

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 867 of 2025
CAN 1 of 2025**

Salim Molla

Vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Samim Ahammed, Adv.
Mr. Arka Ranjan Bhattacharya, Adv.
Ms. Gulsanwara Pervin, Adv.
Mr. Anirudh Singh, Adv.
Mr. Aminuddin Khan, Adv.

For the State : Mr. Md. Galib, Ld. Sr. Govt. Adv.
Mr. Tanay Chakrabarty, Adv.
Mr. Debraj Sahu, Adv.

Heard on : 28.08.2025

Judgment on : 08.09.2025

Md. Shabbar Rashidi, J.:-

1. The appeal at the behest of the writ petitioner is directed against an order dated April 21, 2025 passed by learned Single Judge in WPA 18826 of 2024.

2. By the impugned order, the learned Single Judge disposed of the writ petition negating the prayer of the writ petitioner for a compensation for a death in custody. The learned Single Judge held that at a stage when only the charge-sheet was submitted before the Court, it was not prudent to summarily direct for compensation without exhausting the provisions of law.

3. The writ petitioner happens to be the son of one Gafur Molla who died in police custody. The writ petitioner filed the writ petition being WPA 18826 of 2024 seeking a direction for registration of First Information Report in respect of the death of his father in custody and for grant of compensation for the custodial death of his father. The writ petitioner also sought the initiation of departmental enquiry against the concerned officers responsible for illegal detention and custodial torture of his father resulting in his death on September 2, 2023. According to the case made out by the appellant, his father Gafur Molla was picked up by the officials of Excise Department on August 28, 2023 and was detained at Balarampur Excise Camp. He was neither formally arrested nor produced before the Magistrate. Consequently, as stated by the writ petitioner, no memo of arrest, seizure list or case diary existed to document the detention of his father. It was further contended on behalf of the appellant in the writ petition that the deceased father of the writ petitioner was subjected to severe physical assault, while in custody, resulting in multiple external

injuries and ultimately his father Gafur Molla died as a result of such injuries while in custody. It was further contended that inspite of custodial torture resulting in death of the father of the writ petitioner, the local police authorities did not register a case promptly and failed to take any action against the erring officials. The officials of Excise Department involved in the incident are continuing to serve with their respective departments.

4. By filing the instant appeal, it was submitted on behalf of the appellant that the writ petitioner seeking a direction for award of compensation for the custodial death of the father of the appellant and a direction for initiation of departmental enquiry against the erring officers of Excise Department as well as police officers responsible for the custodial death and inaction on the part of the police authorities. According to the appellant, learned Single Judge while dismissing the writ petition, granted limited reliefs. An FIR over the incident was registered. A special investigation team (SIT) was formed which conducted the investigation of the case. The investigation by the special investigation team resulted in charge-sheet under Section 167/218/330/34 of the Indian Penal Code, 1860 against two accused persons whereas a charge-sheet under Sections 167/218/34 of the Indian Penal Code, 1860 was submitted against other three accused persons. It was contended that the learned Single Judge refused to grant compensation for custodial death of his father. This refusal

to the grant of compensation which has been challenged by the writ petitioner in the present appeal.

5. Learned Advocate for the appellant submitted that the injuries found on the person of his father, as evident from his post mortem report, prima facie established that the father of the appellant was subjected to physical torture in custody which resulted in his death. According to learned Advocate for the appellant, the learned Single Judge ought to have awarded compensation for custodial death of his father on the basis of such prima facie finding. In support of his contention, learned Advocate for the appellant relied on ***1997 SCC OnLine Guj 563 (Lok Adhikar Sangh vs. State of Gujarat & Anr.)***.

6. Relying upon ***(2017) 10 Supreme Court Cases 658 (Re-Inhuman Conditions in 1382 Prisons)***, it was contended by learned Advocate for the appellant that in cases of custodial death, the next of kin of the deceased of an unnatural custodial death are required to be compensated.

