

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1482 OF 2017
WITH
CRIMINAL APPLICATION NO. 711 OF 2018
IN
CRIMINAL WRIT PETITION NO. 1482 OF 2017

1. Himmatsinh s/o Pruthvisinh Hadiyol,
Age : 46 years, Occ : Business,
2. Sangitaben wd/o Narendrasinh Hadiyol,
Age : 41 years, Occ : Household,
3. Rajendrasinh s/o Narendrasinh Hadiyol,
Age : 15 years, Occ : Student (Minor)
U/g. her real mother i.e. petitioner no.2
Sangitaben wd/o Narendrasinh Hadiyol,
4. Kesharba wd/o Prithvisinh Hadiyol,
Age : 75 years, Occ : Household,

All R/o Bhavanipara Village,
At Mandali (Vihar), Tq. Mansa,
Dist. Gandhinagar.

... Petitioners

Versus

1. The State of Maharashtra
Through M.I.D.C. Police Station,
Barshi Road, Latur, Tq. & Dist. Latur.
2. The Superintendent of Police,
Office at Shivajinagar, Latur,
Tq. & Dist. Latur.

[Notices to be served on the
A.P.P High Court at Bombay,
Bench at Aurangabad.

... Respondents

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Mr. Ajit D. Kasliwal, Advocate for the Petitioners.

Mr. B. V. Virdhe, APP for the Respondent-State.

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for the
intervenor (Applicant in Cri/Appln/711/2018).

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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

**Reserved on : 10.10.2022
Pronounced on : 11.11.2022**

JUDGMENT (ABHAY S. WAGHWASE, J.) :-

1. Criminal Application No. 711 of 2018, seeking intervention, is allowed in terms of prayer clause “B” and disposed off.
2. Rule. Rule made returnable forthwith.
3. Heard both the sides.
4. The petitioners who are brother, widow, minor son and mother of deceased Narendrasinh have approached this Court with following prayers :-

B) The 2nd Respondent be directed to cause detailed Investigation, as per the complaint of the petitioner No.1 dated 16.10.2017 by registering the crime against the culprits.

B-1) It be ordered and directed that the Investigation of Crime No. 370/2017 registered with MIDC Police Station, Latur for the offences punishable u/sec.302, 384 r/w section 34 of IPC be handed over to the Central Bureau of Investigation for further investigation.

C) Pending hearing and final disposal of the petition, the 2nd respondent be further directed to cause the additional postmortem of the dead body of deceased Narendrasinh which is in the custody of Respondent No.1 in any Government Medical College, except Latur Government Medical College.

D) The respondents be directed to pay the compensation to the petitioner Nos. 2 to 4 to the tune of Rs.2 crore on account of the custodial death of the deceased Narendrasinh Hadiyol.

5. Brief facts emerging from the petition are as under :

a. Deceased Narendrasinh was involved in a private business of PVC products. He had obtained a loan to the tune of Rs.17,00,000/- from the Bank of Baroda, Bilodara Branch, Taluka Mansa, Gandhinagar, State of Gujarat.

b. According to the petitioners, MIDC police Latur, i.e. present respondent no.1, entertained a complaint lodged by one Patel Mehul Kumar Natwarlal, resident of Mauje Kharsada, Taluka and District Mahesana, State of Gujarat, dated 20.08.2017 resulting in registration of crime bearing No. 276/2017 for the offence punishable under sections 394, 395, 396, 170 and 120-B of the Indian Penal Code.

c. Its sum and substance is that, the complainant therein was working with Suthar Harshadkumar s/o Vishnuprasad, resident of Scrap Market, Latur and he was in service of Chamanda Optical. The complainant therein had alleged that the owner Shri Suthar had handed over Rs.3,80,000/- to him and his friend Haresh Hambuji Rajput with directions to go to Bombay for purchasing material for the optical shop. Complainant Patel further alleged that on 17.08.2017, two tickets for journey to Mumbai by private bus were booked through Priti Travels. Registration number of the bus was MH-24-AB-4999. Accordingly, Rajput and Patel had boarded the bus from PVR Chowk. However, they were followed by two unknown persons in the said bus. When the bus had reached Zamgaon at around 11.30 p.m., one Ertiga car bearing No. MH-04-2616 intercepted the bus. Two unknown persons alighted from the said car and approaching Patel and Rajput, they introduced themselves as police personnel and took Patel and Rajput out of the bus and forced them to sit in the said car. Thereafter, one of those persons directed handing over of the cash carried by them. Those persons also snatched the amount as well as some gold articles from both Patel and Rajput and further took them to PVR Chowk. Then, they were forced to make a call to the owner Shri Suthar. Thereafter, those two persons informed the owner that they are being taken to Aurangabad. Thus, the cash and gold ornaments, total amounting to Rs.4,55,500/-, was forcibly taken away. In such backdrop, crime no. 276/2017 was registered.

