

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

207

CWP-3342-2016

Date of Decision: 14.09.2022

PARKASH KAUR & ORS.

... Petitioners

VERSUS

STATE OF PUNJAB & ANR.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. T.V.S. Lehal, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 for seeking issuance of a writ in the nature of Mandamus directing the respondents to pay compensation for the death of Vikram Singh @ Vicky son of the petitioners No.1 and 2 and husband & father of respondents No.3 and 4 respectively, who met an unnatural death while in custody.

Briefly summarized, the facts of the present case are that Vikram Singh @ Vicky i.e. son of petitioners No.1 and 2- since deceased, was arrested on 18.08.2014 in connection with case bearing FIR No.310, registered at Police Station Tarn Taran for commission of offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'). While in prison as an undertrial, the deceased was kept in Room No.2, Barrack No.8 of Central Jail-CJ-II. There was a barrack mate of the deceased, who was also undergoing imprisonment in case bearing FIR 140 dated 11.07.2013 registered under 22 of the NDPS Act,

1985. As per the version of the prosecution-respondent State, the barrack mate-convict Raman Kumar picked up an altercation with Vikram Singh @ Vicky, the deceased and is stated to have given blow to Vikram Singh @ Vicky and to have caught hold of Vikram Singh @ Vicky from his neck. The deceased was also pushed with force as a result whereof he fell on the floor and sustained injuries. He was taken to the Guru Nanak Dev Hospital, where he was declared to have been brought dead. Accordingly, an FIR No.262 dated 26.09.2014 was registered under Section 302/201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') read with Section 42 of the Prisons Act, 1894 at Police Station Cantonment, District Amritsar. He further submits that upon culmination of the investigation, a final report under Section 173 of the Code of Criminal Procedure, 1972 (hereinafter referred to as 'Cr.P.C.') was filed by the investigation agency. Charge against the said accused namely Raman Kumar was duly framed and that after being enlarged on bail, accused Raman Kumar is absconding and has been declared as proclaimed offender. Certain allegations were also levelled in the present case that deceased Vikram Singh @ Vicky was tortured while in police custody and that the injuries were an outcome of the said torture.

Short reply by way of affidavit of Vishaljit Singh, Assistant Commissioner of Police, West, Amritsar City was filed, wherein the respondent-State reiterated its version given in the FIR and as already noticed above as the cause of death of Vikram Singh @ Vicky. It was also pointed out that after the occurrence of the incident leading to registration of FIR No.262 (supra), inquest proceedings under Section 176 of the Cr.P.C. in relation to death of Vikram Singh @ Vicky was carried out by Judicial Magistrate Ist Class, Amritsar and postmortem examination of the deceased was got conducted from the Board of Doctors. The inquest proceedings were

completed on 26.10.2016 and report was sent to the District Magistrate, Amritsar and thereafter, vide letter dated 16.12.2016, the District Magistrate forwarded the inquest report alongwith complete file and a direction to take further action against accused Raman Kumar as per law. The allegations regarding the alleged torture to Vikram Singh @ Vicky during custody were denied. It was further stated that a departmental inquiry was also conducted against the erring jail official-Warden Kashmir Singh and punishment of stoppage of one annual increment was also imposed upon the erring official vide order dated 07.11.2016.

A separate reply by way of affidavit of Arshdeep Singh Gill, PPS, Superintendent, Central Jail, Amritsar on behalf of respondent No.1 was also filed reiterating the averments noticed above. It was also additionally pointed in the aforesaid reply that an intimation regarding death of Vikram Singh @ Vicky was also sent to Secretary, National Human Rights Commission, New Delhi and other authorities and that Punjab State Human Rights Commission had taken cognizance of the same. No incriminating order against the respondent-State vis-a-vis any custodial torture resulting in death was returned or passed.

Learned counsel for the petitioners has vehemently argued that the deceased son of the petitioners No.1 and 2 was in custody as on the date when the incident in question took place eventually leading to his death. He contends that even though it may not be an incident of custodial death in the nature where the deceased is extended harassment, humiliation and torture by the Prison Authorities, however, it remains an instance of unnatural death while in custody. He refers to the judgment of the Hon'ble Supreme Court dated 15.09.2017 in **Writ Petition (Civil) No.406 of 2013 titled as 'Re:**

Inhuman Conditions in 1382 Prisons'. The relevant extract relied upon by the counsel for the petitioner is reproduced hereinafter below:

“Compensation for unnatural deaths

40. The issue of compensation for unnatural deaths in custody is no longer res integra.

41. One of the earliest cases where this Court granted compensation in a petition under Article 32 of the Constitution is Rudul Shah v. State of Bihar. That case was not one of a custodial death but was a case of illegal detention even after acquittal in a full dress trial. This Court held that the petitioner was entitled to compensation for the illegal detention and it rejected the stale and sterile objection of the State Government that the petitioner may if so advised file a suit to recover damages. This Court took the view that the refusal to pass an order of compensation would be doing mere lip service to the fundamental right of liberty of the petitioner under Article 21 of the Constitution which the State Government had so grossly violated. This Court observed that “if civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy.”

*42. A little later, this Court dealt with **Sebastian M. Hongray v. Union of India** which concerned itself with the disappearance of some persons while in custody. This Court was convinced that enabling the respondents to trace or locate the two missing persons at such a late stage would be to shut its eyes to reality and to pursue a mirage. It appeared to this Court that the two missing persons had actually met a tragic end in an encounter amounting to an unnatural death. This Court ordered the registration of an offence and an investigation and also directed payment of compensation to the next of kin.*

*43. **Nilabati Behera v. State of Orissa** was a case where a person who was taken into police custody for investigation of a theft, was found dead near a railway track the next day. On the*

basis of injuries and handcuffs on his wrists, this Court concluded that it was a custodial death and compensation was awarded under Article 32 of the Constitution. It was held that a public law remedy was certainly available to claim compensation for the contravention of human rights and fundamental rights which are protected as a guarantee by our Constitution. A reference was also made to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which reads: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

44. *An unnatural death in judicial custody where one person was killed by a co-prisoner was the subject matter of discussion in **Kewal Pati v. State of Bihar**. It was held that as a consequence of imprisonment, a prisoner does not cease to have constitutional rights, except to the extent he or she has been deprived of them in accordance with law. Therefore, even a prisoner is entitled to protection and if he is killed while in prison, it results in a deprivation of his life contrary to the law, for which the next of kin are entitled to compensation.*

45. *In **D.K.Basu v. State of West Bengal** this Court recognized that at the time of ratification of the International Covenant on Civil and Political Rights, 1966 in 1979, the Government of India made a specific reservation to the effect that the Indian legal system does not recognize a right to compensation for victims of unlawful arrest or detention and only became a party to the covenant, subject to this reservation. It was noted however, that the reservation has lost its relevance in view of the law laid down by this Court in several cases wherein compensation has been awarded for the infringement of a fundamental right of a citizen. It was also noted that while there is no express provision in the Constitution for grant of compensation, this right has been judicially evolved in cases of established unconstitutional deprivation of personal liberty or life. This Court summed up the law in the following words:-*

“Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not 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.”

46. **Ajab Singh v. State of U.P., Murti Devi v. State of Delhi** and more recently **Rohtash Kumar v. State of Haryana** illustrate that custodial death is a clear violation of the prisoner’s rights under Article 21 of the Constitution and relief could be moulded by granting compensation to the next of kin of the deceased.

47. In addition to the above decisions and several others rendered by this Court, almost every High Court in the country has, at one time or another, also granted compensation for the unnatural death of a person in custody, whether an undertrial or a convict. A few such illustrations may be noted:

a. **Nina Rajan Pillai & Ors. v. Union of India.**

The husband of the petitioner died in judicial custody due to inadequate medical treatment given by the jail authorities. The Lt. Governor of Delhi even appointed a Commission of Inquiry headed by Justice Leila Seth, a former Chief Justice of the Himachal Pradesh High Court to inquire into the circumstances that led to the death of the petitioner's husband. The Delhi High Court awarded compensation for the unnatural death in custody.

b. *Kewalbai v. The State of Maharashtra.*

The victim was shot dead by a constable while in custody. The Bombay High Court awarded compensation for the unnatural death in custody.

c. *Bheduki Buragohain v. State of Assam.*

The undertrial victim died in judicial custody under suspicious circumstances. The post mortem report indicated that the cause of death was asphyxia as a result of strangulation and ante mortem injuries by blunt weapons. The Gauhati High Court awarded compensation for the unnatural death in custody.

d. *Madhuben Adesara v. State of Gujarat.*

The deceased was brutally tortured by police officers while in custody and succumbed to his injuries during treatment. The post-mortem report revealed that the victim had multiple injury marks which were ante mortem in nature. The Gujarat High Court awarded compensation for the unnatural death in custody.

e. *Banalata Dash v. State of Orissa & Ors.*

The deceased was found hanging from a tree with his hands behind his back, tied at the wrist with a towel. Since the victim was in the custody of the prison authorities, compensation was awarded by the Orissa High Court for the unnatural death in custody.

f. *Amandeep v. State of Punjab & Anr.*

The deceased was assaulted by a co-prisoner and succumbed to injuries in the hospital. Due to the unnatural death in custody, the Punjab & Haryana High Court awarded compensation to the next of kin of the deceased.

g. *Tmt. Rohini Lingam v. State.*

The victim was murdered by his enemies while in prison. Due to the unnatural death in custody the Madras High Court awarded compensation to his next of kin.

h. *Sabu & Anr. v. State of Kerala & Ors.*

The victim was tortured in a police station and succumbed to his injuries. In view of the unnatural death in custody the Kerala High Court awarded interim compensation to the next of kin of the deceased until the criminal trial against the concerned police officers was concluded.

i. *Ravindra Nath Awasthi v. State of U.P.*

The victim was an advocate held guilty of contempt of court. While he was undergoing his sentence, he was severely beaten up by the prison authorities and succumbed to his injuries in hospital. Due to the unnatural death in custody, the Allahabad High Court directed payment of compensation to the next of kin of the deceased.

j. *Mst. Madina v. State of Rajasthan & Ors.*

The victim died in police custody on account of the use of third degree methods. Due to the unnatural death in custody, compensation was awarded by the Rajasthan High Court to the next of kin of the deceased.

k. *Dukharam v. State of Chhattisgarh & Ors.*

The deceased was taken from the police station in order to recover stolen articles alleged to have been hidden by him at a secret place. He was brought to a pond and compelled to dive into the pond. At that time he was handcuffed and in chains. Subsequently, the dead body of the deceased was found floating in the pond. In view of

the unnatural death while the deceased was in the custody of police officers, the Chhattisgarh High Court awarded compensation.

l. *Santosh Kumari v. State of H.P. & Ors.*

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.

m. *State of Jammu & Kashmir v. Sajad Ahmad Dar.*

The victim died due to cardio pulmonary arrest while detained in the District Jail under the Jammu and Kashmir Public Safety Act, 1978. It was held that death was due to carelessness, non-seriousness and negligence in not extending medical treatment. In view of the unnatural death in custody the Jammu & Kashmir High Court awarded the compensation to the next of kin of the deceased.

n. *Mrs. Meena Singh v. State of Bihar.*

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.

o. *Lawyers for Justice (Non-Government Organization) v. State of M.P.*

The victim was facing trial for offences under Section 302 of the Indian Penal Code. While he was undergoing treatment in a hospital he was shot dead by an unknown person. In view of the unnatural death while in custody the Madhya Pradesh High Court awarded compensation to the next of kin of the victim.

48. *There are several such cases – documented and undocumented - all over the country but in spite of repeated decisions delivered by this Court and perhaps every High Court*

there seems to be no let up in custodial deaths. This is not a sad but a tragic state of affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody. The time to remedy the situation is long past and yet, there seems to be no will and therefore no solution in sight.”

Further reliance is placed on the judgment of this Court passed in **CWP No.11695 of 2020 titled as Ram Lal and others Vs. State of Punjab and others' decided on 28.04.2022**, wherein this Court has observed as under:

[11]. It is a settled principle of law that the Court can grant appropriate relief in case of deprivation of constitutional guarantee of life and personal liberty. A claim in public law of 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. Though such claims are based on strict liability, by resorting to constitutional remedy provided for enforcement of fundamental rights which is distinct from, and also in addition to, the remedy in private law for damages i.e. torts resulting from contravention of the fundamental right.

*[12]. In **Phoolwati vs. State (Union Territory of Chandigarh) and others, 2008(1) R.C.R. (Criminal) 167**, while deciding such cases, the parameters as laid down in motor accident claim cases can be relied. The multiplier as provided in Motor Vehicle Act, 1988 can be applied to the cases of custodial death as well. In order to calculate the compensation to be awarded to the dependants of the deceased, the parameters as laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77 (SC)** and **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R. (Civil) 1009 (SC)** can be relied.*

[13]. The annual income of the deceased as per income tax returns (Annexures P-2, P-3 and P-4) has been relied upon by

learned Senior counsel for the petitioners. According to the aforesaid documents, annual income of the deceased is prima facie proved to be Rs.3,52,588/-.

*[14]. As per legal position, future prospects @ 25% are to be considered while assessing the compensation. The amount of Rs.88,147/- has to be assessed towards future prospects of the deceased. In this manner, total annual income comes out to be Rs.4,40,735/-. Out of the aforesaid amount, deduction towards personal expenses to the tune of 1/4th has to be applied. In this way an amount of Rs.1,10,184/- has to be deducted from Rs.4,40,735/- and the annual loss of dependency would come out to be Rs.3,30,551/-. Since the deceased Mohinder Pal @ Bittu was aged about 49 years at the time of the occurrence, therefore, as per ratio of **Sarla Verma and others's** case (supra) on the basis of age of the deceased, multiplier of 13 can be applied to the aforesaid annual loss of dependency and the amount comes out to be Rs.42,97,163/-.*

*[15]. In view of ratio of **National Insurance Company Limited vs. Pranay Sethi and others's** case (supra) an additional amount of Rs.70,000/- has to be assessed under the conventional heads i.e. funeral expenses, loss of estate and consortium is to be considered. In this way the total amount of compensation comes out to be Rs.43,67,163/- (42,97,163/- +70,000/-)."*

Reference is also made to the judgment of this Court passed in the matter of **Gurbaj Singh Vs. State of Punjab and others** reported as **(2016) 4 RCR (Criminal) 951**. The relevant extract thereof is quoted hereinafter below:

"9. Since it is not disputed that the deceased died as a convict in custody and preliminary investigation suggests that there was negligence of the warder and it is provided under Section 55-A of the Code of Criminal Procedure, 1973 that it is the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused, it would be just and expedient to award compensation of Rs.7 lacs to the dependents

of the deceased Hardev Singh and keeping in view the report of the Chief Judicial Magistrate, Sri Muktsar Sahib dated 07.08.2013, it is further directed that the Director General of Police, Punjab, shall constitute a SIT with high officials and action taken report be submitted to the Court within a period of six months from today.”

Additionally, reference has been made to the judgment of the Hon’ble Supreme Court passed in the matter of **Kewal Pati Vs. State of U.P. and others** reported as **(1995) 3 SCC 600**. The relevant extract of the same is reproduced hereinafter below:

*“2. Ramjit Upadhyaya was a convict and was working as a Nambardar in the jail. He was strict in maintaining discipline amongst the co-accused. It was due to this strictness in his behaviour as Nambardar that he was attacked and killed by Happy, a co-accused. Even though Ramjit Upadhyaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (see **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, AIR 1981 Supreme Court 746** and **A. K. Roy v. Union of India, AIR 1982 Supreme Court 710**). Therefore, he was entitled to protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated.”*

Learned counsel for the respondent-State, however, controverts the submissions made above on the premise that there was no laxity on the part

of the State officials and that the incident of death of Vikram Singh @ Vicky was the outcome of altercation *inter se* amongst the prisoners. Accordingly, the liability cannot be fastened on the State.

I have heard the learned counsel for the respective parties and have gone through the record of the present case with their able assistance.

While adverting to the issue as to whether the deceased Vikram Singh @ Vicky was subjected to any inhuman torture by the State officials or not, it is noticed that multiple inquiries into the said incident had been conducted. The said inquiries as well as the investigation by the police, the inquest proceedings by the Judicial Magistrate, Amritsar, the Departmental Proceedings in relation to the jail staff and also the inquiry conducted by the Punjab State Human Rights Commission have nowhere suggested any torture/inhuman treatment met out to the deceased by the Jail staff. The investigation in the case also stands conducted and the final report has been filed. There was nothing on record to suggest that the petitioner had in any manner objected to the final report filed by the investigating agency or having expressed their dissatisfaction about the manner and the direction of the investigation.

