

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 578 of 2019**

1. Smt. Usha Yadav Wd/o Late Shri Mohan Yadav, Aged About 45 Years, R/o Chatidih, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.
2. Ku. Jyoti Yadav D/o Late Shri Mohan Yadav, Aged About 20 Years, R/o Chatidih, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.
3. Ajay Yadav S/o Late Shri Mohan Yadav, Aged About 25 Years, R/o Chatidih, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.
4. Janardan Naidu S/o Late Shri Jagdish Naidu, Aged About 29 Years, R/o Chatidih, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home/Police Secretariat, Mahanadi Bhawan, Police Station And Post Rakhi, New Raipur, District Raipur, Chhattisgarh.
2. Director Central Bureau Of Investigation Special Crime-II, Plot No. 5 (B) CGO Complex, Lodhi Road, Opposite Electronic Niketan Office Delhi-110003.
3. Director General Of Police (DGP) Police Headquarters (PHQ) Mahanadi Bhawan, Mantralaya, Police Station And Post Rakhi, New Raipur, District Raipur, Chhattisgarh.
4. Collector, Bilaspur, District Bilaspur, Chhattisgarh.
5. Inspector General Of Police (IGP), Office of Inspector General of Police, Civil Line, Bilaspur, Chhattisgarh.
6. Superintendent Of Police (S.P.) Office of The Superintendent of Police, Collectorate Bilaspur, Chhattisgarh.
7. The State House Officer, Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.
8. Khurshid Ahmed S/o Late Shri Meergulam Rasoi, Aged About 48 Years, Constable No. 65, Posted At Police Station Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh.
9. Kamal Prasad Kurre S/o Shri Roop Sahai Kurre, Aged About 26 Years, Constable No. 137, Posted At Police Station Sarkanda, Bilaspur, Chhattisgarh.
10. Indra Kumar Patel S/o Shri Mohan Lal Patel, Aged About 27

Years, Constable No. 1011, Posted At Police Station Sarkanda, Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	:	Mr. B.K. Charkawarty, Advocate.
For State/Respondents	:	Mr. Sudeep Agrawal, Dy. A.G.
For Respondents 2	:	Mr. R.K. Mishra, Asstt. Solicitor General.
For Respondents 8 to10:	:	Mr. Chandresh Shrivastava, Advocate.

Hon'ble Shri Prashant Kumar Mishra, Ag. C.J.

Hon'ble Smt Rajani Dubey, J

Judgment on Board

Per Rajani Dubey, J

06/09/2021

01. The appellants have preferred this Writ Appeal being aggrieved by the order dated 17.09.2019 passed in Writ Petition (Cri.) No.404/2018 by the learned Single Judge. The learned Single Judge held that the Judicial enquiry has been made thoroughly and there is nothing to comment on the improbability of the said incident which is an accident.

02. Briefly stated facts are that Deepak @ Chhotu Yadav was son of appellant No.1-Smt. Usha Yadav, who died in police custody on 03.1.2016. Deceased Deepak @ Chhotu Yadav was caught by the residents of locality when he was committing theft and handed over him to the police. While Deepak was being taken in a jeep, he made an attempt to escape and unfortunately fell down in an open well as a result of which he died due to drowning. It is alleged that news reports and the evidence in the enquiry are very much contradictory and the fall of son of the Appellant No.1 herein in the said well is also improbable. According to the appellants, the Magisterial enquiry, that has taken place, itself shows that the

report was given suppressing the fact of custodial death of the deceased. As there is no registration of crime in this case, therefore, the appellants herein have not been benefited with any compensation. An application was also moved by the appellants before District Legal Services Authority for grant of compensation, which was rejected only on the ground that as there is no FIR registered regarding the death of the deceased, no compensation can be awarded. Therefore, the appellants herein had filed Writ Petition (Cri) before the learned Single Judge praying for CBI enquiry and compensation citing the case of deceased Deepak @ Chhotu Yadav to be of custodial death. This petition was opposed by the respondents.