d. It is specific case of the petitioners herein that deceased had no concern whatsoever with the above episode, but still, for the reasons best known to the Latur Police, he was picked up from his native and taken in custody. Even petitioner No.1, brother of the deceased, was also taken in custody and he was informed that an FIR has been lodged against his deceased brother. He was even denied with a copy of the FIR.

e. According to petitioner, police arrested him as well as his brother (deceased). At the time, two constables from Mansa police station were also accompanying the five police personnel from Latur. According to the petitioner, an entry of taking into custody of the deceased was also taken in Mansa Police Station. While on the way, when they reached near Ahmedabad, one of the police personnel by name Bawkar put up a demand of Rs.10,00,000/- from both the brothers for closing the file and threats were issued that, if the demand was not met with, both the brothers would be booked and involved in a false case. Both brothers were taken to hotel Kabeer, near Airport at Ahmedabad and an amount of Rs.10,00,000/- was unwillingly paid. That at such location there were CCTV cameras and the act of extortion of money must have been recorded in the same. At Sardarnagar Police Station, Ahmedabad, entry of arrest of deceased Narendrasinh was taken. Since compliance of the demand of Rs.10,00,000/- was met, petitioner No.1 alone was released and deceased Narendrasinh was taken to Latur and since then he was in custody of MIDC Police, Latur.

f. It is contended in the complaint that petitioner no.1 received a call from mobile bearing No. 9049107475 at 9:14 a.m. on 13.10.2017 and his brother was forced to talk with him again making a demand of Rs.10,00,000/-. His brother was produced before the Court and his remand was sought till 16.10.2017. Again on 14.10.2017 at about 10.36 p.m., petitioner No.1 received a call from the said phone number for demand of Rs.10,00,000/-.

g. It is also the case of petitioners that on 15.10.2017 at 9.35 p.m., when he made calls on the above number requesting to arrange talks with his brother, at that time he was intimated that, because of high blood pressure and diabetes his brother made complaint of chest pain and so he was admitted in the Government Hospital, Latur. According to petitioner No.1, he had made at least 22 calls to the police, of which there is CDR, and during the conversation with his brother, which was also recorded by petitioner No.1, his deceased brother requested to arrange the money saying that the police personnel were threatening to kill him and his brother was constantly crying for help. At such time his deceased brother was in the custody of police and he was subjected to torture by the police.

h. It is lastly contended that on 16.10.2017, the petitioner No.1 received a phone call at about 4:30 a.m. from mobile bearing No. 9823202333

informing that his brother is no more and around 5.30 a.m., an officer of Local Crime Branch forwarded a letter through WhatsApp informing about death of his brother.

i. Thus, according to the petitioners, deceased Narendrasinh was falsely implicated in the crime. He was arrested and taken into custody from his native and was in custody of Latur police even when he was not named in the FIR bearing Crime No. 276 of 2017. In the backdrop of demand of Rs.10,00,000/-, he was tortured, both physically and mentally. His death has taken place while in custody of the police. To hush up and cover the matter, the Police machinery has filed “B” and “C” summary report. In fact, in the Magisterial Inquiry under section 176 of Cr.P.C., clear finding has been recorded that death of Narendrasinh is unnatural. Consequently, prayers for registration of FIR against Latur Police, alongwith other prayers as reproduced in the opening paragraph.

SAY OF RESPONDENTS

6. In response to the above allegations, in the writ petition, the Police Officers, i.e. Deelip Shivaji Dolare, Deputy Superintendent of Police, C.I.D. (Crime), Latur, Shivaji Thau Rathod, Superintendent of Police, Latur (respondent no.2), Sudhakar Murlidhar Bawkar, Assistant Police Inspector, Local Crime Branch, Latur and Ashok Navnath Mali, Assistant Police Inspector, M.I.D.C. Police Station, Latur, have tendered their affidavits. That

apart, from the respondents' side, a copy of the summary report is also placed on record.

7. The sum and substance of the affidavit of Deelip Dolare, DySP, CID is that deceased Narendrasinh, who is brother of petitioner no.1, was accused no.2 in crime no. 276 of 2017 registered at M.I.D.C. Police Station, Latur for the offence punishable under Sections 394, 395, 367 and 120-B of IPC and was arrested by the Investigating Officer on 13.10.2017. On he being produced before the learned Magistrate, Police Custody was sought and the same was granted up to 16.10.2017. While in lockup, on 15.10.2017, deceased requested the lockup guard to provide him phenyl as the toilet was stinking. His demand was complied by the guard. The deceased, after going in the toilet, consumed some of the said liquid. There is CCTV footage of demand and supply of the liquid. The deceased made complaint of pain in chest and nausea at around 8.30 a.m. He was immediately taken to Civil Hospital, Latur for treatment. The deceased himself informed the attending Doctor about consumption of phenyl. For the entire day of 15.10.2017, the deceased was under observation of the Doctor. In spite of being treated in ICU, deceased succumbed at 10.20 p.m. on 15.10.2017. Information was duly passed to all the superiors and the relatives. The Superintendent of Police, C.I.D., Aurangabad Region directed this officer to take over investigation. He drew inquest panchanama in presence of the learned JMFC, Latur and the body was sent for postmortem at Nanded for want of

facility of postmortem at Latur. The autopsy doctor opined that death was due to corrosive poisoning, however, viscera was preserved for chemical analysis. Further investigation is in progress.

