

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 17480 of 2024

Reserved on : 13.09.2024
Pronounced on: 26.09.2024

Hasana Begam

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Prabir Kumar Mitra
Mr. Pinak Kumar Mitra
Mr. Subhanwita Ghosh

... .. for the petitioner

Mr. Somnath Ganguly
Ms. Kalpita Pauli

... .. for the State

Rajarshi Bharadwaj, J:

1. The petitioner's son, Sk. Hossain Ali, aged about 24 years, was arraigned as an accused in connection with Tamluk Police Station Case No. 505/24 dated 10th June, 2024, under Sections 163 and 365 of the Indian Penal Code, as per the allegations set forth in a formal written complaint lodged by one Mina Begam. This matter corresponds to G.R. No. 1971/24. The aforementioned accused was produced before the Learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, Himachal Pradesh, on 28th

June, 2024, whereupon the prosecution sought a seven-day transit remand for the said accused. The said prayer was duly granted by the Learned Court.

2. Subsequently, on 01st July, 2024, the petitioner's son, being the accused, was presented before the Learned Chief Judicial Magistrate, Tamluk, Purba Medinipur, where he was remanded to judicial custody until 12th July, 2024, pursuant to the order passed by the Learned Chief Judicial Magistrate. Notably, on the same day, the victim was also produced before the Learned Court and an order was passed directing the Learned Judicial Magistrate, First Court, Tamluk, to record the statement of the victim under Section 164 of the Code of Criminal Procedure, which was duly recorded on 04th July, 2024.

3. During the period of remand, the Superintendent of Tamluk Sub-Correctional Home sought post-facto approval for the transfer of the undertrial prisoner, Sk. Hossain Ali, from Tamluk Sub-Correctional Home to Medinipur Central Correctional Home for medical treatment, as reflected in the order dated 05th July, 2024.

4. On 05th July, 2024, at approximately 11:55 hours, the Inspector-in-Charge of Kotwali Police Station, Paschim Medinipur, received formal communication from the Superintendent of Medinipur Central Correctional Home, informing that the undertrial prisoner, Sk. Hossain Ali, was found deceased, having allegedly hanged himself with a gamcha (cloth) from a tree near the medical kitchen of the correctional home, at around 9:15 a.m. on the same day. Pursuant to this information, an Unnatural Death Case, being Kotwali Police Station U.D. Case No. 482/24 dated 05th July, 2024, was registered.

5. The said information was thereafter communicated via email to the Inspector-in-Charge of Tamluk Police Station, Purba Medinipur, at approximately 1:15 p.m. on 05th July, 2024, for the purpose of informing the deceased's family members.

6. The petitioner, being aggrieved by the actions and/or inactions of the respondent authorities, alleges gross miscarriage of justice in failing to comply with statutory provisions of law, thus infringing upon the fundamental rights of the petitioner and her deceased son, as guaranteed under the Constitution of India has preferred the present petition.

7. Learned Counsel appearing for the petitioners submits that from the photographic evidence submitted by the State, it is evident that markings in the deceased's neck and other portions of the body raises serious questions regarding the plausibility of the police's version of events. It is incomprehensible how an individual purportedly suffering from severe back pain, as claimed by the police authorities, a condition severe enough to warrant his transfer between correctional facilities could have tied multiple knots with gamch around his neck and hang himself from the dilapidated portion of the correctional home. The physical limitations arising from such a condition would have severely hindered his ability to carry out such actions, thereby casting doubt on the alleged suicide narrative. Furthermore, the physical condition of the body as depicted in the photographs deviates from the typical indicators associated with a death caused by suicide, further suggesting foul play or irregularities that merit deeper investigation.

8. Additionally, the Investigating Officer (IO) has committed multiple procedural lapses. Notably, in the forwarding report dated 01st July, 2024, the IO stated that a notice under Section 41A of the Criminal Procedure Code (CrPC) was affixed to the wall of the petitioner's residence, but the notice conspicuously lacked a date. This omission contravenes established legal principles. The Hon'ble Supreme Court, in its authoritative rulings in **Arnesh Kumar v. State of Bihar** reported in (2014) 8 SCC 273 and **Satender Kumar Antil v. CBI** reported in (2022) 10 SCC 51, unequivocally held that for offenses punishable with imprisonment of less than seven years, the prior permission of the Magistrate is a precondition for arrest. The failure of the IO

to adhere to this legal mandate renders the arrest of the petitioner's son illegal and void ab initio.

9. Further compounding the procedural irregularities, the IO did not make any prayer for police custody, which is the usual course in such investigations. Instead, the IO anomalously sought judicial custody (JC), deviating from standard investigative procedures, thus raising concerns about the legitimacy and thoroughness of the investigation.

