



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

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CWP-34928-2019
Date of decision: 28.08.2024

SATWINDER KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: - Mr. G.S. Virk, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for issuance of a writ in the nature of Mandamus for directing the respondents to pay a compensation of Rs 50 lakhs to the petitioner for the death of Livtar Singh s/o Pritpal Singh, son of the petitioner, who was allegedly murdered inside the jail premises.

2. Briefly summarized the facts of the instant case are that Livtar Singh s/o Pritpal Singh petitioner's son, was an under trial lodged in Central Jail Ludhiana. During the course of regular trial on 10.04.2019, he had gone to the court of Sessions at Ludhiana. The petitioner as well as her daughter met Livtar Singh, who was hale and hearty at the time, however, he told the petitioner that he had been assaulted by some persons in connivance with jail authorities in the early part of April 2019. After the course of hearing, Livtar Singh was taken back to the jail in a police van. However, on the night of



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10.04.2019, the petitioner was informed by the jail authorities that her son had committed suicide.

3. The petitioner had a hunch that her son could not have committed suicide and she immediately raised the matter before the Sessions Judge, Ludhiana through her counsel, who immediately granted the indulgence to the petitioner and suspecting foul play, directed the Illaqa Magistrate to be present while conducting the post-mortem of deceased Livtar Singh. In this regard, a 3-member Board of doctors was also constituted and the post-mortem was conducted in the presence of the Illaqa Magistrate, whereby the Board of doctors concluded that the cause of death was ***“Asphyxia due to strangulation which is ante mortem in nature which is sufficient to cause death in the ordinary course.”*** The post mortem report also found that there was a total of 7 injuries on the body of the petitioner’s deceased son, thereby suggesting foul play.

4. Learned counsel for the petitioner argued that the jail authorities committed a delay of 10 days in registering the FIR even though it was incumbent upon them to register it in the aftermath of the post-mortem report dated 11.04.2019 and that the entire incident took place only due to the collusion of jail authorities and their maladministration, connivance and ignorance. He also argued that it was only due to the efforts of the petitioner, that the police investigated the case and found that three persons namely Shakti @ Bhura S/o Chunnu, Sunny Khural @Machhi and Pritam Singh @ Bholu S/o Jaswant Singh had murdered the petitioner’s son and subsequently, filed a challan against the above-said three persons.



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5. He also made an averment that the petitioner's husband had already passed away and that the petitioner's son was the sole bread earner of the family. He also argued that the petitioner is an old lady, who is suffering from various ailments and that she is not able to perform her young daughter's marriage because of financial hardship. He, thus, prayed that the petition be allowed and the claimed compensation be awarded to the petitioner.

6. Reply by way of affidavit of Rajiv Kumar Arora, PPS, Superintendent, Central Jail Ludhiana was filed on behalf of respondents No. 1, 3 and 6 on 30.01.2020. The relevant part of the reply is extracted as hereunder:

PRELIMINARY SUBMISSION:-

1. *That the under trial Livtar Singh son of Pritpal Singh was admitted in this jail on 30.03.2018 as an under trial in case FIR No. 117 dated 27.03.2018 under section 379-B/411 IPC Police Station Shimlapuri, Ludhiana vide orders dated 30.03.2018 by the Learned Court of Ms. Pavleen Singh, Judicial Magistrate Ist Class, Ludhiana and two more cases are pending against him i.e. case FIR No. 326/2014 under section 392/411/34IPC Police Station Focal Point, Ludhiana and case FIR No. 135/2017 under section 380 IPC Police Station Shimlapuri, Ludhiana.*

2. *That the deceased under trial Livtar Singh son of Pritpal Singh was lodged in Barrack No. 04 of Center Block. There are around 150 inmates lodged in Barrack No. 04 and the Center Block has 08 Barracks in it and approx. 900 inmates*



are lodged in this block. Two Assistant Superintendents and two Head Warders are incharge of this Block. They are always present on duty and are fully responsible of safe custody of inmates lodged in this area.