8. There is affidavit of Respondent No.2 Superintendent of Police, Latur, acknowledging arrest of deceased Narendrasinh in Crime No. 276 of 2017 registered at Latur M.I.D.C. Police Station, Latur and being brought from his native and produced before the learned JMFC, Latur and that remand of the deceased was sought and granted up to 16.10.2017. This officer also stated that on 15.10.2017 at around 9.00 a.m., deceased Narendrasinh was admitted in the hospital at Latur. While undergoing treatment, deceased succumbed at 10.30 p.m. Upon inquiry by this deponent, the Doctor informed him that the deceased was treated for complaint of chest pain, vomiting and poisoning. This deponent states that he himself visited the hospital and viewed the CCTV footage, wherein it had transpired that on 15.10.2017 Police Naik Gaffar Shaikh had handed over small acid Can for cleaning the toilet, and immediately enquiry to that extent was directed through the Sub Divisional officer, Latur. He further stated in the affidavit that the Doctors officially intimated death of deceased at around **00.40 hrs. on 16.10.2017**. After receipt of the above information from the hospital authorities, A.D. was registered bearing no. 82/2017 under Section 174 of the Code of Criminal Procedure. Since accidental death had taken place while deceased was in the custody of police, intimation was given to the

State Crime Branch, Pune as per the Government Circular and the SOP specified in the Standing Order. He further stated that a DySP ranking officer was entrusted with the investigation on 16.10.2017. Further, according to him, an application was received from the brother of deceased and it was transferred to the Investigating Officer, CID (Crime), Latur and simultaneous inquiry was also got done under Section 176(1-A) of Cr.P.C. He concluded by stating that investigation is duly handed over to the CID which is an independent and impartial investigating agency.

9. The Assistant Police Inspector Sudhakar Bawkar also submitted an affidavit informing that he was in-charge of the M.I.D.C. Police Station, Latur since 23.01.2016 to 11.12.2017. In para 4 of the affidavit, he states that the deceased was arrested on 13.10.2017 at 09.16 a.m. in Crime No. 276 of 2017 registered at M.I.D.C. Police Station, Latur and he was produced before the learned JMFC, Latur, who granted P.C. up to 16.10.2017. This officer states that on 15.10.2017 at around 9.00 a.m., the deceased was admitted in the Government Hospital at Latur on complaint of chest pain and vomiting. While undergoing treatment, the deceased expired at 10.30 p.m. in the hospital. According to this officer, Doctor treated him for the above complaint along with treatment for poisoning and the Doctor officially intimated about his death at 00.40 hrs on 16.10.2017 as a result of which, A.D. was registered bearing no. 82/2017 and investigation was handed over to the Police Inspector, Local Crime Branch. It is further stated

that as per Government Circular dated 22.11.1990 and the S.O.P, on 16.10.2017, DySP, CID (Crime), Latur, took over investigation of the AD. He states about an application being received from the brother of deceased on 19.10.2017 seeking transfer of investigation to CBI. He too speaks about an inquiry at the hands of the learned Magistrate under section 176(1-A) of Cr.PC.

10. In second affidavit dated 08.10.2019, DySP Shri Dolare apprised this Court about the steps being taken during investigation which was in progress. In concluding para, he stated that, looking to the nature of matter and investigation, Inspector of Police, CID was directed to re-look and evaluate investigation with regard to offence under Section 384 of IPC.

11. One Ashok Mali, who was Assistant Police Inspector at M.I.D.C. Police Station, Latur, also stated in his affidavit about registration of crime no. 370 of 2017 for the offences punishable under sections 302, 384 r/w section 34 of IPC at M.I.D.C. Police Station on 22.12.2017. He also reiterated that, in the morning of 15.10.2017 between 8 to 8.30 a.m. deceased complained of suffocation and was immediately taken to Government Hospital Latur and he was treated there and further, Doctor treating him but deceased being declared dead at around 10.30 p.m. This was followed by drawing of MLC, spot panchanama and commencement of investigation. In para 2 of his affidavit, he informs that the deceased had informed the treating doctor

about consuming phenyl and doctors opining that death is due to corrosive poisoning. In para 7 of the affidavit, he also reiterates that there was negligence on the part of the lockup guard Shaikh as he had supplied phenyl to the deceased for cleaning toilet and so disciplinary action was initiated by the Superintendent of Police against such staff. After CA report was received, the Investigating Officer had conducted investigation even in the angle of commission of offence u/s 302, 384 and 306 of IPC. However, according to this deponent, after thorough investigation, conclusion was reached that nobody was responsible for the suicidal death of the deceased. He added that, deceased was diabetic and had heart ailment. That apart, there was marriage in the family of deceased and he was under frustration and so deceased committed suicide by consuming poison.

