

2024:PHHC:094902



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

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CWP-20968-2019
Date of Decision: 25.07.2024

LAKHWINDER KAUR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for directing the respondents to pay compensation to the petitioner on account of untimely death of her husband, who died in jail due to the alleged negligence on the part of jail Authorities in providing emergency treatment to Gurbinder Singh- deceased husband of the petitioner.

Learned counsel for the petitioner contends that the husband of the petitioner was arrested in FIR No.221 (wrongly mentioned as 321 in the petition) dated 24.12.2005 under Section 21 of the NDPS Act, 1985 registered at Police Station 'A' Division, Amritsar. He was eventually convicted by the learned Special Court, Amritsar vide judgment dated 12.06.2008 and sentenced to undergo rigorous imprisonment for a period of ten years. He remained confined in custody till the date of his death i.e. on 14.08.2016. He vehemently

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argues that the petitioner received information at about 10.30 AM on 14.08.2016 about the condition of her husband being precarious and she was called upon to reach the jail premises. She reached there at about 02.00 PM alongwith one neighbor namely Bajinder Kaur. It is contended that there were no proper arrangements in the jail for shifting her husband from Jail Hospital to Government Hospital. She made a request to the jail staff that she can arrange for a private ambulance and that her husband be sent with them alongwith the security, but the jail staff asked her to wait outside the jail. At about 5.00 PM, her husband died inside the gate and his dead body was lying on the ground. The ambulance came at 5.45 PM and took the dead body of her husband to hospital, whereby the doctor declared him as “brought dead” at 6.15 PM. Learned counsel argues that Gulpinder Singh was confined in custody and his death took place on account of failure on the part of the respondents in taking appropriate steps for detection of the deteriorating health as well as the symptoms. He further refers to the photographs to show that there were clear symptoms on the body of the deceased about his health condition but no steps for timely medication were ever taken and no regular medical checkup was conducted to determine whether any of the inmates is suffering from any contagious disease or not. A suitable compensation is accordingly claimed for by the petitioner on account of the lapses that are attributable to the respondents in maintaining the wellbeing and good health of the inmates within the jail premises.



Learned State Counsel on the other hand, denies the aspect of any lapse and negligence on the part of the respondents. She contends that the patient (husband of the petitioner) had approached the Medical Officer of the Jail on 14.08.2016 with symptoms of anxiety, rashes on his body and a single episode of vomiting. He was afebrile and his vitals were in normal range upto 3.50 PM. Information in this regard was sent by the Jail Medical Officer to the Jail Superintendent and he was provided treatment for his complaint and was kept under observation. As the condition did not improve, despite treatment given by the Jail Medical Officer, he was re-examined when his vitals came up as BP 90/60 mm/hg and pulse 60/minute. Seeing the falling vitals of the patient, he was referred to Emergency, Guru Nanak Dev Hospital, Amritsar and an ambulance was called by the Jail Medical Officer at 4.43 PM for shifting the patient. The jail ambulance was already occupied as one of the inmates namely Gurpreet Singh was being shifted to outside hospital in prison ambulance at around 03.10 pm. The ambulance arrived at 5.25 PM and left the prison with patient Gurbinder Singh at 05.30 PM alongwith jail escort, but the doctors of the Guru Nanak Dev Hospital, Amritsar declared the patient as "brought dead". The postmortem was conducted on the dead body of deceased and as per the PMR, the death occurred due to progression of COPD during its natural course and not on account of any negligence on the part of the jail staff or Jail Medical Officer. The Jail Superintendent also called for a detailed report regarding the medical treatment provided to the deceased. The said report dated 16.03.2023 is extracted as under:-



"In reference to your letter it is respectfully submitted that inmate Gurbinder Singh S/O Bakhshish Singh was admitted into Central Jail Amritsar on 30-12-2005 in case of FIR no.221/2005 U/S 21/61/85 NDPS Act police station A-Division Amritsar as an under trial. As per as record available no previous history of any disease, illness, drug abuse, injury was given by inmate to jail Medical Officer during his admission into Central Jail Amritsar. As per as record available during his tenure in Central Jail Amritsar on 08-12-2014 he came to Medical Officer with complaints of high blood pressure and low backache with no association of fever, breathlessness, weight loss, cough or any other additional symptoms was given by inmate to Medical Officer as per record. On 13-08-2016 inmate suddenly got sick and was advised referral to Civil Hospital. Meanwhile patient was treated in Medical room itself on 13/08/2016 at 7:30 pm where various drugs were given which were needed for his condition& in the meantime as per record patient was able to talk and walk with no diaphoresis or any other sign of sympathetic stimulation was seen by Medical Officer as per record in General no. 692 dated 13.08.2016 at 07:52pm. On 14-08-2016 patient again came to Medical officer with symptoms of anxiety, rash and a single episode of Vomiting. Patient was immediately examined by Medical officer, he was afebrile and as per as record vitals were within normal range at 03:50pm. He was provided treatment for his complaints and kept under observation but as condition of patient did not improve despite treatment given by Medical officer and his vitals continued to deteriorate so patient was re- evaluated and his vitals came up with as follows:

