

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 422 OF 2013

1. Smt. Sanjeevani wd/o Begya Pawar
age 24 years, occ. Nil
R/o Vadhona, Tq. Sengaon
Dist. Hingoli
2. Kalabai w/o Nainu Pawar
age 50 years, occ. Household
r/o Vadhona, Tq. Sengaon
Dist.Hingoli
3. Nainu s/o Faislya Pawar
age 60 years, occ. Agril.,
R/o Vadhona, Tq. Sengaon
Dist. Hingoli

Petitioners

Versus

1. The State of Maharashtra
Through Secretary
Home Department,
Mantralaya, Mumbai 32.
2. The District Collector, Hingoli
Dist. Hingoli
3. The Police Station, Risod
Tq. Risod, Dist. Washim
4. The Deputy Superintendent of Police
C.I.D. Branch, Washim
Dist. Washim
5. Prakash s/o Hiralal Taram
age 44 years, occ. Service as
Police Head Constable B.No. 335
R/o Police Station, Risod

Dist. Washim

6. Panjab s/o Manikrao Patkar
age 42 years, occ. Service as
Police Constable B.No. 382
r/o Police Station, Risod
Dist. Washim
7. Nagorao S/o Bhagwanrao Khandke
age 41 years, occ. Service as
Police Constable B.No.819
R/o Police Station Risod
Dist. Washim
8. Shivaji Namdeo Khillari
age 43 years, occ. Service as
Driver Police Constable B.No. 365
R/o Police Station Risod
Dist. Washim
9. Vasant Kaniram Jadhav
age 40 years, occ. Service as
Naik Police Constable B.No. 627
R/o Police Station Risod,
Dist. Washim
10. Madhav Manikrao Dhande
age 45 years, occ. Service as
Police Inspector
r/o Police Station Risod
Dist. Washim
11. Ashok Nivruti Vaidya
age 43 years, occ. Service as
Police Head Constable B.No. 343
R/o Police Station Risod
Dist. Washim
12. Madan Keshav Pawar
age 42 years, occ. Service as
Police Constable B.No. 1173

r/o Police Station Risod
Dist. Washim

13. Ramesh Sitaram Pawar
age 41 years, occ. Service as
Police Constable B.No 1145
R/o Police Station Risod
Dist. Washim

Respondents

Mr. P.N. Kalani, Advocate for the petitioners.
Mr. G.O, Wattamwar, APP for respondent Nos. 1 to 4.
Mr. H.V. Patil, Advocate for respondent Nos. 5 to 13.

**CORAM : T.V. Nalawade &
M.G. Sewlikar, JJ.**

RESERVED ON : 3rd February, 2021
PRONOUNCED ON : 23rd February, 2021

JUDGMENT : (Per M.G. Sewlikar, J.)

1. By this petition, petitioners are claiming *ex-gratia* compensation for the custodial death of deceased Begya Pawar. Factual matrix in nutshell is as under :-

The deceased Begya Pawar was the husband of petitioner No. 1 and son of petitioners No. 2 and 3. Petitioners have alleged that on 09.05.2011, respondent No. 10 – Police Inspector of police station, Risod, went to the house of the deceased. Respondent No. 10 was accompanied by respondents No. 5 to 9 and 11 to 13. All of them forcefully dragged the deceased Begya Pawar from his house

and also picked up one Raju Pawar from his field. Both Begya Pawar and Raju Pawar were subjected to merciless beating by respondents No. 5 to 13 to obtain confession from them. The deceased Begya Pawar sustained 44 injuries in the custodial torture inflicted by respondents No. 5 to 13. On 10.05.2011 in the morning, Begya Pawar died due to the injuries inflicted by respondents No. 5 to 13. He was declared dead on arrival in the hospital.

2. It is further alleged that on the very day, respondent No. 10 registered Crime No. 88/2011 against deceased Begya Pawar and Raju Pawar. The allegations in the said First Information Report were that both Begya Pawar and Raju Pawar were in preparation of committing dacoity and, on the same day, AD No. 17/2011 came to be registered on account of custodial death of Begya Pawar.