12. That, in such backdrop, the Investigating Officer had filed C summery in respect of the offence under section 302 r/w 34 of IPC and B summery in respect of the offence under section 384 of IPC. Copies of both reports are also placed on record. Consequently he too prays for dismissal of the criminal writ petition.

13. In the record and file before us, summary of investigation papers is also annexed. In it, respondent police authorities claim that they have also recorded statements of inmates of the lockup who were in the cell along with deceased during such period, namely, Dilawar Yunus Shaikh, Amir

Yunus Shaikh, Vicky Kisan Gajghate and Mohan Vasant Patil. The gist of their statements is deceased Narendra demanded acid for cleaning toilet alleging that it was badly stinking. The lockup guard initially refused to fulfill his demand, but as deceased insisted, he handed him acid Can and shortly thereafter, when deceased was inside the toilet, there was smoke emanating from the toilet. Deceased came out, consumed *mawa* and thereafter complained of nausea and vomiting sensation. Thereafter, on feeling uneasy and profuse sweating, he requested to call the police officer and was subsequently taken by police to civil hospital.

14. Apart from the affidavits of respondent police authorities, police machinery has also placed on record medical papers and investigation papers with regard to the offence under sections 302, 384, 34 of IPC vide crime bearing no. 370 of 2017. Similarly, report of learned Magistrate upon the inquiry under section 176 (1-A) of Cr.P.C. also finds place in the annexures.

15. We have heard learned counsel for the petitioners at length. We have equally heard respondent State to their contentment. Learned counsel for the intervenor was also heard. We have carefully examined the papers and file before us.

16. Petitioners' contention is that deceased Narendrasinh was falsely implicated in a crime bearing no.276 of 2017 and he was in custody of Latur MIDC Police Station. Deceased was hail and hearty. There was continuous demand of Rs.10,00,000/- to set deceased free. While in custody of Latur MIDC police he was allegedly shifted to civil hospital but he died. Therefore, death of his brother being custodial one, prayers for investigation at the hands of CBI along with prayers for second postmortem and for grant of compensation to the tune of Rupees two Crores.

17. On going through the entire file and papers it is revealed that police authorities have registered distinct crime on the basis of communications and letters at the end of petitioner no.1, i.e. crime bearing no. 370/2017 for the offence punishable under sections 302, 384 of IPC and investigation has commenced. Therefore, prayer clause B of this petition becomes redundant. By virtue of prayer clause B-1 there is prayer for transfer of crime no. 370/2017 to CBI. By virtue of prayer clause C, petitioners seek directions for undertaking second postmortem whereas prayer clause D is for grant of compensation to the tune of Rupees two crore from the respondents for custodial death of Narendrasinh.

18. Considering the case of petitioners and the prayers raised by them, the following points arise for our consideration:

- A. Whether deceased Narendrasinh, a suspect in crime no. 276/2017 registered at M.I.D.C. Latur Police Station, was in custody of said police since 13.10.2017 up to 15.10.2017?
- B. Whether deceased Narendrasinh died unnatural death while in custody of police?
- C. Whether it is necessary to direct undertaking the exercise of second postmortem on the dead body of deceased Narendrasinh?
- D. Whether case is made out for transfer of investigation of crime no. 276/2017 to CBI?
- E. Whether petitioners are entitled for compensation as prayed for?

We accordingly proceed to answer the above points hereinafter.

19. It would be apt to consider and decide point nos. A and B together as both are interlinked.

As to point nos. A and B, it is reiterated that according to the petitioners, deceased Narendrasinh was picked up from his native along with his brother petitioner no.1 in connection with crime no. 276/2017. Though it is the contention of petitioner no.1 that there was demand of Rs. 10,00,000/- by police team headed by officer Bawkar and said demand was

fulfilled, we do not wish to enter into such allegations as distinct prob to that extent is under way.

As regards to contention of petitioners regarding deceased to be in custody of Latur MIDC Police, one comes across that, all police officials who are arraigned as respondents, have tendered affidavits unequivocally admitting about deceased being taken in custody from his native on the night of 13.10.2017. From the affidavits of all the respondent police personnel, it is unequivocally coming on record that deceased Narendrasinh was involved and wanted in crime no.276/2017 registered at Latur M.I.D.C. Police Station and he was therefore taken in custody from his native and produced before learned JMFC, Latur and he was remanded to police custody up to 16.10.2017. Therefore, in the light of above, there is no hesitation to hold that deceased Narendrasinh was very much in the custody of Latur M.I.D.C. police since he was picked up from his native till his death.

