

HIGH COURT OF GAUHATI**Bench: Hon'ble Mr. Justice Manash Ranjan Pathak and Hon'ble Mrs. Justice Mitali Thakuria****Date of Decision: 21st May 2024**

Case No.: WP©/3604/2016

SONA MIAH ...PETITIONER**VERSUS****THE STATE OF ASSAM AND 3 ORS ...RESPONDENTS****Legislation:**

Article 226 of the Constitution of India

Sections 40/41/49 of the Assam Forest Regulation Act

Subject: Writ petition filed under Article 226 for directing the respondent authorities to conduct a proper enquiry into the death of the petitioner's son in police custody and to provide adequate compensation for the custodial death.

Headnotes:

Custodial Death – Enquiry and Compensation – Writ Petition seeking directions for proper enquiry into custodial death and compensation – Allegation of torture by police resulting in death – Petitioner's son died while in police custody – Post-mortem report indicated injuries – Respondents argued the death was due to an attempt to escape – NHRC had ordered compensation on humanitarian grounds – Supreme Court's precedent on compensating next of kin for unnatural deaths in custody cited – High Court directed payment of Rs. 3 Lakhs as compensation to the next of kin after proper verification and identification – Compensation to be deposited before District & Sessions Judge, Dhemaji.

****Enquiry into Custodial Death – Analysis – Held – Post-mortem report indicated injuries inconsistent with the respondent’s narrative – Torture by police personnel suspected – Authorities failed to initiate proper enquiry or compensation – NHRC ordered compensation recognizing the humanitarian aspect. [Paras 3-10]**

Decision – Compensation for Custodial Death – Court orders compensation of Rs. 3 Lakhs to be paid to the next of kin of the deceased – Compensation to be deposited before District & Sessions Judge, Dhemaji for disbursement after proper verification and identification – Directions issued for compliance within two months. [Paras 14-17]

Referred Cases:

- Re-Inhuman Conditions in 1382 Prisons vs. State of Assam (2017) 10 SCC 658

Representing Advocates:

Mr. S. Alim for the petitioner

Mr. D. Nath, Senior Government Advocate, Assam for the respondents

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. S. Alim, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam for the respondents.

- 2.** This writ petition has been filed under Article 226 of the Constitution of India praying for a direction to the respondent authority, more particularly, the Superintendent of Police, Dhemaji, respondent No. 3 to make proper enquiry into the fact of the death of the son of the petitioner in police custody on the basis of the application dated 23.11.2015 and further to direct the respondent Nos. 3 & 4, i.e. the Superintendent of Police, Dhemaji and the Deputy Commissioner, Dhemaji, respectively, to pay adequate compensation to the petitioner for the death of his son in police custody.

- 3.** The case of the petitioner, in a nutshell, is that his son- Late Rokibul Hussain was working as truck driver and while he was carrying some timber logs consignment, police intercepted the truck and arrested him on suspicion. Thereafter he was produced before the Magistrate, wherefrom he was sent to judicial custody on 29.10.2015. On the day of incident, his son was being taken to the jail from the Court premises in a prisoner van and on the way, he was tortured by the police and for which he sustained grievous injuries on his person resulting to his death in the medical on 30.10.2015. Subsequently, on 23.11.2015, the uncle of the deceased filed an application before the Superintendent of Police, Dhemaji praying for necessary action against the erring personnel as well as for payment of compensation. But the respondent authorities did not initiate any enquiry nor took any steps for making payment of compensation for the custodial death of the son of the petitioner, rather, the Superintendent of Police, Dhemaji vide letter No. DMJ/CRM/C.Death/2016/433, dated 19.01.2016, intimated the uncle of the deceased that there is no provision for economic lift to the poor family of the deceased. On being failed to get any response from the end of the Superintendent of Police, Dhemaji, petitioner approached the Deputy Commissioner, Dhemaji by filing a representation dated 11.03.2016 praying for compensation, which is also lying unattended without any action by the respondent authority. Such action of the authorities concerned being illegal, arbitrary and in violation of fundamental rights, the petitioner has filed the present petition praying amongst others for a direction to the respondent authorities to make appropriate enquiry and also to pay adequate compensation to the petitioner for the custodial death of his son.
- 4.** It is submitted by Mr. S. Alim, learned counsel for the petitioner, that from a bare perusal of the dead body handover letter dated 31.10.2015, it is crystal clear that the plea of victim's trying to escape from the prisoner van as contended by the police authority is nothing but an improbable story as in a prisoner van, the captives are being kept in handcuffs with security personnel and it was not possible on the part of the deceased to free himself from the handcuffs and managed to reach the door of the van escaping the sights of the security personnel. More so, the post-mortem report reveals that there were wounds found in the back of the deceased besides head and other injuries. Further it is submitted that on the day of incident, the deceased was brutally tortured and mercilessly beaten by the police for not confessing his guilt and for which he sustained grievous injuries and later on succumbed to