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7. That it is submitted that this incidence had occurred on dated 10.04.2019 at evening time during lock up and the under trial Livtar Singh was found lying unconscious at around 08:30 pm after searching all the area of the block. That every block has a very large area. After tracing him, he was immediately brought to the Jail Hospital where the Jail Medical Officer declared him brought dead. He was sent to the Civil Hospital, Ludhiana for post mortem and his family members were informed on the same day regarding death of the said under trial. All the concerned offices like Hon'ble National Human Rights Commission, Punjab State Human Rights Commission, Deputy Commissioner, Commissioner of Police Ludhiana, concerned Station House Officer etc. were informed on the very next day of the incident i.e. on dated 11.04.2019. Further, it is submitted that his post mortem was performed on 11.04.2019 and the post mortem report was received in the office of the Respondent No.6 on dated 12.04.2019. That only after examining the report of post mortem the Respondent No.06 came to know the fact that under trial Livtar Singh has died due to asphyxia due to strangulation and it was not a natural death. Therefore the Respondent No.06 wrote a letter to Commissioner of Police, Ludhiana requesting him for detailed enquiry so that culprits of this murder could be traced and legal action could be initiated against them.



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8. That after receiving intimation from the Respondent No.06, the Respondent No. 04 constituted an SIT for tracing the murderers of the said inmate. The SIT was comprised of Deputy Commissioner of Police, Additional Deputy Commissioner of Police, two ACPs and one SHO of the concerned Police Station of the area. The SIT visited the Jail on dated 23.04.2019 and started inside the block. The team enquired the inmates and after detailed investigation, the SIT has identified three suspected persons out of which two were present in jail and one was released from Jail on dated 13.04.2019. After this, the police took them on police remand and three of the accused confessed that they have committed the crime. That all the three accused namely under trial Pritam Singh @ Bholu S/o Jaswant Singh, under trial Shakti @ Bhura S/o Chunnua and under trial Sunny @ Khural S/o Satpal were found to be involved in said crime and a case FIR No. 86 dated 20.04.2019 U/s 302/34 IPC Police Station Division No. 07, Ludhiana lodged against them which was previously registered against the unknown persons.

9. That a similar petition Criminal Misc-M- 19806 of 2019 had earlier filed by the petitioner in the Punjab and Haryana High Court, Chandigarh which was disposed of on dated 25.09.2019 (a copy of the orders is annexed herewith as AnnexureR-1). Further a complaint No.3436/10/2019-JCD regarding custodial death of under trial Livtar Singh S/o Pritpal Singh is pending in Hon'ble Punjab State Human Rights Commission, Chandigarh which is fixed for 12.02.2020.

7. Learned counsel for the respondent-State referred to the above said reply and argued that there was no collusion, connivance and ignorance

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on the part of the Jail authorities and that information regarding the death of deceased Livtar Singh was given to all the concerned offices on the very next day of incident i.e. 11.04.2019. Learned counsel also argued that respondent No.4- Commissioner of Police, Ludhiana had constituted an SIT to investigate the death of inmate Livtar Singh and the SIT found 3 suspects, who were later taken on police remand, wherein they confessed to the crime of strangulating late Livtar Singh to recover the intoxicating substance from his anus and for staging the scene of crime to make the act look like a suicide afterwards. A case FIR No. 86 dated 20.04.2019 u/s 302/34 IPC was also registered at Police Station Division No. 07, Ludhiana against the said accused. There was no involvement of any staff and it was an act by the inmates themselves.

8. Learned counsel also referred to the Status report that was filed on behalf of the respondents No. 2, 4, 5 and 7 on 26.07.2023 in compliance of the order dated 22.03.2023 passed by this Court, to argue that a Challan/Final Report under Section 173 of Cr.P.C was presented against the accused on 18.07.2019 and charges were framed on 19.08.2021 and that the trial is pending before Addl. Sessions Judge, Ludhiana for recording prosecution evidence.