From the affidavits of the respondent police, it has also come on record that after grant of police custody, in the backdrop of his alleged involvement in crime bearing no. 276 / 2017 registered at said police station, deceased was lodged in the police lock up of said police station.

It seems from the above affidavit that, respondent police personnel

have asserted that in the morning of 15.10.2017, deceased expressed his desire to answer the call of nature. His other inmates in the lockup also wanted to use toilet. Deceased Narendrasinh demanded phenyl for cleaning the toilet as it was allegedly badly stinking and the lockup guard complied with the said demand on humanitarian consideration. It is their further case that, shortly after using toilet, deceased complained of chest pain and vomiting sensation and therefore he was shifted to Government Hospital, Latur.

The Hospital papers show that Narendrasinh Hadiyol was shifted to Government Hospital, Latur on 15.10.2017 at 9.05 a.m. with complaint of unknown poisoning at 08.00 a.m. Bed papers show that since then, deceased was being treated in the said hospital up to 10.20 p.m. of 15.10.2017. The last noting on the case papers goes to show that there is remark, that “in spite of cardio-respiratory resuscitation measures, patient could not be revived and he succumbed to death. Statements of Doctors available and involved in admitting and treating deceased are also recorded by the police.

SUMMATION

The residue which falls back from the above discussion is that, from the affidavits of all respondents police personnel, it is manifest that deceased Narendrasinh was very much in the custody of Latur M.I.D.C. Police Station since he was picked up as a suspect in crime no. 276/2017 i.e. since the

night of 13.10.2017 up to his death on 15.10.2017. Medical papers attribute history of consumption of phenyl, and so he was treated in such backdrop. AD was registered vide no. 82/2017 and its papers are placed on record. Whereas in postmortem report, on conclusion of autopsy at the hands of Doctors at Nanded Government Hospital, cause of death is reported as corrosive poisoning. However, viscera was preserved for histopathological examination. Injury nos. 1 to 4 are said to be ante-mortem and injury no. 5 is post-mortem injury. Injury nos. 1 and 4 are unnatural, whereas injury nos. 2 and 3 are therapeutic treatment injuries. Corrosive injuries mentioned in column no.(C) sub columns 2, 3 and 4 are sufficient to cause death in ordinary course of nature. C.A. examination reports of viscera comprising of stomach and loop of intestine with their contents, slices of liver, spleen, kidney, on analysis revealed detection of Chloride and acidity to be positive, whereas on analysis of plastic Can and yellow liquid in the plastic Can, Hydrochloric acid was detected. Final cause of death issued on 29.12.2017 is regarding cause of death as "Hydrochloric acid poisoning".

Statements of relevant witnesses recorded u/s 164 of Cr.P.C. by learned 4th JMFC, Latur are placed on record. Even report of learned JMFC under Section 176 (1-A) of Cr.P.C. is regarding death of Narendrasinh to be unnatural.

Record shows that by order dated 22.04.2019 this Court viewed the CCTV footage made available by the State. In the same order, it was observed that this Court would prepare notes in respect of viewed CCTV footage and accordingly, notes were prepared and the same are part of the compilation and record. With the aid of Computer Department, in presence of counsel for each of the sides as well as learned APP, the copy of hard disk, which was used for recording the events that occurred at police station, was played and the footages which were captured in the eight CCTV cameras were watched. Camera nos. 6, 7 and 8 were found to be non-functional. It was noted that camera nos. 1, 2, 3 and 4 were important. Camera nos. 1 and 4 were found fixed outside the building which covered the road situated inside the campus of the police station. Camera no. 2 was found to be affixed in the office which comes first after the entrance door. Camera no. 3 was found to be fixed outside the lockup and this Court could see some movements inside the lockup and the persons who had come towards the gate of the lockup from inside and the persons who were seen coming close to the door from outside and thereafter, who were seen entering the lockup.

Notes taken in by this Court, more particularly from paragraph nos. 4 to 15, which are very crucial, are reproduced as under:

“4) This Court has carefully seen the CCTV footage starting from 00.00 hours of 15.10.2017 till the time when the deceased was taken out of the campus of the police station.

5) The deceased was wearing blue colour T shirt. In addition to deceased, there were two more youngsters kept in this lockup. At 00.02 hours the deceased was seen and he took water from a bottle. After that some movement was seen inside of the lockup at 6.36 a.m. of 15.10.2017.