10. Moreover, the petitioner's son was transferred from Tamluk Sub Correctional Home to Paschim Medinipur Central Correctional Home on 04th July, 2024 without prior notification to the petitioner or his family, a clear violation of Section 45(3) of the West Bengal Jail Code. This provision mandates that the relatives of a prisoner be informed of such a transfer. In addition, the local Magistrate was not notified before the transfer, further highlighting the State's blatant disregard for statutory procedures. Similarly, Rule 46(1) of the West Bengal Jail Code and Rule 259(2)(a) require that the family of a deceased prisoner be informed of the death promptly and that the body be retained for no more than 24 hours. These provisions were flagrantly ignored, as no intimation was given to the petitioner's family.

11. Significant procedural lapses were also observed during the inquest. Inquest conducted by the Executive Magistrate, between 3:35 p.m. and 4:15 p.m. on 05th July, 2024, failed to mention the presence of the petitioner's relatives, in direct violation of Section 176(4) CrPC. Moreover, the inquest report raises doubts about its credibility, as it contains detailed observations of the body even though it was still in a hanging position at the time. Such inconsistencies call into question the veracity of the findings.

12. Furthermore, it is submitted that the Health Screening Report dated 04th July, 2024 indicated that the petitioner's son was in good health. Yet, the subsequent referral to Tamluk Hospital for lower back pain, which was treated with minor medication, raises doubts about the necessity of transferring him

to another correctional home. This inconsistency, coupled with the absence of any complaints or specific timings in the report from Midnapore Central Correctional Home on 06th August, 2024, casts further suspicion on the State's narrative. Additionally, the report submitted by the State respondents on 12th July, 2024 confirms the absence of CCTV cameras at Tamluk Sub Correctional Home. The lack of video surveillance in a high-security environment exacerbates concerns about the conditions under which the petitioner's son was held and the events leading up to his death.

13. Furthermore, the death certificate issued by the Medical Officer at Midnapore Central Correctional Home vaguely cites "probably by hanging" as the cause of death without even pulling down the body for proper examination. This ambiguous declaration, coupled with the aforementioned procedural lapses, significantly undermines the credibility of the State's version and necessitates a comprehensive and impartial investigation into the true cause of death.

14. In addition to the aforementioned discrepancies, it is also submitted that the State is attempting to delay the course of justice under the guise of awaiting NHRC involvement. This tactic is a clear attempt to stall proceedings, thereby causing significant delays in the filing of the FIR. Such delays would create an opportunity for the respondents to tamper with or destroy crucial evidence, further obstructing a fair and impartial investigation.

15. The Learned Counsel for the State submits that the petitioner's arguments lack merit and do not undermine the procedural integrity of the investigation. First, the petitioner's son might have climbed a staircase adjacent to the scene and hanged himself, as evidenced by the three knots found around his neck. The physical capacity to tie these knots is not inconsistent with the deceased's medical condition and reports have been produced before the Court supporting the suicide claim. All relevant procedures, including guidelines by the NHRC, specifically Guideline no.27

regarding *conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action*, have been followed meticulously by the police authorities and the final report from the NHRC is awaited before proceeding further, including the lodging of an FIR.

16. Addressing the concerns regarding discrepancies in the case diary, the State submits that the issue of timing was purely a human error committed by the Sub-Inspector (SI), and it does not reflect any malintent. Furthermore, the petitioner's claims about procedural lapses are unfounded. Rule 861 of The West Bengal Jail Code clearly states that transfers for health benefits should only occur for prisoners who, though not suffering from active diseases, are expected to recover in a healthier environment. In this case, the deceased was in good health at the time of transfer, satisfying the rule's requirements.

17. Regarding allegations of misconduct by the Investigating Officer (IO), the State emphasizes that there was no breach of protocol in the handling of the case. The notice under Section 41A Cr.P.C, though missing a date, was properly affixed as required by law.

18. Additionally, the petitioner's son's transfer between correctional facilities on 04th July, 2024 was executed according to standard procedures, and while notification of the petitioner's family was delayed, this was not indicative of any foul play. The inquest conducted by the Executive Magistrate adhered to legal guidelines, and although the petitioner questions its credibility, it is imperative to wait for the final NHRC report, which will clarify any remaining concerns.

19. Moreover, the State firmly denies any allegations of delaying justice. The involvement of the NHRC is crucial to ensuring an impartial investigation, and any delays are a result of awaiting their findings, not due to obstruction or manipulation by the respondents.