9. Learned counsel also made a reference to the final order dated 24.05.2022 that was passed by the Punjab State Human Rights Commission, Chandigarh in complaint No.3436/10/2019-JCD, wherein the Commission found no foul play on the part of police officials in the custodial death of deceased Livtar Singh, son of Pritpal Singh. The operative part of the order

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passed by the Punjab State Human Rights Commission is extracted hereunder:

“Superintendent, Central Jail, Ludhiana, has intimated the Commission, vide his communication, dated 11.04.2019, that the inmate Livtar Singh, son of Pritpal Singh, resident of New Janta Nagar, District Ludhiana, was admitted in the Jail on 30.03.2018 in IFR No. 117, dated 27.03.2018, under Section, 379B/411 IPC, PS Shimlapuri, Ludhiana. On 10.04.2019, the inmate was found unconscious in the toilet and was brought to jail hospital where he was declared brought dead by the Senior Medial Officer and was referred to Civil Hospital, Ludhiana, for postmortem. Since it was a custodial death case, the Commission took cognizance of the matter within the meaning and definition of Section 2(d) of the Protection of Human Rights Act, 1993 on 24.04.2019 and called for following reports from the concerned authorities: 1) Inquest/Magisterial Enquiry Report; 2) Post-mortem Examination Report; 3) In case the Inquest Report/Magisterial Enquiry Report finds some foul play in the death of the deceased, in that eventually the Authorities were also directed to send the video film; 4) Detailed Report of the Superintendent, Central Jail, Ludhiana; 5) Report of the Chemical Examiner/Histopathologist, if any, regarding the viscera of the deceased; 6) Details of treatment given to the deceased in the various hospitals; 7) Report regarding cause of death of the deceased by the concerned Board of Doctors; All the report has been received in this custodial death case. As per the final report of inquest proceedings conducted by Mr. Ankit Airi, Judicial Magistrate, 1st Class-cum-Inquiry Officer, Ludhiana, the statement of Sawinder Kaur (mother of deceased) has been recorded, who deposed that she met her son day prior



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to his demise at the Court complex and he seemed happy. On the same day she received the unfortunate information of his death that her son had committed suicide, from police officials. In her opinion, he was murdered. As per the postmortem, the death of the deceased had occurred on the account of murder by strangulation and not at the anvil of suicide by hanging, or by any other means. As per Histopathological/Chemical Report, no poison was detected by the concerned laboratories. The show cause notice was issued, vide order dated 31.10.2019, to the Superintendent, Central Jail, Ludhiana and other officials concerned. On the perusal of replies of show cause notice, there is no foul-play on the part of police officials in the custodial death of deceased Livtar Singh, son of Pritpal Singh, no further action in the matter is required to be taken. Accordingly, proceedings in this case are closed. A copy of the order be sent to the Additional Director General of Police, Jails, Punjab, District Magistrate, Ludhiana and Superintendent Central Jail, Ludhiana, for information. The file be consigned to the record room.”

10. Learned counsel for the respondents, thus, prays for dismissal of the writ petition.

11. No rejoinder to the reply by the State was filed by the petitioner. The facts thus remained undisputed.

12. No other argument has been raised.

13. I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition.

14. It is undisputed that the petitioner's son Livtar Singh died due to asphyxia because of strangulation, while he was lodged in Central Jail



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Ludhiana. The issue which arises is for award of compensation for death that has occurred.

15. 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) 10SCC 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.”

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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 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 inmost 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 under trial 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 under trial 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. Dukhram 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.”



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16. As can be inferred from the judgment of Hon'ble Supreme Court in ***RE-Inhuman Conditions (supra)***, a tortious liability was fastened upon the State for occurrence of such an event against a person, while in custody. Although the Punjab State Human Rights Commission, Chandigarh has exonerated the police officials in the present case yet 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.

17. The very fact that late Livtar Singh was strangled while he was still lodged in Central Jail Ludhiana reflects failure on the part of respondent-State in protecting the life of the prisoner and its contention of non-involvement would not absolve them of the liability to compensate the petitioner herein.

18. 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 would arise as regards the income of the deceased; petitioner's ailments; the marriage of petitioner's daughter and also the lapse/negligence on part of the respondents, the present petition is partly allowed by awarding an interim compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) to the petitioner.

19. The amount awarded above be released within a period of 03 months of the receipt of certified copy of this order. The petitioner may, if so advised, take recourse to alternative remedies to seek compensation in accordance with law, not only against the State but also under the Fatal Accidents Act, if so advised.



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20. 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.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 28, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No