

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1464 OF 2015

1. Vishnu s/o Sandipan Kute,
Age 62 years, Occ. Agri.,
R/o Kutewadi, Tq. & Dist. Beed.
2. Chabubai w/o Vishnu Kute
Age 55 years, Occ. Household,
R/o as above.
3. Anjali w/o Pratap Kute,
Age 29 years, Occu. Household,
R/o Kutewadi, Tq. & Dist. Beed.
4. Priya @ Piyusha d/o Pratap Kute,
Age minor, u/g of petitioner No.3.
Anjali w/o pratap Kute
Age 29 years, Occu. Household,
R/o Kutewadi, Tq. & Dist. Beed
5. Harshwardhan s/o Pratap Kute,
Age minor, u/g of petitioner No.3.
Anjali w/o Pratap Kute
Age 29 years, Occu. Household,
R/o Kutewadi, Tq. & Dist. Beed

... PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary,
home Minister (M.S.),
Mantralaya, Mumbai – 32
2. The Superintendent of Jail,
District Prison, Beed

(Copy to be served on P.P. Office,
High Court of Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....
Mr. N.R. Thorat, Advocate for petitioners
Mr. M.M. Nerlikar, A.P.P. for State
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 2nd MARCH, 2023

ORAL JUDGMENT (PER : SMT. ANUJA PRABHUDESSAI, J.)

Rule. Rule made returnable forthwith and taken up for final hearing at admission stage with the consent of learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India has been filed by the parents, widow and children of the deceased Pratap Kute, an undertrial prisoner who died in custody, for grant of compensation of Rs.90 Lakhs for loss of life due to the negligence of the jail authority.

3. The petitioners claim that the deceased Pratap was suffering from spondylosis and severe pain. It is alleged that since he was not provided medical treatment, he filed an application before the Magistrate to shift him to Government Hospital, Beed for proper medical treatment. The said application was dismissed with observations that the Superintendent of Jail is able to take proper care and provide medical facility to the deceased. It is alleged that the deceased

was not given any treatment despite his request at initial stage and it was only after his condition deteriorated that he was shifted to Government Hospital, Beed. It is further stated that since the condition of the deceased was critical, the doctor at Government Hospital, Beed had advised to shift the deceased to Government Medical College, Aurangabad for further treatment. The deceased was not shifted to Government Medical College, Aurangabad and the concerned Police Constable made an endorsement that he is not able to shift the deceased to Government Medical College, Aurangabad and will have no complaint in case of any untoward incident/ risk to the life of the deceased Pratap. The deceased expired on 27/2/2012. The petitioners claim the death of deceased Pratap was due to callous and negligent attitude of the jail authority.

4. Anil Subhash Paraskar, the Superintendent of Police, Beed has filed his affidavit-in-reply wherein he has denied that the deceased died due to negligence of the jail or State authority. He has stated that at the time of admission of the deceased in jail, he had stated that he did not have any ailment. On 23/2/2012, the deceased complained of chest pain and back pain and he was immediately taken to District Government Hospital, Beed. Two Police Guards were deputed at the hospital. The deceased died on 27/2/2012 and on the basis

of the information given by one of the Guards A.D. No.6/2012 was registered. He has stated that inquiry was conducted by the State C.I.D. and subsequently pursuant to the order in Criminal Writ Petition No.72/2013, the Sub-Divisional Police Officer conducted inquiry and recommended disciplinary action against the duty police guard Chaudante for his negligence in his duty. It is stated that the deceased was HIV Positive and he died due to complications of the said ailment. He has stated that the deceased was not subjected to ill-treatment while he was in jail.

5. Learned counsel for the petitioners submits that the son of the petitioners No.1 and 2 died while he was in prison, due to negligence of the jail authorities. He, therefore, contends that the petitioners are entitled for compensation.

6. Per contra, learned A.P.P. submits that though the doctors regularly visit the jail, the deceased had not complained to the doctor or the jail authorities about his ailment. He was shifted to the hospital immediately after he complained of ill-health and was given necessary medical treatment. He submits that the jail authorities cannot be held responsible for the death of the deceased. Learned A.P.P. states that, there were three inquiries including magisterial inquiry, C.I.D. as well inquiry by

the National Human Rights Commission and that all the authorities have recorded a finding that it is not a case of custodial death due to ill-treatment. Learned A.P.P. further submits that the authority has also been absolved of charge of negligence.

7. We have gone through the record and considered the submissions advanced by learned counsel for the respective parties. The records reveal that, the deceased Pratap was arrested on 16/1/2012 in Crime No.4/2012, registered with Pimpalner Police station for offences punishable under Sections 143, 147, 148, 326, 452, 506 read with Section 149 of the Indian Penal Code. He was remanded to the magisterial custody on 23/1/2012. The deceased had filed an application before the learned Magistrate on 7/2/2012 stating that he was suffering from spondylosis and needed treatment and proper nutrition. He requested that he should be referred for treatment to the Government Hospital at Beed. The application was opposed by the prosecution stating that it is the boundent duty of the State to provide medical aid and that the medical facility is available in jail. The learned Magistrate dismissed the application stating that there was nothing on record to show that the deceased Pratap Kute was given necessary treatment in the jail. The learned Magistrate also observed that it is

bounden duty of the Superintendent of Jail to provide specialised medical treatment to the prisoners. The records further reveal that the deceased Pratap was admitted in District Hospital, Beed on 23/2/2012 and that he expired on 27/2/2012. The post mortem report indicates that the cause of death was due to 'Pulmonary Koch's with Miliary Tuberculosis' of Liver and spleen in Sero Positive Case.

