

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 1207 of 2019

Smt. Nirmala Bai Sahu, W/o Sitaram Sahu, Aged About 55 Years, R/o. Village- Sirri, Tahsil- Kurud, District- Dhamtari (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
2. Director General of Police (Jail) Raipur, District- Raipur (C.G.)
3. Collector Raipur, District- Raipur (C.G.)
4. Superintendent of Jail Raipur, District- Raipur (C.G.)

---- Respondents

For Petitioner : Mr. Sumit Singh, Advocate.

For State/res. No. 1 to 4 : Mrs. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

08.10.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India seeking direction to the respondent authorities to pay monetary compensation to the petitioner on account of custodial death of her son- Bedram Sahu.
2. Learned counsel for the petitioner would submit that petitioner's son was detained in Central Jail, Raipur in Cell No. 8 and one Narendra Kumar Sahu was also detained in the same Cell, who was convicted by learned Fourth Additional Sessions Judge, Raipur in Session Trial No. 69/2012 for committing offence punishable under Sections 302 & 201 of I.P.C. He would further submit that on 21.11.2016 at about 4:00 a.m., the co-prisoner Narendra Kumar Sahu gave multiple blow to her son by scissor thereafter, the deceased was taken to Jail Hospital where he was examined by Dr. A. Khandekar and after examination, he

was declared dead. In pursuance of the incident took place on 21.11.2016, FIR No. 0344/2016 has been registered against co-prisoner Narendra Kumar Sahu at Police Station- Ganj, District- Raipur for committing offence punishable under Section 303 of I.P.C.

3. Learned counsel for the petitioner would further submit that as the incident took place when deceased was in custody and due to non-providing security measure by the jail authorities, the deceased succumbed to death, therefore, it is custodial death, as such, the petitioner is entitled to get compensation. He would refer to the judgment passed by Hon'ble the Divisional Bench of this Court in **Saroj Shrivastava Vs. State of Chhattisgarh & others**¹, wherein Hon'ble the Division Bench after considering the various law points on this subject has given its finding and defined the custodial death as under:-

“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 under trial 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

¹ WPCR No. 15 of 2012 (decided on 18.04.2018)

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 byway 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 byway 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.

4. Learned counsel for the petitioner would further submit that Hon'ble the Division Bench after considering the law on this subject that the deceased has succumbed to custodial death, therefore, directed the respondent authorities to pay compensation considering the quantum of compensation. Hon'ble the Division Bench has relied upon the judgment rendered by Hon'ble the Supreme Court has passed the following order :-

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 MPHT81** 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.

5. Learned counsel for the petitioner would also submit that Hon'ble the Division Bench has granted compensation to the tune of Rs. 15 Lakhs to the petitioner therein where age of the deceased was 33 years. In the present cases, age of the deceased was 32 years, therefore, the same compensation may be granted to the petitioner. The judgment passed by Hon'ble the Division Bench has also been considered by Coordinate Bench of this Court in **Ramkhilawan Dansena & another Vs. State of Chhattisgarh & others**², wherein the Coordinate Bench has reiterated the law and passed the judgment which is extracted as under:-

"21. Taking into the various proposition, therefore, and the fact that the deceased left behind his father, mother, wife and one daughter, it would be proper in the facts of this case to award compensation of Rs.15 Lakhs to the legal heirs of the deceased within a period of two months from today. It is ordered accordingly. In absence of such payment, it will carry an interest of Rs. 9% p.a. Out of the compensation amount, if so paid, rupees 4 lakhs would be paid to the petitioners namely Ramkhilawan Dansena & Smt. Keshar Bai, who are the father & mother i.e. 2 Lakhs each and out of remaining 11 Lakhs; 6 lakhs would be paid to the wife i.e. Smt. Chanda Dansena respondent No.8 and 5 Lakhs would be paid to the daughter Rashi respondent No.9."

6. Learned State counsel would submit that Rs. 3 Lakhs has

² WPC No. 6242 of 2009 (decided on 19.07.2019)

already been paid to the petitioner i.e. mother of the deceased as compensation on 31.12.2020 immediately after filing of this petition. Letter No. 7858/warrant/2020 dated 06.10.2020 along with other documents sent by Jail Superintendent, Central Jail, Raipur has been produced by learned State counsel today for perusal of this Court and the same is taken on record.

7. In view of the submissions made by learned counsel for the parties, judgment passed by Hon'ble Hon'ble the Supreme Court, Divisional Bench of this Court in **Saroj Shrivastava (Supra)** & the Coordinate Bench of this Court in **Ramkhilawan Dansena (Supra)**, this petition is allowed and it is held that the petitioner's son succumbed to custodial death as such, the petitioner is entitled to get compensation to the tune of Rs. 15 Lakh.
8. The respondent authorities are directed to award total compensation of Rs. 15 Lakhs to the petitioner and children (Vikas Sahu, aged about 17 years & Vijay Kumar, aged about 13 years) of the deceased within a period of three months from the date of receipt of copy of this Court. After adjustment of Rs. 3 Lakhs, which has already been awarded to the petitioner, remaining Rs. 12 Lakhs is payable to her. Out of remaining compensation amount of Rs. 12 Lakhs, Rs. 2 Lakhs is payable to her for maintenance of children, Rs. 5-5 Lakhs is directed to be kept in the form of fixed deposit in name of children of the deceased namely Vikas Sahu & Vijay Kumar each in any Nationalized bank for three years which will be renewable. The amount so deposited in FDR can be withdrawn by the petitioner in case of exigency, such as education, marriage, medical emergency of the children, if required by submitting proof of the same by filing appropriate application before the concerned District Magistrate.
9. It is further observed that since the amount of compensation as awarded is paid out of the government exchequer for the disastrous act committed by few of the erring officers, which resulted in custodial death, the Government shall be at a liberty

and shall be free to have recourse for recovery against those officers, if so desired following due course of law.

10. With these observations and directions, this writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge