



Order reserved on 08.11.2024.

Order pronounced on 25.11.2024

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 3682 of 2024

Smt Reshma Begum W/o Arbaz Khan Aged About 47 Years Caste Musalman, R/o Lal Bagicha, Dhamtari, Police Station City Kotwali, Dhamtari District Dhamtari (C.G.)

... Petitioner

versus....

1 - State Of Chhattisgarh Through The Secretary, Home (Jail) Department Mantralaya Mahanadi Bhawan, Atal Nagar New Raipur (C.G.)

2 - Inspector General Of Police Raipur, Range, District Raipur (C.G.)

3 - The Collector Office Of The Collectorate Dhamtari, District Dhamtari (C.G.)

4 - The Superintendent Of Police (Jail) Dhamtari, District Dhamtari (C.G.)

... Respondents

For Petitioners : Mr. Kunal Das, Advocate

For Respondents : Mr. Vedant Shadangi, PL

(Hon'ble Shri Justice Sachin Singh Rajput)

CAV Order

This petition has been filed for enhancement of the compensation for the custodial death of son of the petitioner in District Jail, Dhamtari, CG on 31.08.2022.

2. Facts in short are that son of the petitioner namely Arbaz Khan @ Allu S/o Babar Ali was an under trial prisoner lodged in District Jail, Dhamtari, facing trial for various offences in different Courts at Dhamtari. On 03.09.2022 the petitioner made a

complaint (Annexure P-2) to Police Station, City Kotwali, Dhamtari to the effect that on 31.08.2022 her son Arbaz Khan had committed suicide in District Jail, Dhamtari by hanging, and that on receiving this information when her elder son went to the District Jail, through the prisoners and the staff of the jail he came to know that Arbaz Khan was subjected to physical and mental torture by Jail Prahri Mukund Ram Ratnendra on one pretext or the other, and when this incessant tortuous highhandedness became unbearable, he committed suicide by hanging. The complaint further says that the one and the only reason for ending his life was the continuous unbearable torture by Jail Prahri Mukund Ram Ratnendra, and therefore justice has been demanded so that such people are awarded rigorous punishment.

3. Judicial enquiry in the matter was conducted and during the course of such enquiry statements of other prisoners and jail staff were recorded. Finally, the enquiry report (Annexure P-1) was given, which demonstrates that the reason for the death of the victim which took place on 31.08.2022 in Barrack No. 6 of District Jail, Dhamtari was the continued physical and mental torture meted out to him by Jail Prahri Mukund Ram Ratnendra. Report further adds that the inaction on the part of other jail officials on duty also contributed to the incident.

4. Return filed by the respondents shows that the jail officials found involved in the death of the victim in any manner whatsoever have been subjected to departmental enquiry and also placed under suspension. Return also mentions that on the directions of the National Human Rights Commission, New Delhi vide letter dated 16.01.2024 (Annexure R-1) to the Chief Secretary, Government of Chhattisgarh, an amount of Rs. 5,00,000/- (Five Lakhs) has also been given to the petitioner (mother of the victim) through account payee cheque No. 000113 dated 27.02.2024 drawn at Bank of Baroda, which the petitioner has received also as is evident from Annexure R-5. Hence this petition for enhancement.

5. Learned counsel for the petitioner submits that the petitioner has lost her son plus 18 at the relevant time and the bread winner of the family who ended his life by hanging on account of the unbearable tortuous activities of the jail officials on duty, the compensation of Rs. 5,00,000/- awarded to her is extremely on the lower side. Relying on the decision of this Court rendered in the matter of **Ramkhilawan Dansena and another v. State of CG and others** reported in **2019 SCC Online Chh 70** which drew strength from several celebrated cases of the Supreme Court such as **Nilabati Behra (Smt) alias Lalita Behra v. State of Orissa and others (1993) 2 SCC 746** and **DK Basu v. State of WB (1997) 1 SCC 416**, counsel for the petitioner submits that the compensation awarded may be enhanced suitably.

6. On the other hand, counsel for the respondents submits that the compensation of Rs. 5,00,000/- as directed by the National Human Rights Commission has already been paid to the petitioner which she has received on 27.02.2024, being just and reasonable does not need any enhancement. He however submits that if the petitioner is not satisfied with the compensation already awarded, the appropriate remedy for her would be the civil suit claiming damages for the tortuous act of the State.

7. Heard counsel for the parties and perused the documents taken through by their counsel, carefully.

8. The 18 plus year old son of the petitioner who was the bread winner of the family became the victim of custodial death having his most valuable and indefeasible right to life guaranteed under Article 21 of the Constitution of India been snatched away by the State. Thus no one can suppose that the executive will never be guilty of sins that are common to all of us. Mere punishment to the offender cannot give much solace to the family of the victim, and the monetary compensation for infringement of the indefeasible right to life of the citizen is, therefore, and at times perhaps the only effective remedy to apply balm to the wounds of the family

members of the deceased, who as already said, was the bread winner of the family.

9. While assessing the compensation it however has to be kept in mind that emphasis has to be on the compensatory and not on punitive element. The objective of this is to apply balm to the wounds of the victim and the next of its kin. As held by Supreme Court time and again, the quantification of compensation, should of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in this regard. The right to compensation can act just as some palliative for the unlawful acts of instrumentalities of the State, and therefore the State must repair the damage caused to the young victim who lost his life for the tortuous highhandedness of the jail officials, and snatched the source of livelihood of the petitioner and thereby made her suffer for none of her faults. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens.

10. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority within the four walls of a police station or lock-up, the victim being totally helpless.

11. Since this petition is just for enhancement of the compensation already awarded by the State on the directions of the National Human Rights Commission, this Court refrains from commenting as to the liabilities and duties of the State to set the things right to prevent recurrence of the event. By paying Rs. 5,00,000/- as compensation the State has already tried to repair the damage caused to the

petitioner, but looking to the loss caused to her, this monetary relief seems to be quite inadequate. This Court while dealing with another custodial death related issue in the case of *Ramkhilawan Dansena* (supra) already referred to above, has granted the compensation of Rs. 15,00,000/- to the next of the kin of the victim to custodial death. Thus looking to the fact that the deceased gave up his mortal frame at the bloom of his life leaving behind his mother alone to make her shoulders strong enough to march ahead in life, a compensation of Rs. 15,00,000/- (15 Lakhs) would be appropriate. So she becomes entitled for that to be paid to her within a period of two months from today. Needless to say that amount already awarded to her would be adjustable while making the further payment. State government would however be at liberty to have recourse to recovery against the erring officials, if desirable, but by following due process of law.

12. Petition is thus allowed.

Sd/-
(Sachin Singh Rajput)
Judge