

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-1408-2022 (O&M).
Date of Decision: 25.09.2023.

KULDEEP KAUR AND ANOTHER

... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. C.S. Singhal, Advocate,
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for grant of compensation to the petitioners who are widow and minor child of deceased Sukhjinder Singh @ Sukha who died while in custody at New District Jail, Nabha, District Patiala.

Learned counsel appearing for the petitioners contends that petitioner No.1 was married with Sukhjinder Singh @ Sukha and one child

i.e. petitioner No.2 was born on 16.01.2019. The deceased was stated to be doing labour work and working as a driver wherefrom he was earning Rs.20,000/-per month. He was, however, booked in a criminal case bearing FIR No.100 dated 09.10.2020 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mulepur, District Fatehgarh Sahib. As an undertrial, the deceased was lodged in New District Jail Nabha.

On 07.10.2021, certain prisoners/undertrials picked up a scuffle and gave severe beatings to Sukhjinder Singh @ Sukha which led to his death on 19.10.2021. An FIR No.256 dated 07.10.2021, under Section 302 of the Indian Penal Code, 1860, was registered at Police Station Sadar Nabha, District Patiala against Sonu (undertrial) lodged in New District Jail Nabha as an accused. The deceased was 23 years of age as on the date of the incident and is survived by no other Class I heir but for the petitioners referred to above.

Reply by way of short affidavit of Ramandeep Singh Bhangu, PPS, Superintendent, New District Jail Nabha, on behalf of respondents No.1 to 4 has been filed wherein occurrence of the incident in question is not disputed. It was averred that accused Sonu son of Samuel Masih was lodged in New District Jail Nabha, in a criminal case bearing FIR No.08 dated 31.01.2019 under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station GRP Sirhind. The accused along with deceased Sukhjinder Singh @ Sukha was confined in Barrack No.01 of Ward No.03. A scuffle took place between the

deceased and the accused at around 5:00 P.M. while arranging their beddings resulting into Sonu attacking deceased Sukhjinder Singh @ Sukha with sharpened spoon. Sukhjinder Singh @ Sukha was immediately taken to the Jail Hospital where the Medical Officer referred him to Civil Hospital. He, however, could not survive the injuries. As an aftermath of the incident, FIR No.256 dated 07.10.2021, under Section 302 of the Indian Penal Code, 1860, already stands registered at Police Station Sadar Nabha, District Patiala. The same is now pending before the trial Court.

Learned counsel for the petitioners has argued that the present case is a case of unnatural death of an inmate while in custody and that the respondents are liable to compensate the petitioners being widow and minor child, for his death. State was under an obligation to prevent any harm to a prisoner and the respondents have failed in the same.

Learned State counsel, however, informs that the State Policy mandates payment of compensation of Rs.1 Lakh for any such incident that may have taken place. It is submitted that there was no fault on the part of the State. The petitioners may file appropriate proceedings for compensation against accused.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present petition, including the Policy relied upon by the learned State counsel.

It is undisputed that the petitioner Sukhjinder Singh @ Sukha passed away as a result of an incident that took place while he was lodged

in New District Jail Nabha. The Hon'ble Supreme Court was seized of the matter pertaining to the death of an inmate in the police custody in the matter of **RE-Inhuman Conditions in 1382 Prisons, reported as (2017) 10 SCC 658** and it was held as under:-

*“41. One of the earliest cases where this Court granted compensation in a petition under Article 32 of the Constitution is **Rudul Sah v. State of Bihar reported as (1983) 4 SCC 141.** 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, reported as (1993) 2 SCC 746**, 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 reported as (1995) 5 SCC 600**. 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, reported as (1997) 1 SCC 416**, 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. (2000) 3 SCC 521, Murti Devi v. State of Delhi (1998) 9 SCC 604 and more recently Rohtash Kumar v. State of Haryana (2013) 14 SCC 290, 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, reported as (2011) SCC Online Del. 2252.

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, reported as (2013) SCC Online Bom. 1773

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, reported as (2013) SCC Online Gauhati, 429.

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, reported as (2016) SCC Online Guj 1956.

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., reported as AIR 2012 Ori. 97.

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. reported as (2012) SCC Online P&H 19844.

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, reported as (2008) SCC Online Mad. 1249.

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. reported as (2016) SCC Online Ker. 22210.

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., reported as (2009) SCC Online All. 337.

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. reported as (2000) SCC Online Raj. 203.

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. reported as (2011) 3 MPHT 81

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. reported as (2007) SCC Online HP 45.

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. reported as (2015) SCC Online J&K 160.

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. reported as (2001) SCC Online Jhar. 74.

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. reported as (2015) SCC Online MP 7488.

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.

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THE NEED TO COMPENSATE

53. The case law indicates that over the last several decades this Court and almost every High Court has relied on Article 21 of the Constitution and thought it appropriate to compensate the next of kin for an unnatural custodial death. The constitutional courts can go on delivering judgment after judgment on this issue and award compensation, but unless the State realizes that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance.

54. Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims - sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the

perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

The entire law and precedents have been thoroughly discussed by the Hon’ble Supreme Court in the above said judgment and a tortious liability was fastened upon the State for occurrence of such an event against a person, while in custody. A mere absence of any State involvement in the death does not absolve the State of its obligation to protect the lives of the persons who are lodged in custody.

The accused having possessed a sharpened spoon is reflective of some element of negligence on the part of respondent State and its contention of non-involvement would not come to the aid of the respondents or to conclude that they are not liable to compensate the petitioners herein.

In so far as reference made to the Policy notified by the State is concerned, the said Policy is only for the financial assistance to be extended by the respondent State so that family of victim does not die in harness and also to overcome the immediate financial hardship that may accrue as a result thereof. The aforesaid financial assistance cannot be imputed as compensation on account of death of an inmate.

Besides, the Policy of the State does not operate as a bar on a Court to examine the case. The restrictions or conditions come into play only if claim is lodged under the Policy and not otherwise. Even otherwise, compensation of Rs.1,00,000/- (Rupees One Lakh) on death seems highly inadequate.

In view of the circumstances noticed above and having considered that it was a case of an unnatural death of an inmate while in custody, and also that certain disputed questions of facts as regards the income of the deceased; the age of the deceased; the dependency and the apportionment and also the lapse/negligence, the present petition is disposed of by awarding an interim compensation of Rs.5,00,000/- (Rupees Five Lakhs Only). 50% of the aforesaid amount shall be kept in a Fixed Deposit carrying maximum interest in favour of petitioner No.2 and to be released on his attaining the age of majority/18 years.

The amount awarded above be released within a period of 03 months of receipt of certified copy of this order.

The petitioners may, if so advised, take recourse to alternative remedies to seek compensation from the State as well as the accused under the Fatal Accidents Act, if so advised.

The period during which the present petition has remained pending before this Court shall be taken into consideration by the competent Court while dealing with limitation.

September 25, 2023
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No