the investigation of the said crime to the State C.I.D. forthwith. The Additional Director General of Police, C.I.D. Pune, within fortnight from today shall appoint an Investigating Officer not below the rank of Superintendent of Police to investigate into the said crime. The over all supervision of further investigation into the said crime should be constantly monitored by the Additional Director

General of Police, C.I.D. Pune, who shall seek report after fortnight.

c) We make it clear that the investigating agency is at liberty to add the other persons as accused in the crime in the event their involvement in the crime is revealed during the course of investigation.

d) We hope and expect that the investigation would be expedited and be taken to its logical end within a period of four months from today.

IV. Registrar (Judicial) of this Court is hereby directed to file suo motu contempt proceedings against respondent No.7, the police head constable, Mr. Shankar P. Rathod, buckle No. 502, for violating the mandatory direction given by the Supreme Court in the case of ***D.K. Basu (supra)***.

V. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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