BP – 90/60 mmHg

Pulse – 60/min



Seeing his vitals falling, patient was immediately referred to Guru Nanak Dev Hospital Amritsar. Call to 108 ambulance was made at 04:43 pm as it has got paramedical staff along with other lifesaving equipment and most importantly medical oxygen that's essentially needed by such medically serious patients. Unfortunately EMO at GNDH Amritsar declared him brought dead on 14-08-2016 at 06:15pm. As per as post mortem report of cause of death in this case as given by Forensic Medicine and Toxicology Department Guru Nanak Dev Amritsar was "failure of function of respiration as result of chronic pulmonary disease (pulmonary TB) which is sufficient to course death in ordinary course of nature. Here it is vital to mention here that as above said no complaint of fever, breathlessness, weight loss or any symptom associated with COPD or Pulmonary TB was reported by patient to Medical officer during his stay in Central Jail Amritsar and it is also well known medical fact that COPD can lead to failure of function of both heart and lungs as the COPD progresses during its natural course so death of this inmate here was as a result of progression of COPD during its natural course and not due to negligence on part of Medical Officer on duty."

Relying on the above, State Counsel contends that death had occurred on account of natural circumstances and not on account of any act or omission committed by the Jail Staff or Jail Medical Officer. An inquiry in this regard was also conducted by the Judicial Magistrate Ist Class, Amritsar and in paragraph No.8 of his report bearing No.633 dated 06.06.2018, he has specifically reported that Gurbinder Singh had not died as a result of any injury or poison and that the death took place on account of failure of heart and lungs. Learned State Counsel further submits that the National Human Rights

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Commission, New Delhi, vide its order dated 22.09.2020, also closed the case based upon the postmortem report, histopathology examiner's report, chemical examiner report, the Magisterial Inquiry report and as per suggestion of the Investigation Division of the National Human Rights Commission, New Delhi. She thus contends that it is not a case of custodial death rather it is a case of natural death for which the respondents cannot be faulted with. She further contends that no replication has been filed by the petitioner to the averments contained in the written statement/reply filed by the respondents, even though the said reply was filed by the respondents on 05.04.2023 and a period of more than one year has elapsed since then.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

Even though the documents on record, as brought out, do reflect that the death had occurred on account of natural circumstances coupled with progression of chronic pulmonary disease leading to failure of heart and lungs, however, one aspect in this regard cannot be lost sight of is that the death of petitioner's husband took place on account of tuberculosis. The said disease is symptomatic as well as contagious. Invariably, the symptoms thereof could have been determined/detected. The Authorities have somewhere failed to carry out regular medical examinations of the inmates and to keep a record of their physical health. They have relied solely on an inmate approaching the jail hospital with a complaint as the basis for treatment. The spread of the

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tuberculosis to a level of failure of heart and lungs cannot be said to be sudden and certainly there would have been a history behind it. Even though the deceased may not have approached the jail hospital about the medical problems being faced by him, however, the photographs of the deceased reflect that there were clear symptoms by way of spots on the body of the deceased. Had due and prompt caution been exercised by the jail staff, there could have been a timely detection of the disease suffered by the petitioner's husband and the unfortunate death could have been delayed or averted. However, at this stage and in the absence of sufficient material on record, this Court is not in a position to conclusively hold that there was a lapse on the part of the jail Authorities or there was a contributory negligence on the part of the deceased himself in not approaching the jail authority with the complaint of any uneasiness, breathlessness or anxiety considering that tuberculosis is a disease which causes severe coughing and other respiratory problems. The possibility of the deceased having concealed the said aspect can also not be ruled out. Hence, the said issues would give rise to disputed questions of fact, not only in relation to determination of negligence but also in relation to quantification of damage, if any, and as such, I am of the opinion that this Court cannot go into the said aspect. Nonetheless, taking into consideration the unfortunate and untimely demise of petitioner's husband while being in custody as also the socio-economic circumstances of the petitioner herein, I deem it appropriate to award an interim compensation to the tune of Rs.5,00,000/-. The amount of interim compensation awarded by this Court be disbursed by the respondents equally in



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favour of the petitioner and her minor children. The share of the minor children be kept in the shape of FDRs in a nationalized bank fetching maximum rate of interest and be released in favour of the minors alongwith entire accrued interest on their attaining the age of majority.

Petition stands disposed of accordingly.

Liberty is, however, granted to the petitioner to take recourse to the alternative remedies available to her in accordance with law for seeking enhancement of compensation, if any and if so advised. In case, the petitioner tends to avail any such remedy, the period during which the proceedings remained pending before this Court shall be taken into consideration while computing limitation.

JULY 25, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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