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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 05.03.2025**+ **W.P.(C) 2773/2025**

ANWAR SHEKH

.....Petitioner

Through: Mr. Shubham Dayma, Adv.

versus

STATE OF HARYANA & ORS.

.....Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)****CM APPLs.13176/2025 (Exemption from filing original copies etc.) and 13177/2025 (seeking leave to place on record additional documents)**

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

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3. The petitioner has filed the present seeking compensation of Rs. 2,08,00,000/- (Rupees Two Crore Eight Lakhs only) for the malicious prosecution suffered by the petitioner at the hands of the respondents.
4. It is submitted that the petitioner was falsely implicated in FIR No. 136 of 2017, dated 02.03.2017, registered at Police Station – Central Faridabad, for alleged offences under Section 420 of the Indian Penal Code, 1860 (IPC) and Sections 103 and 104 of the Trade Mark Act, 1999.
5. The brief background of the matter is that the petitioner owned and operated a tempo bearing No. DL-1-LN-0954. On 02.03.2017, at Keshopur



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Mandi, Delhi, the petitioner was approached by Md. Imtiyaz (Formerly Accused No. 3) for hiring his tempo to transport Aqua Guard machines from Delhi to Faridabad on behalf of customers of his employer Bijender (Formerly Accused No. 4). Since the petitioner was in the routine business of transporting goods, he agreed to the request.

6. During the loading process, the petitioner learned that the customers were Manoj Kumar (Respondent No. 4 & Complainant in FIR) and Ritesh (Prosecution Witness No. 1 in Trial). Both were personally present at the location, supervising the loading of boxes into the petitioner's tempo. After loading, the petitioner was instructed to follow an Alto car driven by Manoj Kumar and Ritesh, along with Laxminarayana (Formerly Accused No. 1).

7. Upon entering Faridabad, the group stopped, and Laxminarayana boarded the petitioner's tempo, affixing stickers on the Aqua Guard machines under the supervision of Manoj Kumar and Ritesh. Soon thereafter, a police vehicle arrived, led by Sub-Inspector Balbir Singh, who apprehended the petitioner along with Md. Imtiyaz and Laxminarayana.

8. Despite the petitioner's repeated pleas that he was merely a driver with no knowledge of the alleged goods, he was detained at the police post till 9 p.m. At around 8 p.m., Manoj Kumar and Ritesh arrived at the police post, after which the petitioner and others were taken to the Police Station, Central Faridabad.

9. It is submitted that the FIR No. 136 dated 02.03.2017 was wrongfully registered against him, despite clear evidence that he was not involved in any criminal activity. However, subsequently on 03.10.2024, after enduring



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over seven years of wrongful prosecution, the petitioner was acquitted by the Ld. Trial Court on the ground that no evidence was found against him.

10. It is submitted that the petitioner was wrongfully remanded to the police custody for a day on 03.03.2017 and for two days on 04.03.2017 and was prosecuted for a period of 7 years, 4 months, and 26 days.

11. It is the case of the petitioner that the petitioner has suffered immense loss and hardship, for which he seeks compensation of Rs. 2,08,00,000/- under the following heads –

1. Wrongful Arrest and Detention – Rs. 50,00,000/-
2. Loss of Earnings and Future Earnings – Rs. 50,00,000/-
3. Reputational Loss – Rs. 1,00,00,000/-
4. Legal Expenses and Defence Costs – Rs. 8,00,000/-

12. The petitioner in order to substantiate his case has placed reliance on *Sube Singh v. State of Haryana*, (2006) 3 SCC 178 and *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

13. After carefully considering the submissions on behalf of the petitioner, this Court is of the view that assessment of the petitioner's entitlement to compensation would entail an intricate adjudication of factual aspects. The same would require evidence to be adduced, as regards the underlying factual aspects and also as regards quantification of financial damages, if any.



14. It is a well-settled that such an exercise may not be apposite in proceedings under Article 226 of the Constitution of India, and the petitioner must be relegated to its civil/other remedies.

15. In ***Deepak Construction, through its Proprietor, Deepak Kumar Mehta v. State of Jharkhand and Others***, 2024 SCC OnLine Jhar 2460 the Division Bench of the Jharkhand High Court has observed as under –

“11. So far as prayer No.(ii) is concerned, it has been submitted that due to the illegal act of the respondents, the writ petitioner has been made to suffer for eight months and, as such, he is entitled for damage, cost, etc.

12. This Court is of the view that the writ court sitting under Article 226 of the Constitution of India cannot assess the quantum of damage or compensation since the same requires adjudication by leading evidence for which the appropriate forum is else.

13. Accordingly, no positive direction can be passed in favour of the writ petitioner so far as prayer No.(ii) is concerned.”

16. In ***Sivakasi Master Printer’s Association, Rep. by its President, Railway Feeder Road v. State of Tamil Nadu, Rep. By its Secretary, Department of Revenue and Others***, 2025 SCC OnLine Mad 1063, the Division Bench of the Madras High Court has observed as under –

“10. The building in question was admittedly 40 years old. Even if we accept the case of the petitioner, the writ Court sitting under Article 226 of the Constitution of India cannot assess the quantum of damages or compensation since the same requires adjudication by leading evidence for which the appropriate forum is the civil Court.”

17. The judgment in ***Sube Singh v. State of Haryana*** (supra) and ***Nilabati Behera v. State of Orissa*** (supra) does not assist the petitioner’s case. In ***Sube Singh v. State of Haryana*** (supra), the Court made the following observations:–

“46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the



courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

50. In this case, there is no clear or incontrovertible evidence about custodial torture, nor any medical report of any injury or disability. The grievance of the petitioner and his relatives is against different officers in different police stations at different points of time. More importantly, several of the allegations are proved to be exaggerated and false. We, therefore, do not consider this to be a fit case for award of compensation. All reliefs which should be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course."

18. This judgment elucidates the stringent criteria which must be applied for the purpose of assessing and awarding compensation, in situations such as custodial death or torture. In fact, the judgment runs contrary to the petitioner's case, as it sets out the key considerations that must be met for a writ court to award compensation. The judgment hold that before awarding compensation, the Court should pose to itself the questions like "(a) Whether the violation of Article 21 is undeniable and irrefutable, (b) Whether the violation is egregious to the extent that it shocks the conscience of the court, (c) Whether there is evidence of custodial torture, such as death, medical reports, visible scars, or permanent disability".



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19. In fact in *Sube Singh* (supra) also, the petition for compensation was ultimately denied because there was no clear evidence of custodial torture, and the allegations were unsubstantiated by medical reports or visible evidence.

20. Similarly, the *Nilabati Behera v. State of Orissa* (supra) is also distinguishable from the facts of the present case, as in the said case the Court was required to determine the claim of compensation made therein consequent upon the death of the son of the petitioner (therein) in police custody.

21. In the circumstances, the petition is dismissed, with liberty to the petitioner to approach the appropriate forum/initiate appropriate proceedings, for the purpose of pursuing his claim for damages/compensation. It is made clear, that this order shall not be construed as an expression of opinion of this Court as regards the merits of any such claim/s.

SACHIN DATTA, J

MARCH 5, 2025/sv