20. On perusal of the documents brought before this Court and considering the submission made on behalf of the parties, it is observed that the

petitioner's son, died under suspicious circumstances while in judicial custody, allegedly by suicide. In light of the post-mortem report, as delineated in Modi's "Medical Jurisprudence," 24th Edition at Page -453, it is imperative to note that:

“Post-mortem Appearance- *Post-mortem appearance are external and internal.*

External Appearance- *The external appearances are those due to the constricting force applied to the neck, and those due to asphyxia.*

*(b) Appearances due to Asphyxia. The face is puffy and cyanosed, and marked with petechiae. The eyes are prominent and open. In some cases, they may be closed. The conjunctivae are congested and the pupils are dilated. Petechiae are seen in the eyelids and the conjunctivae. The lips are blue. Bloody foam escapes from the mouth and nostril and sometimes, pure blood issues from the mouth, nose and ears, especially if great violence has been used. The tongue is often swollen, bruised, **protruding** and dark in colour, showing patches of extravasation and occasionally bitten by the teeth. There may be evidence of bruising at the back of the neck. The hands and organs may be congested and there may be discharge of urine, faeces and seminal fluid. usually clenched. The genital organ may be congested and there may be discharge of urine, faeces and seminal fluid.”*

However, there are several inconsistencies in the state's version of the events, such as the presence of multiple knots in the gamcha (cloth) on the deceased's neck and his alleged medical condition that cast doubt on his ability to commit suicide. These discrepancies, combined with inadequate procedural adherence, lead to the breakage of a chain link of circumstances, pointing towards possible foul play or negligence.

21. Several procedural lapses have been highlighted, including the failure to properly notify the petitioner/petitioner's family about the transfer of the deceased between correctional homes, violations of the West Bengal Jail Code, failure to seek police custody and the absence of CCTV surveillance at Tamluk

Correctional Home. These raise concerns regarding the thoroughness and fairness of the investigation conducted by the state police authorities.

22. According to Guideline no.27 of the National Human Right Commission it has been categorically mentioned that:

“III. Annexure to be attached with the report:-

a) The statements of the family members/relatives of the deceased, concerned doctors who rendered medical treatment/conducted post mortem, concerned police/prison official, co-prisoners, independent witnesses and other such relevant persons.

b) All other external reports which have been referred to or relied upon by the enquiry magistrate in his/her magisterial enquiry.”

Therefore, the inquest conducted by the Magistrate raises doubts as it lacks to mention the presence of the deceased's relatives, as required by law. Additionally, conflicting health reports further weaken the state's narrative, suggesting the need for an impartial investigation to determine the true cause of death.

23. Additionally, as per D.O. No. 237/11/6/2017-JCD/FC of the National Human Right Commission (NHRC) dated 24th April, 2019 the post-mortem examination must be done by a Board of at least three doctors, preferably from different institutions as the doctors from the same institution are likely, in some cases, to be influenced by their senior members in the Board impeding independence of the other members; and all doctors doing post-mortem must be holding a post-graduate degree in forensic medicine and must have at least experience of five years in the speciality of post-mortem examination. However, in the instant case, the post-mortem was conducted by only two doctors of the same institution thereby violating the guidelines laid down by NHRC.

24. The substantial delay in lodging the FIR, coupled with the State's reliance on the pending NHRC report, raises serious apprehensions regarding potential tampering of evidence and obstruction of justice. When a specific

allegation is made against police officers, implicating them in a cognisable offense of culpable homicide, it is imperative that an FIR be registered under the relevant provisions of the Indian Penal Code. Such cases should be entrusted to the State CID or another specialized investigative body for thorough scrutiny. Considering the procedural lapses, inconsistencies in the State's account, and concerns over potential bias, this Court finds it essential to transfer the investigation to the Criminal Investigation Department West Bengal (CID) to ensure an impartial, transparent, and exhaustive inquiry. The CID, being a specialized investigative agency, is well-positioned to handle sensitive cases of custodial deaths, especially when there are allegations of misconduct by state officials.

25. It has been reiterated by the Supreme Court in **R.S. Sodhi v. State of U.P** reported in **1994 SCC (Cri) 248** that:

"2.... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation...."

26. For the forgoing reasons, CID being the respondent no. 3 in the instant application, shall register a case and conduct an investigation into the circumstances of the petitioner's son's death. CID shall forthwith appoint an officer to receive from the respondents, all records relating to the petitioner's son and the respondents shall immediately hand over such records to such

officer. The investigation shall be completed as expeditiously as possible. The Registry shall forward a copy of this judgment and order to the Director, CID, West Bengal.

27. With the above directions, the writ petition being WPA 17480 of 2024 is disposed of.

28. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
26.09.2024
PA (BS)