7. On the other hand, learned Advocate for the respondents submitted that for a compensation to be awarded to a custodial death, it has to be established that the death was an unnatural death. Each and every death in custody does not qualify for compensation. In support of his contention, learned Advocate for the respondents relied upon various provisions of the West Bengal Correctional Home Services Prisoners (Unnatural Death Compensation) Scheme, 2019. Learned advocate for the respondents also

submits that the SIT has submitted charge sheet in the case registered for the death of the father of the writ petitioner. The case relates to Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture, Public servant framing an incorrect document with intent to cause injury and voluntarily causing hurt to extort confession, or to compel restoration of property. According to learned advocate for the respondents, such injuries alleged to be inflicted by the excise officials or the police are yet to be established pending trial of such case. A direct connection between the injuries and the resultant death of the father of the writ petitioner is required to be established to wield the death to be an unnatural death. In absence of such materials, the writ petitioner is not entitled for compensation under the Scheme of 2019.

8. As noted above, the father of the writ petitioner, namely Gofur Molla was arrested by the officials of Excise department on August 28, 2023. He was allegedly detained at Balarampur Excise Camp. There was an allegation that the said Gofur Molla was subjected to physical torture, while in custody, by the officials of Excise department due to which he sustained several external injuries. According to the case made out by the writ petitioner, his father Gofur Molla, died as a result of such injuries inflicted upon him in custody. No information with regard to the arrest and detention of Gofur Molla was given to the writ petitioner or to any other relative of the detainee. Ultimately, the writ petitioner was informed of his

death. The writ petitioner is said to have approached the local police authorities to lodge a complaint in this regard but the police authorities did not pay any heed to such complaint. No specific case was registered against the erring officials.

9. The writ petitioner/appellant approached the High Court with a writ petition seeking the reliefs which are enumerated as under:

“a. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing an impartial and through investigation into the circumstances surrounding the petitioner’s father’s detention, torture, and death, and transfer the investigation to an independent authority, thereby ensuring a fair and unbiased inquiry/investigation;

b. Issue a writ of mandamus or any other appropriate writ, order, or direction, commanding the concerned authorities to initiate a departmental inquiry against the responsible excise police officers, as identified by the petitioner, to ascertain their involvement, if any, in the unlawful detention, torture, and death of the petitioner’s father, and to hold them accountable for any violations of duty;

c. Issue of writ of mandamus or any other appropriate writ, order, or direction, commanding the concerned authorities to conduct a review and assessment of the post-mortem report conducted on the petitioner’s father;

d. Issue a writ of mandamus or any other appropriate writ, order, or direction, and direct the concerned authorities to grant just and equitable compensation to the petitioner for the loss of his son, taking into account the violations of fundamental rights,

emotional distress, potential income loss, and harm suffered by the petitioner's family due to the untimely death of his son;

e. Issue a writ of mandamus or any other appropriate writ, order, or direction, and direct the concerned authorities to the petitioner's letter dated March 13, 2024, and take necessary actions to address the petitioner's grievances, thereby ensuring a fair and transparent investigation;

f. Issue Rule Nisi in terms of prayers a), b), c), d) and e) above;

g. Pass an interim order by directing the concerned authorities to preserve and produce the CCTV footage of office Excise Department Bishnupur Circle from August 28, 2023 till August 29, 2023;

h. Pass an interim order by directing the concerned authorities to preserve and produce the CCTV footage of Baruipur Central Correctional Home from August 29, 2023 to September 2, 2023;

i. Pass an order directing the concerned authorities to provide a status update on the progress of the investigation into the suspicious death/homicide and any related actions taken to address the concerns raised by the petitioner;

j. Pass an order directing an independent court – appointed medical board to review and assess the post-mortem report conducted on the petitioner's father, ensuring its accuracy, adherence to guidelines, and unbiased representation of the circumstances leading to his death;

k. Pass an Ad-interim order in terms of interim prayers made herein above;

l. Costs and other incidentals thereto;

m. And/or to pass such other or further or further order or order as Your Lordships may deem fit and proper."

10. We have noted above that during the pendency of the writ petition, a specific case was registered against the erring officials; a Special Investigation Team was formulated to investigate the case. Materials placed before us reveals the SIT, after conducting the investigation, submitted charge sheet under Sections 167/218/330/34 of the Indian Penal Code, 1860 against two accused persons whereas a charge-sheet under Sections 167/218/34 of the Indian Penal Code was submitted against other three accused persons. At the same time, the injury report of the detainee was referred to a specially constituted medical board in order to determine the cause of death of the father of the appellant and to ascertain a connection between the injuries found on the person of Gafur Molla and his death. The medical board also submitted its report which was placed on record.

