

2024:PHHC:164202



108.

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

CRWP-9461-2024

Date of decision: 26.11.2024

Jyoti Devi

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Manpreet Singh Sidhu, Advocate, for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

GURBIR SINGH, J.

1. While issuing notice of motion in the present case, vide order dated 27.09.2024, this Court passed the following order:-

“Learned counsel for the petitioner *inter alia* submits that the husband of the petitioner namely Raj Kumar @ Raju, who is confined in Central Jail, Gurdaspur in FIR No.161, dated 11.10.2019, under Sections 22 & 29 of NDPS Act, registered at Police Station, City Nawanshahr, District SBS Nagar was mercilessly beaten in jail by Mr. Ajay, Deputy Superintendent, Central Jail Gurdaspur/respondent No.3 along with other officials of the said jail namely Harpreet, Sona, Vijay and Sukhwinder. Thereafter, immediately a representation was made to ADGP, Prison, Punjab (Annexure P-1). It is submitted that the husband of the petitioner is presently with other inmates whom he is not known.

Notice of motion.

Ms. Manjot Kaur, AAG, Punjab, appears and accepts notice on behalf of the respondents/State.

Adjourned to 03.10.2024.

The learned District and Sessions Judge, Gurdaspur is directed to send the concerned Chief Judicial Magistrate/ Secretary DLSA or whosoever is available to the Central Jail, Gurdaspur on 28.09.2024 positively.

It is directed that the concerned Officer shall visit the Central Jail, Gurdaspur tomorrow i.e. 28.09.2024 positively and meet Raj Kumar @ Raju i.e. the husband of the petitioner and assess the necessity for medical examination and arrange for the same, if required. He shall also record his statement and furnishes the compliance report to this Court positively by the next date of hearing.

Reply if any, be filed well in advance with copy to the opposite counsel.”

2. Vide order dated 12.11.2024, this Court passed the following order:-

“Pursuant to order dated 27.09.2024, compliance report has been received from learned Chief Judicial Magistrate, Gurdaspur. The relevant extract of same is as under:-

“..... and Shri Rahul Raja, Superintendent Central Jail, Gurdaspur stated that above-said Shri Raj Kumar has shifted to Central Jail, Amritsar on administrative grounds. Thereafter undersigned recorded the statement of Shri Rahul Raja, Superintendent, Central Jail, Gurdaspur, which is as under:-

“Stated that Shri Raj Kumar son of Shri Mohan Lal, resident of Pailli, Police Station Pojewal, District Shaheed Bhagat Singh Nagar (Nawanshehar) is convict in case bearing FIR No.129, dated 23.07.2017, under Section 22/61/85 of NDPS Act Police Station Garhshankar, District Hoshiarpur and he was sent to Central Jail, Gurdaspur on 11.11.2023 from District Jail Ropar. He remained in Central Jail Gurdaspur till 24.09.2024 and he was transferred/shifted from central Jail, Gurdaspur to Central Jail Amritsar on administrative grounds as per order dated 23.09.2024, passed by Shri Arun Pal Singh, IPS, Additional Director General of Police (ADGP Jails). Attested copy of order dated 23.09.2024 is Mark-A and attested copy of e-prison record is Mark-B.”

Learned counsel for the petitioner submits that in para 5 of the petition, it was specifically mentioned that after giving merciless beatings to Raj Kumar @ Raju (husband of the petitioner), the petitioner had no information where said her husband was kept by the jail authorities.

State is directed to produce the record regarding shifting of the husband of the petitioner from District Jail, Gurdaspur to District Jail, Amritsar and also Superintendent, Central Jail, Gurdaspur, who was posted on 23/24.09.2024, shall file an affidavit whether Raj Kumar @ Raju, husband of the petitioner, was given any medical aid before shifting to Central Jail, Amritsar and similarly, Superintendent, Central Jail, Amritsar posted on 24.09.2024 shall also produce the record if medical assistance required by the husband of the petitioner or if any injury was found at the time of admission in the Central Jail, Amritsar.

Let District & Sessions Judge, Amritsar to send the Chief Judicial Magistrate, Amritsar to the Central Jail, Amritsar on 14.11.2024 positively who shall meet Raj Kumar @ Raju and assess the necessity for medical examination and arrange for the same. He shall also record the statement and send the report immediately to this Court.

List on 26.11.2024.

To be shown in the urgent list.”

3. Pursuant to order dated 12.11.2024, reply by way of affidavit dated 25.11.2024 of Hemant Sharma, Superintendent, Central Jail, Amritsar, has been filed in Court today, which is taken on record. In the said affidavit, it has been stated that on 24.09.2024, husband of the petitioner, namely, Raj Kumar @ Raju was transferred from Central Jail, Gurdaspur to Central Jail, Amritsar, on administrative grounds. On entering the jail, the said convict was medically examined by the Jail Medical Officer and no external injury was found. It has been further stated that in compliance of order of this Court, the convict was referred to Civil Hospital, Amritsar for his medical examination. The Board of Doctors examined him on 16.11.2024 at District Hospital, Amritsar and it has been

reported that “as per the initial report submitted, the patient complained of pain in the head for 2 months, with no history of vertigo, loss of consciousness, vomiting, fever, or chest pain. On examination, no wheezing or rhonchi were observed, and no active or emergency intervention was required. Blood tests including CBC, RFT, LFT, and imaging (CT scan and chest X-ray PA view) were advised for further evaluation, with instructions for the patient to return on Monday.” Subsequently, for further compliance, he was again referred on 18.11.2024 from CJ, Amritsar and his CBC was done at DH, Amritsar on the same day and thereafter, he was sent back to CJ, Amritsar. Following this, his medical guard was requested for further investigations on 19.11.2024 for the next day, but medical guard was not available on 20.11.2024. Further tests of the patient was to be conducted on 21.11.2024.