6) Camera No.2 fixed in the office shows that at 6.51 a.m. one boy with a bucket entered the office along with the guard of the police station. The guard is a beard face man. Third man wearing white cap was in their company. They went towards the lockup from the office side. Camera No.3 fixed outside of the lockup shows that the guard and one man with bucket came near the lockup. The guard entered into the lockup with bucket and after keeping the bucket inside he came out. The aforesaid third man was in their company but only the guard entered the lockup after opening the lock of the gate of the lockup. At this time, the deceased was appearing hale and hearty.

7) At 7.08 a.m. camera No.2 shows that the guard went towards the lockup with a small plastic white can and the camera of the lockup shows that the guard gave one white plastic can to the deceased.

8) At 7.19 a.m. and prior to that time one constable was found sleeping in the office and he was found sleeping till 7.44 a.m. At 7.19 a.m. from the office side one man wearing sky blue shirt and black pant probably holding a tea cup went towards the side of the lockup from the office side. The camera fixed over this lockup shows that at 7.20 a.m. the deceased was at the gate of the lockup and he was in good health and probably the tea cup was handed over to him at this time.

9) One constable wearing jerkin visited the lockup at 7.44 a.m. It shows that the man wearing jerkin handed over something to the deceased. At 7.50 a.m. the same man again went towards the lockup to see the deceased.

10) Camera No.3 fixed towards lockup shows that at 8.31 a.m. the two other persons kept in the lockup came towards the gate of the lockup and starting calling police. At 8.31 a.m three police came towards the lockup and they took the deceased out of the lockup. This time the deceased was not appearing hale and hearty and police helped him to go towards office. One lady with baby was there moving in the police station and she had opportunity to see the deceased when he was taken towards the office. There is one room attached to the office opposite to the entrance gate and in that room the deceased was taken. This lady peeped into that room to see as to what was happening and this was at 8.38 a.m. At 8.41 a.m. one lady constable also entered the office and that room where the deceased was taken. From that room two youngsters in civil dress came out. One lady sweeper was also there who was cleaning the office and the premises of the building of the police station. At 8.57 a.m. one more lady constable wearing pant and shirt was also seen.

11) From the aforesaid room which is attached to the office the deceased was taken towards the side which is opposite to the lockup. There were no CCTV cameras on that side of the building and so it cannot be seen as to whether and where the deceased was made to sit for few minutes, before taking him outside of the building.

12) Between 8.41 a.m. and 8.42 a.m. the CCTV coverage of camera No.1 and camera No.4 fixed to cover the portion outside the

building show that the deceased was taken towards the jeep and he was on his legs and he boarded the jeep. This jeep left the police station at about 8.43 a.m. and the second jeep also followed it.

13) In short, the sum and substance of the CCTV footage of the relevant time shows that till 8.31 a.m. apparently there was no complaint from the deceased. Prior to that, the articles like water bottle, tea cup, can etc. were supplied to him. The camera fixed near the lockup is fixed in such a way that any person from outside can hand over to the person inside something and if they are close to each other, things can be handed over by concealing the things from the camera. One constable was seen loosening his pant and shirt in front of the lockup and at this moment anything could have been taken out from the clothes of the said constable and could have been handed over to the deceased.

14) The CCTV footage shows that from the expression of the deceased it can be seen that he had no complaint against the two persons who were inside of the lockup at the relevant time. When he was taken out of the lockup at 8.34 a.m. he was on his legs but he was not appearing hale and hearty. He was kept for few minutes in a room attached to the office when there were persons other than police also. When the deceased was taken out of that room he was not appearing hale and hearty and at 8.43 a.m. the deceased boarded the jeep on his own and he was not required to be lifted and kept in the jeep when he was taken outside of the campus of the police station. The CCTV footage creates probability that somebody who knew the deceased was there and due to that, things like tea, water bottle etc, were supplied to the deceased.

15) This Court has noted that the cameras which were fixed near the lockup was blinking regularly though the time shown before the

blinking and the time which could be seen after the blinking was appearing as continuous. This Court is not expert and it cannot be said as to whether there was tampering. There was no such blinking seen in other cameras.”

Taking above discussed material into consideration, we are of the considered opinion that death of Narendrasinh occurred while he was in custody of Latur M.I.D.C. Police and his death is “*unnatural one*”. Consequently, we record findings of both above points in affirmative.

Point No. C. - Whether it is necessary to direct undertaking the exercise of second postmortem on the dead body of deceased Narendrasinh?

20. Record clearly shows that after his demise in the morning of 15.10.2017, his dead body was shifted to Nanded for autopsy for want of facility to that extent. Autopsy was also done at Nanded Government Hospital as is evident from the record. Viscera was preserved and dispatched for analysis and its reports are also received and are part of record. Therefore, in our considered view, second postmortem as prayed is not possible at all. For above reasons, above relief cannot be considered or granted.

Point No. D. - Whether case is made out for transfer of investigation of crime no. 276/2017 to CBI?