his injuries. Accordingly, it is submitted that the inaction on the part of the respondent authority in making a proper enquiry and paying adequate compensation to the petitioner for the custodial death of his son is ex facie illegal, arbitrary, mala fide and not sustainable in the eye of law.

- 5.** Mr. D. Nath, learned Senior Government Advocate, Assam, by filing their affidavit-in-opposition, has submitted that the next of kin of the deceased has already been provided with due compensation in terms of order dated 17.05.2017, passed by the National Human Rights Commission (NHRC) on humanitarian ground. As the NHRC had already undertaken a separate proceeding with eventual payment of compensation on humanitarian ground, Mr. Nath stated that the present writ petition is not maintainable. However, it is admitted that the deceased was arrested for his criminal activities under the forest laws, which was registered under Sections 40/41/49 of the Assam Forest Regulation Act. It is stated that on 30.10.2015, the deceased Rakibul Hussain, along with 22 other UTPs, were escorted from Dhemaji District Jail to Jonai SubDivisional Judicial Magistrate Court in a requisition bus bearing Registration No. AS-01/H-8697 under proper police escort. After production of the UTPs before the said Court and on completion of the proceeding, while they were being brought back to Dhemaji District Jail, the deceased with an attempt to escape from his criminal liability, suddenly jumped out of the running bus at a place called Jalakiasuti under Silapathar Police Station through the front door of the bus at around 14.40 hours, for which he sustained grievous injuries and he was immediately taken to Silapathar Hospital for treatment, but the attending Medical Officer declared him dead. Thereafter, necessary formalities were observed and after the post-mortem examination, the dead body of the deceased was also handed over to his family on 31.10.2015. As per record, the deceased was identified to be the son of one Md. Zakir Hussain of Village Chandmari and not the son of Sona Mia, i.e. the present writ petitioner. More so, the departmental proceeding has already been initiated against the police personal for alleged dereliction of duty and on completion of the same, they have been imposed penalty with stoppage of 2 (two) annual increments without cumulative effect.
- 6.** Mr. D. Nath, learned Senior Government Advocate, further submitted that after an enquiry, it was found by the department that the compensation has been prayed for by one Md. Menasir Hussain of Pub Chandmari and it is not known who is the real representative and/or next of kin of the deceased and on that count alone, the present writ petition is not maintainable. It is also

stated that a magisterial enquiry was also conducted by Smt. Arundhati Narah Mipun, ACS, Assistant Commissioner, Dhemaji with regard to the incident involved in the case and after enquiry, the said officer submitted the report before the authority. Further it is submitted that the police authority followed all the required procedure for safety and security of the UTPs. However, the deceased suddenly and with a criminal approach, jumped out of the running bus and sustained grievous injuries leading to his death and it was a voluntary conduct of the deceased who tried to fled away if he would have successful in his attempt. Mr. Nath stated that the cause of death, as reflected in the postmortem report, is due to massive intra-cranial injury with damage to the brain, which cannot be for the circumstances as has been tried to be projected by the petitioner. Accordingly, Mr. Nath, learned Senior Government Advocate, has submitted that this is not a fit case to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India as to grant compensation to the petitioner that to for the circumstances explained above.