4. Reply by way of an affidavit dated 25.11.2024 of Rahul Raja, Superintendent, Central Jail, Gurdaspur, on behalf of respondent No.2 has also been filed in Court today, which is taken on record. It has been stated that earlier, the husband of petitioner was kept in District Jail, Roopnagar, but since he was disrupting the prison environment by forming groups with other disruptive inmates, engaging in illegal activities, inciting prisoners against the jail administration, and misbehaving with staff, he was ordered to be shifted from District Jail, Roopnagar to Central Jail, Gurdaspur. It has been further stated that at the time of transfer to Central Jail, Amritsar on 24.09.2024, Rahul Raja was posted as Superintendent Central Jail,

Gurdaspur and on said day, husband of the petitioner did not complain about any illness or beatings given to him by any prison official, so there was no need for providing him medical treatment.

5. Report dated 22.11.2024 of learned Chief Judicial Magistrate, Magistrate, forwarded through District & Sessions Judge, Amritsar, has also been received, wherein it has been stated that as per direction of learned District & Sessions Judge, Amritsar, learned Chief Judicial Magistrate, Amritsar went to Central Jail, Amritsar on 14.11.2022 and recorded the statement of Raj Kumar @ Raju. For assessing the necessity of medical examination of said inmate, Civil Surgeon, Amritsar was directed to conduct necessary medical examination and as per medical examination report dated 21.11.2024 of Civil Surgeon, Amritsar, the Board of Doctors advised blood tests of said inmate and has opined that there was no evidence of any fresh external injury at the time of examination of said inmate.

6. Heard.

7. This petition was moved on 26.09.2024. A representation dated 24.09.2024 (Annexure P-1) was sent to ADGP Prison. Specific allegations were levelled that Raj Kumar was beaten badly and mercilessly in the Central Jail, Gurdaspur by Deputy Superintendent Ajay with other jail officials and whereabouts of Raj Kumar were not known. Advance copy of petition was served in the office of Advocate General, Punjab, on 26.09.2024. The petition was taken up in this Court on 27.09.2024. Instead

of getting Raj Kumar medically examined, he was shifted to Central Jail, Amritsar on 24.09.2024 itself. This Court was not informed on 27.09.2024 that Raj Kumar was already shifted to Central Jail, Amritsar despite the fact that advance notice of petition was received in the office of Advocate General, Punjab. The learned Chief Judicial Magistrate, Amritsar has recorded the statement of Raj Kumar who has specifically stated that he was beaten by Ajay Kumar and others. Raj Kumar was examined medically on 21.11.2024. After such a long delay, there could not be any evidence of fresh external injury. But it can be safely concluded that Raj Kumar, husband of petitioner, was given beatings by Ajay Kumar, respondent No.3 and other jail officials, while he was in judicial custody.

8. In case *Nilabati Behera Versus State of Orissa, (1993) 2 SCC 746*, the Hon'ble Supreme Court has pointed out that prisoners and detenues are not denuded of their fundamental rights under Article 21 of Constitution of India and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenus. In case *D.K. Basu Versus State of W.B., (1997) 1 Supreme Court Cases 416*, the Hon'ble Supreme Court has held that torture, rape, death in police custody/lock-up infringes Article 21 as well as basic human rights and strikes a blow at the rule of law. In that judgment, it is also held that compensation can be granted under public law by the Supreme Court and by the High Courts in addition to private law remedy

for tortuous action and punishment to wrongdoer under criminal law. Paras

No.44 and 54 of said judgment are as under:-

“44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

“54. 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 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. That 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 its 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.”

9. In view of above, respondent No.2-ADGP (Prison), Punjab is directed to initiate enquiry in the matter and on the basis of enquiry report, take appropriate and suitable departmental action against the guilty officials as per law. Though this Court does not propose to register FIR against the delinquent officials, but in view of the fact that Raj Kumar @ Raju was given beatings while in judicial custody, so Raj Kumar @ Raju, husband of the petitioner, to be suitably compensated for the grave injustice done to him by respondent No.3.

10. Accordingly, husband of the petitioner would be entitled to Rs.25,000/- as compensation. The master is liable for the acts of the servant, so Home Secretary to Government of Punjab is directed to pay compensation within three months to the husband of the petitioner. In case the amount of compensation is not paid within three months, then petitioner is entitled for interest @ 7.5% per annum from the date of this order till payment of the amount.

11. The State can recover the said amount from respondent No.3 if so advised, after making the payment of said amount to the husband of the petitioner.
12. Present petition stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

November 26, 2024
sanjeev

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