21. Amended prayer (B-1) reads as under :

B-1) It be ordered and directed that the Investigation of Crime No. 370/2017 registered with MIDC Police Station, Latur for the offences punishable u/sec.302, 384 r/w section 34 of IPC be handed over to the Central Bureau of Investigation for further investigation.

It is pertinent to note that prior to amendment, the initial prayer clause "B" was regarding seeking directions to respondent no.2 to cause detailed investigation as per the complaint of petitioner dated 16.10.2017. Currently, the prayer is for direction to hand over investigation to CBI.

Since dawn of the era of human rights protection, courts are flooded with petitions alleging violation of fundamental rights and breach of basic human rights, thereby necessitating investigation at the hands of independent agencies. There are instances where there is either unfair investigation at the hands of local police machinery or there is political interference misdirecting and/or hampering investigation. Several factors are involved when serious cognizable offences are committed but for some or other reasons, investigation is not carried out as contemplated under law. Consequently, we find petitions with prayers for transfer of investigation from one agency to other. However, though the Code of Criminal Procedure is a complete code in itself, providing sound inbuilt mechanism to deal with

respective stages of investigation, sometimes courts are compelled, in given circumstances, to hand over investigation to independent agency only with sole objective of doing complete justice.

Since the landmark case of **Rudul Sah v. State of Bihar ; AIR 1983 SC 1086**, courts have become vigilant in examining such cases of violation or breach of human rights and Courts are not hesitating in granting compensation as well as damages in deserving cases.

Other landmark cases wherein higher courts have granted damages, compensation for breach of fundamental rights and violation of human rights, include ***Central Bureau of Investigation v. Rajesh Gandhi ; 1997 Cr.LJ 63 (SC)***, ***State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal ; (2010) 3 SCC 571***, ***K. V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai ; (2013) 12 SCC 480 ; Nilabati Behara v. State of Orissa ; AIR 1993 SC 1960***.

However, in the case of **CBI v. Rajesh Gandhi** (supra), it has been held and observed that no one can insist for investigation at the hands of a particular agency.

In the case of **K.V. Rajendran** (supra), it is observed as under :

“13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any

other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. ...”

“17. ... the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

22. Similarly, the Hon’ble Apex court in the case of ***Himanshu Kumar and others v. State of Chhattisgarh*** ; 2022 SCC Online SC 884, very recently has discussed the position of law in cases wherein directions are sought for transfer of investigation. It is observed in above ruling as under ;

“44. *It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or*

fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of this Court, in the case of the State of West Bengal v. Committee for protection of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571, has made the following observations pointing out the situations where the prayer for investigation by the CBI should be allowed:

*“70..... In so far 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 powers 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 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”*

Thus, the principle of law that can be culled out is that, investigation may be transferred to CBI only in the “rare and exceptional” cases. This extraordinary power is expected to be exercised sparingly and not in routine manner.

23. Bearing in mind above discussed settled legal position, if we return to the facts of the case in hand, it is found that according to the police machinery crime no. 276/2017 was registered for commission of offence under section 394 of IPC wherein there were allegations of robbery. While investigating such crime, police claim that, it was revealed that prior to the said offence one of the accused was in touch with co-accused Narendrasinh Hadiyol (deceased brother of petitioner no.1), along with Siddharaj Ambuji Barad, Jitendrakumar Laxmibhai Patel and Wasimkhan Topaz. Copy of said FIR is also annexed with the police papers.

Thus, it seems from the report dated 22.12.2017 tendered to the learned Magistrate, that in the above context, finding name of deceased Narendrasinh, he was picked up from his native on the night of 13.10.2017. Therefore, though there are allegations on behalf of petitioner no.1 that he and his deceased brother were wrongfully arrested even when they had no concern with said crime, *prima facie*, the act of police machinery regarding taking the deceased in custody seems to be in above backdrop and in the light of above complaint.

24. It is worth noting that, investigation of said crime no. 276/2017 has culminated into filing of charge sheet. Even when this Court took cognizance of representation of petitioner no.1, separate crime has been registered i.e. bearing no. 370/2017. Sight of the fact cannot be lost that at

the very inception, upon receipt of information of custodial death, investigation has been directed to be taken over from local police by CID and it is already entrusted to a DySP ranking officer. Nothing is on record before us to doubt the trustworthiness or credibility of the said agency while conducting investigation in crime no. 370/2017. As stated above, the legal proposition is fairly settled that the powers for transfer of investigation from one agency to another are to be exercised with complete circumspection and only in deserving cases.

In the totality of the material and circumstances before us, we have not come across a single instance being pointed out to us, so as to doubt the quality of investigation by CID. It has not been demonstrated to us that, currently the CID is not properly investigating or there is any unsatisfactory investigation so as to question the credibility of the said agency. Resultantly, as no case for transfer of investigation being made out and there being no justification to hand over investigation from CID Crime to CBI, we decline to grant such relief.