3. In the autopsy conducted on the dead body of Begya Pawar on 11.05.2011, 44 injuries were noticed by the Medical Officer. The cause of death was shock and haemorrhage following multiple contusions all over body with multiple fractures.

4. On 12.05.2011, petitioner No. 3 i.e. the father of deceased

Begya Pawar lodged a complaint alleging therein that Begya Pawar was brutally killed by respondents No. 5 to 10. This complaint was lodged with the Deputy Superintendent of Police, Washim on the basis of which, Crime No. 108/2011 came to be registered with Police Station, Washim.

5. The said Crime No. 108/2011 was investigated into by Anwar Mehboob Shaikh, the Deputy Superintendent of Police. In the investigation, it transpired that Begya Pawar died due to the custodial torture inflicted by respondents No.5 to 13. Accordingly, charge-sheet also came to be filed. It is not in dispute that the deceased Begya Pawar was picked up from Hingoli. The petitioners are claiming compensation to the tune of Rs. 25,00,000/- on account of death of Begya Pawar due to custodial torture.

6. Heard Shri Kalani, learned counsel for the petitioners, Shri Wattamwar, learned APP for respondents No. 1 to 4 and Shri H.V. Patil, learned counsel for respondents No. 5 to 13.

7. Learned counsel Shri Kalani submitted that Begya Pawar was picked up from his residence at Hingoli and he was detained by

respondents No. 5 to 13. He submitted that after the death of Begya Pawar, Crime No. 88/2011 came to be registered mysteriously and deceased Begya Pawar and one Raju Pawar were shown to be arrested in that crime. He further submitted that B summary in that crime was filed by Washim police station in respect of another accused Raju Pawar. The said B Summary was sanctioned by the learned Judicial Magistrate First Class having jurisdiction. He argued that this shows that just to cover up the death of Begya Pawar, Crime No. 88/2011 came to be registered. He further submitted that upon the complaint of petitioner No. 3, the father of deceased Begya Pawar, Crime No. 108/2011 came to be registered in which charge-sheet has been filed against respondents No. 5 to 13 under Section 302 of Indian Penal Code and other sections for custodial death of the deceased Begya Pawar on account of torture inflicted by respondents No.5 to 13.

8. Learned APP Shri Nerlikar submitted that the Department of Social Welfare has paid the petitioners an amount of Rs. 1,50,000/- in lumpsum and, petitioners have been paid Rs.1,000/- per month during the period from 01.06.2011 to 31.12.2013 and Rs. 3,000/- per month from 01.01.2014 till further orders. According to him, the total amount of compensation received

by the petitioners is more than Rs. 4,35,000/-.

9. Shri Patil, learned counsel for respondents No. 5 to 13 submitted that the conviction is still not recorded and, therefore, at this stage, it cannot be said that respondents No. 5 to 13 were responsible for the death of the deceased Begya Pawar. Therefore, respondents No. 5 to 13, at this stage, cannot be fastened with liability of paying compensation.

10. It is not in dispute that autopsy was conducted on 11.05.2011 between 10.00 hours to 13.00 hours. Inquest panchanama was drawn on 10.05.2011 between 16.45 hours to 17.10 hours. The dead body was brought by Washim police station. The deceased Begya Pawar had 44 injuries on his body and the cause of death was shock and haemorrhage following multiple contusions all over body with multiple fractures.

11. The investigation conducted by Anwar Mehboob Shaikh, the Deputy Superintendent of Police shows that the deceased died on account of the custodial torture. Charge-sheet has also been presented against respondents No. 5 to 13. Therefore, necessary

concomitant of these events is that the deceased died due to custodial torture. The attempt of respondents No. 5 to 13 to show that the deceased was apprehended in Crime No. 88/2011 did not yield any result due to the subsequent event i.e. filing of B summary report in respect of another accused Raju Pawar.

12. Now the question that falls for consideration is whether the petitioners are entitled to the compensation. This issue is no more *res integra*. In the case of Nilabti Behera Alias Lauti Behera Vs. State of Orissa reported in 1993 AIR (SC) 1960, it has been held as under :-

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.

17. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability in the State in tort may arise is to be found in *Ratanlal & Dhirajlal's Law of Torts*, 22nd Edition, 1992 by Justice G.P. Singh, at pages 44 to 48.

18. This view finds support from the decisions of this Court in the *Bhagalpur* blinding cases : *Khatri (II) v. State of Bihar* (1981) 1 SCC 627 : (AIR 1981 SC 928) and *Khatri (IV) v. State of Bihar* (1981) 2 SCC 493: (AIR 1981 SC 1068), 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 v. Union of India* (1991) 4 SCC 584 : (AIR 1992 SC 248), 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 Art. 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 enables the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Art. 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.

13. This issue again came up for consideration before the Honourable Apex Court in the case of D.K. Basu Vs. State of West Bengal reported in AIR 1997 Supreme Court 610(1) wherein it has been held thus :-

55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, 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 duly 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 citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in 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.

14. The factual matrix narrated above clearly indicates that the action of respondents No. 5 to 13 was in clear violation of Article 21 of the Constitution of India. Article 21 provides that no person shall be deprived of his life and personal liberty without due process of law. In the case at hand, the deceased Begya Pawar was arrested in blatant violation of the provisions of Article 21 of the Constitution of India. Therefore, his fundamental right to life and personal liberty was taken away without due process of law. The subsequent event shows that B summary was filed and it was sanctioned by the

Magistrate having jurisdiction. This clearly shows that the petitioners are entitled to compensation.

15. Admittedly, the deceased was 18 years of age at the time of the incident. Post Mortem report shows the age of the deceased as 18 years. Income of the deceased is not on record. Therefore, notional income of Rs. 4,000/- per month can be considered for calculating the amount of compensation. After deducting 1/4th expenditure for himself, the total amount payable for compensation is Rs. 3,000/- per month. The multiplier to be applied would be 17 as per the guidelines framed by the Honourable Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 Supreme Court Cases 121. Having regard to the age of the deceased and his notional income per year, the amount of compensation can be calculated as under :-

Age	Multiplier	Income per year	Total amount
18 years	17	Rs. 36,000/-	Rs. 6,12,000/-

Loss of love and affection	Rs. 20,000/-
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Total	Rs. 6,32,000/-
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Thus, the total amount of *ex-gratia* compensation comes to Rs. 6,32,000/-.

16. Learned counsel Shri Patil placed reliance on the judgment in the case of Amol Vitthalrao Kadu Vs. State of Maharashtra & others reported in **2019 ALL MR (Cri.) 1266 (S.C.)** for the proposition that the liability is still not fixed so far as respondents No. 5 to 13 are concerned. Therefore, at this stage, the State may not direct to recover the amount of compensation from respondents No. 5 to 13. It has been held in the aforesaid case as under :-

6. In a case Delhi Airtech Services Private Limited and Anr. Vs. State of Uttar Pradesh and Anr. (2011)9 SCC 354 dealing with default on part of the officials in depositing the amount in terms of the Land Acquisition Act, Swatanter Kumar, J. had observed :

“(iv) In this case, the claimants would be entitled to the costs of Rs.1,00,000 (Rupees one lakh only) which shall be deposited at the first instance by the State Government of Uttar Pradesh and then would be recovered from the salaries of the defaulting/erring officers/officials in accordance with law. The inquiry shall be completed within a period of six months from today and a report shall be submitted to the Secretary General of this Court on the administrative side immediately thereafter.”

17. Having regard to the above reasons and discussion, we arrive at a conclusion that it is a case of custodial death at the hands of respondents No. 5 to 13. The prayer of *ex-gratia* compensation needs to be granted to the petitioners. In the light of above, we proceed to pass the following order :

ORDER

- (i) Criminal Writ Petition is allowed.
- (ii) Respondent No. 1 / State shall deposit an amount of Rs. 6,32,000/- within six months from today.
- (iii) Respondent No. 1 /State is at liberty to recover compensation from the erring officers i.e. Respondents No. 5 to 13 as and when responsibility is fixed on them.
- (iv) Rule made absolute in above terms.

(M. G. SEWLIKAR)
Judge

(T.V. NALAWADE)
Judge

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