The reply in the present case by the respondents had been filed way back in the year 2017, however, no replication or counter affidavit controverting the aforesaid stand of the respondent-State has been filed. Resultantly, this Court can safely assume that the officials of the State had not participated in the event which resulted into the death of Vikram Singh @ Vicky.

Having held so, the issue which now arises for consideration of this Court is as to whether in the event of occurrence of an unnatural death of a person while in custody, would his heirs be entitled to compensation or not?

The perusal of the precedent judgments referred to above and extracted in the preceding paragraphs of this judgment, squarely hold that Article 21 of the Constitution of India, 1950 comes in operation with full force at a time when life and liberties of a person in the custody of State are taken away without law. The agencies and instrumentalities of the State cannot be obliterated of their obligation to ensure protection of a life and liberty of an individual when he is confined to prison/jail under the orders of a Court. It cannot be left open to the State Agencies to wash off their responsibility by holding it as an event of private dispute amongst two private individuals and seek exoneration from all obligations to ensure safety and security of inmates while in prison. The assessment of danger, the possible plight and the maintenance of law and order within the jail premises is the responsibility of the State. It was in the aforesaid background and recognising the settled legal principles that writ jurisdiction of the Court has been regularly invoked and exercised repeatedly to strike a balance in the equitable relief for the next of the kin of the deceased.

I am therefore, of the opinion that in light of the judgments referred to above, the State would be obligated to compensate the petitioners who are next of kin of the Vikram Singh @ Vicky. The mere absence of active participation of jail authorities does not absolve the sovereign of its obligation to ensure protection of life of inmates. Absence of participation is solely a shield against criminal prosecution of the persons who would be so involved and cannot be cited as the basis to wriggle out of the civil and tortuous liabilities.

Having held as above, the next question which arises for determination is the quantum of compensation to be awarded to the petitioners. It has been pointed out that the minimum wages as were in force

at the relevant point of time were Rs.240/- per day. Upon consideration, number of days when a daily wager may be in a position to get work in an year is approximately 200 days, the annual income of deceased Vikram Singh @ Vicky could be assumed as Rs.48,000/-. By applying a deduction of $1/3^{\text{rd}}$ i.e. Rs.16,000/-, the annual dependency of deceased would work out to Rs.32,000/- per annum. The age of the deceased was 25 years and taking into consideration the parameters and yardsticks enshrined in the Motor Vehicle Act, 1988, the multiplier of 18 would be attracted as per the law laid down by the Hon'ble Supreme Court in the matter of **Ms. Sarla Verma and others Vs. Delhi Transport Corporation and another** reported as **(2009) 6 SCC 121**. The amount of compensation thus comes to Rs.5,76,000/-. An additional amount of Rs.70,000/- is also awarded under the Conventional Heads i.e. litigation expenses, loss of estate and consortium. Even though the judgments in relation to the compensation under the Motor Vehicles Act, 1988 take into consideration the future prospects of a person, however, taking into consideration the criminal antecedents and the possibility of the petitioner being convicted, the aforesaid aspects for assessing compensation are not being gone into at this stage.

Resultantly, a consolidated amount of compensation of Rs.6,46,000/- (Rs.5,76,000/- on the basis of annual dependency with the multiplier of 18 + Rs.70,000/- payable towards the conventional heads) is awarded.

Learned counsel for the petitioners has suggested that the compensation in question may be disbursed amongst the petitioners in the ratio of 10% each to the petitioners No.1 and 2 and 40% each to the petitioners No.3 and 4.

Accordingly, the bifurcation of the amount of compensation amongst the petitioners is worked out as under:

Petitioners	Share in percentage	Total payable amount
Petitioners No.1 & 2	10% each	Rs.64,600/- each
Petitioners No.3 & 4	40% each	Rs.2,58,400/- each

The proportionate share of the minor shall be deposited in a Nationalised Bank in the shape of an FDR under a scheme that would earn maximum rate of interest to be released in the favour of the petitioner No.4 - minor upon attaining majority. The needful shall be done at the earliest and preferably within a period of three months from the date of receipt of certified copy of this order failing which the amount of compensation so assessed shall carry interest @ 6% per annum from the date of filing of the petition till actual realization.

The petition stands allowed accordingly.

14.09.2022.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**