03. The learned Single Judge, after hearing the parties, dismissed the writ petition at the motion stage.

04. Learned counsel for the appellants would submit that it is a case of custodial death, and the deceased died when he was either bring brought to police station Sarkanda or was taken to CIMS for treatment after arrest but on the way it was alleged/levelled that he jumped off moving jeep and while he was running away, fell down in the well and as a result of injuries suffered, he died. Learned counsel further submits that Sarkanda Police has completely developed a concocted story but it is clear that this is a matter of custodial death. He would also submit that award of compensation, in a proceeding under Article 32 by Hon'ble Supreme Court or by the High Court under Article 226 of the Constitution of India, is a remedy available in public law. The enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Thus, this Court may call for the entire record and

direct the CBI to register an FIR and investigate the matter under observation of this High Court and may also direct respondents/State to grant compensation atleast of Rs.8,00,000/- (Rs. Eight Lac only) to the unfortunate appellants. Learned counsel for the appellants also submits that in this case it is significant to order for CBI enquiry otherwise it would cause miscarriage of justice. In support of his submission, he placed reliance on the decisions of Hon'ble Supreme Court rendered in the matter of **Rudul Sah V. State of Bihar and Another¹**, **Sebastian M. Hongray V. Union of India and Others²**, **Bhim Singh V. State of J&K³**, **Saheli, A Women's Resources Centre and Others V. Commission of Police, Delhi Police Headquarters and Others⁴** and **State of Maharashtra and Others V. Ravikant S. Patil⁵**.

04. Learned counsel for the State has opposed the writ appeal submitting that the order of the learned Single Judge calls for no interference.

05. We have heard learned counsel for the appellants and respondents and perused the material on record.

06. The material available on record would show that Deepak @ Chhotu Yadav had died on 03.12.2016. Judicial enquiry also disclosed the facts that on 02.12.2016 the deceased had gained entry in one house at Songanga colony for committing theft. As he was seen by habitants of that colony, an attempt was made by him to escape from there by jumping off the balcony resulting injuries on his head. Thereafter, he was caught hold of by the residents of

1 [1983] 3 S.C.R. 508

2 [1984] 1 S.C.R. 904

3 [1984] Supp. S.C.C. 504

4 [1990] 1 S.C.C. 422

5 [1991] 2 S.C.C. 373

that locality and handed over him to the police patrolling party. As the deceased was injured, he was being taken to the hospital in a vehicle of police patrolling party. When the patrolling party was on their way, the deceased jumped off the moving vehicle and ran towards the Palm Enclave Apartment. While jumping from the wall which was inside the compound, he fell down in well and died due to drowning.

07. In the matter of **State of West Bengal and Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others**⁶, Hon'ble Supreme Court held in para 17, which reads thus :-

“17. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing

6 (2010) 3 SCC 571

the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

08. Further, Hon'ble Supreme Court in the matter of **Pooja Pal V. Union of India and Others**⁷, in para 75, held as under:-

“75. That the extraordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to CBI to conduct investigation must be exercised with great caution, was underlined in Committee for Protection of Democratic Rights⁸ as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

09. In the instant case, the learned Single Judge has rightly held that in the Judicial enquiry apart from examining the police witnesses, local witnesses have also been examined and on the basis of the statements recorded, it has been found confirmed that cause of death of the deceased had been accidental after he made escape from police custody, therefore, it cannot be held that present is a case of custodial death.

⁷ (2016) 3 SCC 135

⁸ (2010) 3 SCC 571:(2010) 2 SCC (Cri) 401

10. Having considered the entire fact situation of the case and the material available on record, we have not found any good ground to interfere with the order passed by the learned Single Judge.

11. As a sequel, the appeal being devoid of merit is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Prashant Kumar Mishra)

Acting Chief Justice

Sd/-

(Rajani Dubey)

Judge