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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 579 of 2025

Prema Devi

.....Petitioner(s)

Versus

State of U.P. Thru. its Prin. Secy. Home Deptt. Lko. and
5 others

.....Respondent(s)

Counsel for	:	Rama Kant Dixit, Uday
Petitioner(s)	:	Kumar
Counsel for	:	C.S.C.
Respondent(s)	:	

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.

HON'BLE SHEKHAR B. SARAF, J. : The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of mandamus commanding the respondents to pay just and adequate compensation to the petitioner on account of unnatural death of her minor son (Sukhvinder) on February 20, 2024 in District Prison

Pilibhit. The petitioner in furtherance seeks direction in the nature of mandamus commanding the respondents to ensure action against the guilty persons, who are responsible for the unnatural death of the son of the petitioner.

FACTS

1. The factual matrix of the present writ petition is delineated below:

a. A criminal case bearing case no. 742/2016, under Sections 363, 366 and 376 of IPC and 3/4 of the POCSO Act, P.S. Puranpur, District Pilibhit was registered against the minor son of the petitioner, for which he had already undergone imprisonment for about three years and ten months and was enlarged on bail on February 12, 2022.

b. Petitioner's son was required to appear before the trial court, but due to unavoidable circumstances, he could not appear. Consequently, he was arrested by the police on February 7, 2024 in execution of a warrant and thereafter detained in jail.

c. On February 20, 2024, the petitioner was informed by the respondents that her son had died in custody. Before handing over the dead body to the family for cremation, a Panchnama and Post Mortem examination were conducted on the same day. The Panchnama indicated that the deceased had died on account of hanging by a muffler and the post mortem report disclosed the cause of death of the deceased as 'asphyxia due to antimortem hanging' with the presence of ligature mark on the neck.

d. The petitioner was informed by respondent

authorities about the various financial beneficial schemes and was assured for the grant of the same vide letter dated February 22, 2024.

e. On October 5, 2024, an inquest report to inquire into the cause of death of the deceased was submitted by Judicial Magistrate in accordance with Section 176 CrPC (corresponding Section 196 BNSS), after taking into consideration the Panchnama and Post Mortem report. It was observed therein that the deceased had succumbed to suicide by hanging himself and it was further noted that no external injury of any kind was found on the body of the deceased. Additionally, it was observed that no information regarding harassment and instigation by jail authorities had been given by the jail inmates.

f. The National Human Rights Commission, after considering the panchnama, inquest report, and post mortem report furnished by the jail authorities, vide order dated October 10, 2024, directed payment of compensation of Rs. 3,00,000/- to the nearest family member of the deceased.

g. In pursuance thereof, the State issued a letter dated November 21, 2024 to the Director General of Police, Prison Administration, communicating the direction of NHRC to pay compensation to the next of kin of the deceased prisoner and submit an inquest report with regard to the same as soon as possible.

h. The petitioner moved an application dated December 6, 2024, seeking compensation on account of the unnatural death of her son.

i. Being aggrieved by the inaction on the part of the

respondents in not granting compensation to the petitioner for the unnatural death of her son while in custody of District Jail, the writ petitioner has come before this Court by filing the present writ petition.

CONTENTIONS OF PETITIONER

2. Learned counsel appearing on behalf of petitioner has made the following submissions:-

a. The minor son of the petitioner was subjected to torture by the police personnel of prison due to non fulfilment of illegal money demands, including a monthly expenses of Rs. 4500/- for relief from such torture, which ultimately resulted in his unnatural death.

b. The petitioner was pressurized by the respondent authorities to perform the last ritual immediately.

c. Despite the petitioner having moved an application for compensation and notwithstanding the assurance given by the respondent authorities, no compensation has been provided to the petitioner so far.

d. By the inaction on the part of the respondents, the petitioner's fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India have been violated.

e. To buttress his aforesaid submissions, learned counsel appearing on behalf of the petitioner has relied on the following Supreme Court and High Courts judgments:-

i. **Nilabati Behera v. State of Orissa** reported in (1993) 2 SCC 746 [Supreme Court]

ii. **Re-Inhuman Conditions in 1382 Prisons** reported in (2017) 10 SCC 658 [Supreme Court]

iii. **In Suo Motu Custodial Violence and Other Matters Relating to Prison Conditions v. State of Meghalaya** reported in (2023) 5 GLT 19 [Meghalaya High Court]

iv. **Rasheda Khatun v. State of Tripura** in W.P.(c) no.797 of 2021 [Tripura High Court]

iv. **Smt. Meena v. State of U.P. and others** in Writ-C No.7217 of 2019 [Allahabad High Court]

CONTENTIONS OF RESPONDENTS

3. Learned counsel appearing on behalf of respondents has made the following submissions:-

a. It is submitted that the petitioner's son died by hanging himself from the ventilator of the toilet situated within the prison premises. The incident was an act of suicide and there is no material on record to suggest any negligence, misconduct or involvement on the part of the respondent-authorities in causing death of the deceased.

b. It is further submitted that the State Government, upon consideration of the recommendation made by the National Human Rights Commission, has accorded approval for payment of compensation amounting to ₹3,00,000/- to the nearest family member of the deceased.

c. It is submitted that the compensation could not be disbursed immediately as the process of verification and identification of the rightful next of kin of the deceased is presently underway. Upon completion of the said identification process and receipt of the requisite budgetary allocation from the Government, the approved compensation shall be released in accordance with law.

d. It is also submitted that after conducting an inquiry, an inquest report was submitted by the Judicial Magistrate, wherein the cause of death of the deceased was opined to be ante-mortem hanging, and no material was found to indicate any external injury or custodial violence.