Point No. E. - Whether petitioners are entitled for compensation as prayed for?

25. Constitutional Courts are custodians of fundamental rights of citizens of the country. The concept of maxim like “King can do no wrong” or

“immunity of sovereignty” are now things of past. State is looked upon as the guardian of life and property of its subjects, and it is entrusted with the duty to protect the same. Negligence or failure to protect the same gravitates action even against State. Since the landmark case of **Rudul Sah** (supra), courts have become vigilant in examining such cases of violation or breach of basic rights and are not hesitating in granting compensation as well as damages in deserving cases. Custodial death is one amongst such other cases which has invited attention of the courts for granting compensation or for rectifying the wrong i.e. in appropriate cases. Other similarly situated cases necessitating grant of compensation or damages could be named are custodial violence, torture during interrogation, illegal detention, breach of fundamental rights, fake encounter deaths etc., wherein, apart from granting compensation, commission of above illegal acts at the hands of officials of various Government instrumentalities are highly deprecated.

In above backdrop, on visiting the facts of the case in hand, undisputedly deceased Narendrasinh was taken in custody and till the episode of his medical complaint, he was very much in the custody of the M.I.D.C. Police Station. Such allegations are not at all contested by the respondents and in the affidavits of various officers from various levels, including those on duty in police station that day and it is fairly conceded that deceased was in the custody of police. We cannot and we do not wish to enter the aspect of as to whether consumption of so called acid by deceased

Narendrasinh was suicidal, accidental or otherwise. We are not called upon to decide nature of death and as to who is responsible for the same. But as discussed above, here we find respondent authorities admitting and attributing negligence to the lockup guard. Though statement is made that disciplinary action has been initiated against said staff, this Court cannot shut its eyes to the aspect of deceased Narendrasinh losing his life in police custody. Along with his brother and mother, his son and wife are also petitioners. It is emerging from record, which too is not controverted by the State, that Narendrasinh was conducting business and he was the sole bread-earner of his family. Petitioner nos. 2 and 3 i.e. wife and son are permanently deprived of very source of livelihood. Therefore, in our considered opinion, under such circumstances, it is a fit case for grant of compensation.

26. Now, as to what should be the nature of monitory relief and what should be the quantum, has to be decided. The word “compensation” means to expiate the loss suffered. In the case in hand, deceased Narendrasinh was admittedly in the custody of M.I.D.C. Police, Latur. Such police was obliged to keep him in safe custody till being dealt by Courts of law. They were not only duty bound to protect his basic human rights but were also bound to protect his person till being dealt by Courts. As discussed above, police machinery fairly concedes that there was negligence on the part of their own staff i.e. lockup guard in handing over acid directly to the deceased which

resulted into the episode that followed necessitating medical indulgence, but he unfortunately died while being treated. Therefore, apparently when death has taken place while in custody of police, such machinery, though indirectly, is responsible for the death. They are liable to pay compensation, being the instrumentality of Government. There is no dispute that deceased was in his early forties when he was picked up and kept in custody. There is further no dispute that he was conducting business and earning for his family. His wife at such time was also in her early forties and his son was a teenager. Both wife and son have permanently lost source of income apart from losing love, affection, care and company of deceased. Therefore, in our opinion, only these two petitioners i.e. petitioner nos. 2 and 3 are entitled for compensation. In our view, brother i.e. petitioner no.1, who declared himself as a business, does not qualify for any amount of compensation. Likewise, even petitioner no.4-mother has not suffered any economic loss as like that of petitioner nos. 2 and 3. Taking the above discussed circumstances into consideration, in our considered opinion, it would be just and proper to quantify amount of compensation to the tune of Rs.10,00,000/- (Rupees Ten Lakh only). Hence, the following order :

ORDER

- I. The Criminal Writ Petition is hereby partly allowed.
- II. Respondent no. 1 State is hereby directed pay compensation to petitioner nos. 2 and 3 to the tune of Rs.10,00,000/- (Rupees Ten Lakh only).

III. Out of the above amount, an amount of Rs.2,50,000/- be kept in Fixed Deposit in the name of petitioner no.2-wife and Rs.2,50,000/- be kept in Fixed Deposit in the name of petitioner no.3-son. Such Fixed Deposits shall be initially for a period of two years.

IV. Remaining amount of Rs.5,00,000/- be paid to petitioner no.2-wife within a period of three months from the date of receipt of this order.

V. Rule is made absolute in the above terms.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

27. After pronouncement of the judgment, Mr. A. D. Kasliwal, learned Advocate for the petitioners submits that by way of the interim relief this Court had directed the trial court not to decide the “B” summary report filed by the Investigating Officer and it may be continued for a reasonable period to enable the petitioners to approach the Supreme Court.

28. In view of the reasoning given by us herein above, we see no sufficient and cogent reason to extend the interim relief. Request is rejected.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

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