11. However, the prayer of the writ petitioner with regard to award of compensation for custodial death of his father was not allowed by the learned Single Judge. While disposing of the writ petition, the learned Single Judge observed to the following:

“Considering that SIT has already submitted charge-sheet(s) and will submit a Supplementary charge-sheet, if required, before the learned jurisdictional Court, I am of the view that further pendency of the writ petition is unwarranted.

The petitioner has prayed for compensation. At this stage, when charge-sheet has only been submitted before the court

without exhausting the provisions of law, it will not be prudent to summarily direct for any compensation.”

12. The instant appeal is specifically directed against the refusal by the learned Single Judge in respect of grant of compensation without exhausting the provisions of law governing such compensation. Since a charge sheet has been filed in the case against the erring officials. A supplementary charge sheet is also expected upon receipt of the chemical examination report. The case is pending with the learned Trial Court and the trial of such case is yet to be concluded. The deceased was arrested by the officials of Excise department on August 28, 2023. He was produced before the court of learned Magistrate on the following day and was remanded to judicial custody. It was alleged that the deceased was subjected to physical assault during his detention by the officials of Excise department.

13. Being lodged at the Baruipur correctional home, the deceased father of the appellant fell sick and was moved to Baruipur Sub-divisional hospital on September 1, 2023 at 7.45 p.m. in course of his treatment, the father of the appellant died on September 2, 2023 at 12.20 a.m. it is the allegation of the appellant that his father died due to the effects of injuries, he received in pursuance of the physical torture meted out on him, while in custody. The appellant referred to the post mortem report which indicated several injuries on the person of the victim to contend that the death was

the after effect of torture inflicted upon him in custody in order to bring the case into one under the purview of custodial death.

14. However, it is evident that the death of the father of the appellant occurred after four days of his arrest and when he was subjected to physical assault. It has come out from the materials on record that the victim had to be moved to Baruipur Sub-divisional hospital on his feeling sick where he ultimately died on September 2, 2023. An Unnatural Death Case was started in this regard. Post mortem examination was conducted over the dead body and such report exhibits that the autopsy surgeon found as many as 6 injuries in the nature of abrasion and extravasation of blood, on the dead body which showed vital reactions on dissection and were opined to be ante-mortem. However, no definite cause of death was noted by the autopsy surgeon pending receipt of chemical examination report which is yet to be received.

15. In course of hearing of the writ petition, a medical board was constituted which has submitted its report. Such report was placed before us. We are not minded to go into the details of such report and make observations at this stage for such observations may affect the trial of the case, which is yet to conclude.

16. Compensation for custodial death has been claimed in terms of the schedule appended to the Scheme of 2019. It would be apposite to set out the preamble of the scheme, which runs as follows: -

“The Governor is pleased hereby to make the following scheme for the purpose of providing compensation to such beneficiaries who, by virtue of their kinship to the deceased have suffered loss or injury as a result of Unnatural death of a prisoner in a Correctional Home.”

17. Similarly, Section 2 (g) of the Scheme of 2019 defines prisoner as,

“2. in this Schem, unless the context otherwise requires,-

(a)

(b)

(g) “Prisoner” a Prisoner who died an unnatural death in a Correctional Home of West Bengal;”

18. Therefore, in terms of the disposition of the Scheme of 2019, in order to get compensation under the scheme, it is essential to prove that the deceased was a prisoner as contemplated under Section 2 (g) of the Scheme of 2019. An unnatural death is to be established. Unfortunately, the post mortem report is not explicit as to the cause of death of the deceased.

19. In ***Re-Inhuman Conditions In 1382 Prisons*** (supra), the Hon’ble Supreme Court considered the conditions of the persons detained in correctional home in the country and were pleased to issue certain directions. In the said case, the Hon’ble Supreme Court noted on the issue of defining natural and unnatural deaths as envisaged in the guidelines of investigating deaths in custody issued by the International Committee of the Red Cross (ICRC). It was noted that an unnatural death is caused when

its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident).