8. The question before us is whether the death of the deceased was caused for want of proper medical care and treatment. The records reveal that the deceased was not provided any treatment while he was in jail from 7/2/2012 till the date he was shifted to the hospital. All that the jail authorities had done is that they collected the blood sample of the deceased Pratap on 10/2/2012, report of which was received after his death. The contentions of the learned A.P.P. that the deceased Pratap ought to have approached the doctor and narrated about his sickness cannot be accepted. As noted above, the deceased who was an undertrial prisoner, had approached the Magistrate and had complained about ill-health. The jail authorities were, therefore, well aware that the deceased was having some sort of ailment. Having opposed the application on the ground that all the facilities were available in the jail, it was the duty of the Superintendent of Jail and all the

other concerned to ensure that necessary medical facility was provided to the deceased Pratap. The records further reveal that, even after the deceased was shifted to the hospital, the doctor on duty had informed the on-duty Constable that the patient had to be shifted to Government Medical College & Hospital, Aurangabad. The said Constable from Headquarters, Beed had made an endorsement that for some reason, he is unable to shift the accused to Government Medical College & Hospital, Aurangabad and that they would have no grievance if the life of the deceased Pratap was in danger. This endorsement itself reflects total callous and insensitive mindset of the police authorities as well as the jail authorities.

9. The affidavit filed by Anil Paraskar, Superintendent of Police (respondent No.2) also indicates that Sub-Divisional Officer has attributed negligence to the Police Duty Guard who had refused to shift the deceased to Government Medical College, Aurangabad despite advice of the doctor at District Government Hospital, Beed. In paragraph 9 of the affidavit it is stated that "during the inquiry, the State C.I.D. as well as Sub-Divisional Police Officer, it was revealed that there was no ill-treatment at the hands of Jail Authorities in jail." We are conscious of the fact that this is not a typical case of death due to custodial violence or torture. The present case reveals that

despite the request of the deceased, an undertrial prisoner, to provide medical treatment, no timely medical aid was provided to him except for collecting his blood sample, report of which was received after his demise. This fact has not been considered in the magisterial inquiry report.

10. In Suba Singh Vs. State of Haryana (2006)3 SCC 178, the Apex Court has observed thus :

“38. It is well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

In Sujata Mukunda Manerao Vs. State of Maharashtra & ors. [2004 ACJ 11023], the Division Bench of this Court has observed that :

“7. It is bounden duty of the State to look after health of the inmates in the jails since they cannot take treatment on their own and for the purpose of treatment, they are at the mercy of the hospital authorities. Proper medical aid to the inmates is a

right available to them under Article 21 of the Constitution. The Apex Court in P.B. Khet Mazdoor Samity's case (supra) has laid down that Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance and failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. It is also laid down by the Supreme Court in the said judgment that it is well settled that adequate compensation can be awarded by the Court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution."

11. Having gone through the records, in our considered view, there has been total negligence and lapse on the part of the jail authorities in providing adequate, effective and proper medical treatment and on the part of the police guard on duty who declined to shift the deceased Pratap Kute to Government Medical College, Aurangabad which has resulted in his death.

12. The deceased was a young man of 32 years of age, with his wife, children and parents dependent on him. The deceased was not a hardened criminal involved in some grave or serious crime. He lost his life only due to the failure of the jail authority to provide medical treatment. It need not be emphasised that the right to health enshrined in Art. 21 of the Constitution of India particularly of a prisoner who is deprived of

his personal liberty, albeit in accordance with the procedure established by law, cannot be ignored. In fact the Hon'ble Supreme Court has in several decisions held that the right to life includes right to live with human dignity. Hence the duty of the State to provide medical treatment to the prisoners, to take care and ensure their safety and security of the prisoners and treat them with human dignity needs no affirmation. The Government having failed in its duty, the petitioners being the parents, widow and the children of the deceased, are entitled for compensation.

13. As regards the quantum of compensation, the deceased was 32 years of age. His parents, wife and two minor children were dependent on him. The parents, widow and the children of the deceased have also been deprived of love and affection of their loved one due to his untimely death caused due to negligence of the jail authority and the police guard. In such circumstances, though we cannot compensate human life in true sense, we are inclined to award compensation of Rs.10,00,000/- (Rupees ten lakhs) to the petitioners.

14. In the result, the respondent No.1 State of Maharashtra is directed to pay compensation of Rs.10,00,000/- (Rupees ten lakhs) to the petitioners. The compensation shall

be paid within four weeks from today failing which the amount will carry interest @ 6% p.a. from the date of the order till the date of payment. The State is at liberty to recover the same from the concerned officers who are negligent in providing medical aid to the undertrial prisoner. Rule made absolute in above terms.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-