- 7.** After hearing the submissions made by the learned counsels for both sides, we have also perused the case record and the annexures filed along with the petition.
- 8.** It is a fact that the deceased was arrested in connection with a case, which was registered under Sections 40/41/49 of the Assam Forest Regulation Act. On the day of incident, i.e. on 30.10.2015, the deceased, along with 22 other UTPs, were escorted from Dhemaji District Jail to Jonai Sub-Divisional Judicial Magistrate Court in a requisition bus bearing Registration No. AS-01/H8697 under proper police escort. As per the case of the petitioner, when the deceased was brought back to the Jail, he was tortured by the police personnel and for which he sustained grievous injuries on his person resulting to his death in the hospital on the same day, i.e. on 30.10.2015. But from the enquiry report and other evidences available in the case record, it is seen that the deceased died when he fell down from the running bus while they were brought back to the District Jail, Dhemaji.
- 9.** During the argument, it was submitted by Mr. Nath, learned Senior Government Advocate, that the incident had happened only due to the voluntary act of the deceased as he tried to fled away from the police custody jumping out of the vehicle that carried him and other UTP back to jail from Court during which sustained grievous injuries on his person, more

particularly on his head and succumbed to his injuries and he was immediately brought to the Jonai PHE. Thus, the next of kin of the deceased are not entitled to receive any compensation from the authority concerned. However, he already submitted that the compensation @ Rs. 1 Lakh has already been paid in pursuance of the order dated 17.05.2017, passed by the NHRC, on humanitarian ground. AS per respondents, apart from the said compensation, the legal heirs/next of kin of the deceased are not entitled for any compensation for the voluntary conduct of the deceased who jumped out from the running bus only with an attempt to flee away from the police custody. It is also seen from the submission made by the learned Senior Government Advocate and also from the documents available in the case record that the police personnel, who were entrusted with the duty to escort the UTPs, have already faced their departmental proceedings wherein penalty of stoppage of 2 (two) increments have already been imposed on those erring police personnel.

10. However, On the other hand, it was the submission made by the learned counsel for the petitioner, Mr. S. Alim, that even if it is considered that the deceased died due to injury sustained by him while falling from running bus, but in that case also, the legal heirs of the deceased is entitled to compensation.

11. In this context, a judgment of the Supreme Court can be relied on which was passed in **Re-Inhuman Conditions in 1382 Prisons Vs. State of Assam**, reported in **(2017) 10 SCC 658**, wherein, in paragraph No. 55 thereof, it has been held as under:

“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.”

- 12.** Thus, in view of the aforesaid judgment of the Hon'ble Supreme Court, it can be concluded that the persons who suffer an unnatural death in a prison are also victims and the next of kin deceased are entitled for compensation.
- 13.** However, from the affidavit-in-opposition filed by the State respondent, it is seen that the deceased was identified as the son of one Md. Zakir Hussain from village Chandmari and he is not the son of Sona Miah, i.e. the present petitioner, and thus, the identity of the petitioner is also doubtful, who claimed himself to be the father of the deceased.
- 14.** During the course of argument, Mr. Nath, learned Senior Government Advocate, has submitted that the State has no objection if Rs. 3 Lakhs is paid as compensation to the next of kin of the deceased, who admittedly died while he was in judicial custody, but only after proper verification and identification. In this context, Mr. S. Alim, learned counsel for the petitioner, also raised no objection and submitted that the compensation to the tune of Rs. 3 Lakhs is also agreeable.
- 15.** In view of above and also in view of the law laid down by the Hon'ble Supreme Court in the case of **Re-Inhuman Conditions in 1382 Prisons (supra)** and considering the fact that the deceased was in police custody when the incident took place, we are of the considered opinion that the compensation to the tune of Rs. 3 (three) Lakhs is found to be reasonable and justified and that the State authorities are liable to pay the said compensation amount to the next of kin of the deceased Rokibul Hussain.
- 16.** However, since the identity of the petitioner is disputed and hence, we find that the compensation payable to the next of kin of the deceased @ Rs. 3 (three) Lakhs shall be deposited by the State Authority within 2 (two) months from the date of this order before the learned District & Sessions Judge, Dhemaji obtaining necessary report in that regard, which shall be disbursed to the next of kin of the deceased by the said Court only after proper verification and identification.
- 17.** With the above observation and direction, the writ petition stands disposed of.
- 18.** Registry shall forward a copy of this order to the learned District & Session Judge, Dhemaji, as well as the Deputy Commissioner, Dhemaji and also the Superintendent of Police, Dhemaji for their information and necessary compliance.

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