20. However, in the case at hand, it is yet to be determined that the father of the writ petitioner died an unnatural death which was the proximate result of the alleged torture by the excise officials.

21. Similarly, in **Lok Adhikar Sangh** (supra), the Hon'ble Supreme Court held as follows:-

“18. In our opinion, it is a matter of trial to arrive at a final conclusion as to whether physical beating in the present case has led to a stress causing his death. At this stage, it is sufficient that there is possibility of beating leading to stress contributing towards percipitation of mio cardial infection. Thus, it prima facie appears to be a case of homicidal death.”

22. It may be noted that in the facts of the present case, death of appellant's father took place after four days when he was allegedly beaten by the Excise officials. In that view of the facts, we do agree with the findings of the learned Single Judge to the effect that, at this stage, when charge-sheet has only been submitted before the Court, without exhausting the provision of law, it will not be prudent to summarily direct for any compensation. We are also in agreement with the learned Single Judge insofar as the petitioner was granted liberty to approach an appropriate Civil Court for damages, if any. By the impugned order, the learned Single Judge also granted liberty to the appellant to pray for compensation under

the relevant provision of law, upon conclusion of the trial of the criminal case.

23. As noted hereinbefore, a medical board was constituted in respect of the death of the father of the appellant. A specific query, placed for consideration of such board was, whether the injuries mentioned in the post mortem report were collectively or individually sufficient to cause death of a person in ordinary course of nature. The medical board, in response to such query, opined as follows: –

“Upon evaluation of the injuries described in the post-mortem report, it is evident that none of the injuries, individually or collectively, are sufficient to cause of death in the ordinary course of nature in a healthy individual. However, the deceased had significant pre-existing cardiovascular diseases, including failure atherosclerosis and narrowing of coronary arteries. The trauma inflicted by these injuries could have potentially acted as a triggering factor, exacerbating the underlying heart condition and contributing to death. While a direct cause – effect relationship between the injuries and de facto outcome cannot be conclusively established based solely on post-mortem findings, the possibility of trauma playing a role in precipitating the fettle evident cannot be ruled out.”

24. It is not in dispute that the deceased father of writ petitioner/appellant was lodged in Baruipur Correctional Home and after feeling sick he was taken to Baruipur Sub-divisional Hospital where, in course of treatment, he died. Such death of the father of the appellant has

not been conclusively established to be an unnatural death or to be proximately related to the injuries allegedly inflicted by the Excise officials. In order to be entitled to compensation for custodial death in a correctional home in West Bengal, the beneficiary is initially, under obligation to demonstrate that the deceased died an unnatural death. Simply, any death occurring while the deceased was under incarceration in a correctional home in West Bengal does not qualify for award of compensation under the scheme of 2019. Moreover, the schedule appended to the West Bengal Correctional Services Prisoners (Unnatural Death Compensation) Scheme, 2019, enumerates the 'Particulars of Unnatural death' where the death qualifies for compensation. Such 'particulars of death' includes Death by Suicide, Death due to injury by other Prisoners, Death due to injury by self, Death due to injury by any correctional home employee, Death due to Medical Negligence and Death due to any other reason. Such 'Death due to any other reason' mentioned in the schedule, to our consideration, has to be considered in the context of the Scheme of 2019 and must be an unnatural death. A death due to the diseased condition of the organs of a person occurred while undergoing detention inside a correctional home cannot be stretched to be an unnatural death for the purpose of such scheme.

25. Therefore, taking into account the allegation made on the part of the appellant, the nature of injuries noted in the post mortem report and the

opinion of the experts constituting the medical board, we are of the opinion that it is yet to be established that the father of the appellant died an unnatural death and was a Prisoner within the meaning of Section 2 (g) of the Scheme of 2019.

26. On the basis of discussions made hereinabove, we are of the view that learned Single Judge was quite justified in refusing to grant compensation in terms of the West Bengal Correctional Services Prisoners (Unnatural Death Compensation) Scheme, 2019 at this stage and as such, we find no reason to interfere with the impugned order. We affirm the same.

27. Consequently, the instant appeal being MAT 867 of 2025 along with connected applications, if any, is hereby dismissed without any order as to costs.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

29. I agree.

[DEBANGSU BASAK, J.]