ISSUE

Whether a case of custodial death has been made out? If yes, then whether the Writ Court under Article 226 of the Constitution of India should direct compensation to be paid to the family of the victim?

ANALYSIS

4. I have given my thoughtful consideration to the submissions canvassed by the learned counsel for the parties and have also perused the materials placed on record.

5. Custodial death depicts one of the most serious challenges to the protection of fundamental rights within the Indian Justice System. The right to life and human dignity guaranteed under Article 21 of the Constitution of India is an intrinsic, inviolable and omnipresent right which is extended even to an individual who is illegally arrested and detained by the State. The Constitution of India does not vouchsafe the suspension of fundamental rights merely because a person is in custody. On the contrary, the Constitutional jurisprudence casts the onus upon the State for the death of such nature, therefore raises presumption on the State and demands strict Constitutional scrutiny [see **State of Andhra Pradesh v.**

Challa Ramakrishna Reddy and others reported in (2000) 5 SCC 712].

6. The phenomena of custodial death exposes the dichotomic tussle between the coercive powers of the State and the Constitutional mandate to protect individual liberty. Law enforcement agencies being vested with the wide powers of arrest, detention and investigation to maintain public order and ensure effective administration of justice are attenuated by constitutional limitations designed to prevent abuse and arbitrariness. Custodial death can result from torture, coercion, neglect, abuse of power by law-enforcement authorities [see **D.K. Basu v. State of West Bengal** reported in (1997) 1 SCC 416].

7. It is flabbergasting to note that there is no express mandate in our Indian Constitution for the grant of compensation for unlawful detention or custodial death. India has ratified to the International Covenant in Civil and Political Rights, 1966 wherein Article 9(5) states that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". In consistence with the above ratification, India owes its obligation to the international community. Furthermore, the Law Commission of India, in its 273rd report on implementation of United Nations Convention Against Torture, has observed custodial violence marked by weak accountability, lack of transparency and institutional protection of errant officials.

8. If the death in custody occurs naturally then State can not be faulted with, but if the death is caused unnaturally then State is absolutely liable for its act/

omission which resulted in death of an individual. The International Committee of Red Cross (ICRC) has also issued guidelines on investigating deaths in custody, wherein a clear distinction between natural and unnatural death has been carved. According to ICRC, death is the irreversible cessation of all vital functions including brain activity. It is natural when it is caused solely by disease and/or aging process. It is unnatural when the causes are external such as intentional injury, negligence or unintentional injury (death by accident).

9. The Tripura High Court in the decision of **Rasheda Khatun** (Supra), directed the State to pay compensation for custodial death, relying upon the judgment of the Hon'ble Supreme Court in **D.K. Basu** (Supra) wherein it was observed that the purpose of compensation is to ameliorate the wound of the kin of the deceased and not to act as a deterrent for the transgressor. The relevant paragraphs of the judgment are delineated below:-

" 17. For determination of the quantum of compensation we may profitably refer to the decision of the Apex Court in the case of D.K. Basu v. State of W.B: reported in (1997) 1 SCC 416 wherein the Apex Court has held that the objective of such monetary compensation is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence must be left to the criminal courts in which the offender is prosecuted. Observation made by the Hon'ble Apex Court in paragraph-54 of the judgment is as under:

"54. Thus, to sum up, it is now a well accepted proposition in most 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. That 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."

18. In view of the facts and circumstances of the case and the law laid down by the Apex Court in the Judgment cited to (supra) we direct the state respondents to pay a sum of Rs. 10,00,000/- (rupees ten lakhs) as compensation to the

petitioners for the custodial death of Jamal Hossain by depositing the said amount with the Registry of this Court within a period of four weeks from today. The petitioners who are the widow, children and mother of the deceased shall be entitled to equal share of the said amount of compensation. On deposit of the compensation, Registry shall disburse the share of the mother and wife of the deceased by transferring the same to their individual bank account. The share of the children shall be invested in term deposits in their names in any nationalised bank until they attain majority and the monthly interest generated from those deposits shall be transferred to the account of their mother for their educational and other expenses."

10. In **Suo Motu Custodial Violence and Other Matters Relating to Prison Conditions** (Supra), the High Court of Meghalaya at Shillong has held that there is no room to apply the strict liability theory when it comes to a death of a person in custody of the State. The State's liability in such regard is absolute unless it demonstrates to the satisfaction of the Court that the death was due to natural causes. The Court would reasonably infer otherwise and hold the State liable. Furthermore, it was *inter alia* observed to quantify compensation as per the age of deceased. The relevant paragraphs of which are quoted herein below:-

"24. A death in custody is a slur on a civilised State and completely unacceptable. Ideally, there should be no death, except due to natural causes, while in custody. Of course, the natural causes are beyond the control of the State and convicts serving long sentences may also have age-related problems which may lead to their death. But it is particularly distressing to note the number of deaths of under-trial prisoners as the investigating agency uses third-degree methods to get information from the arrested person rather

than go out in the field and investigate the matter. Oftentimes, the excesses indulged in by the State through its police personnel result in admissions, which may be inaccurate, but which are made to stave off or delay the further torture. If police brutalities and inhuman treatment of persons in custody have to be arrested, the compensation for custodial death has to be pegged at a level where the State will bleed to make the payment; not what the State is happy to pay off.

25. At any rate, there is no room to apply the strict liability theory when it comes to a death of a person in the custody of the State. The State's liability in such regard is absolute and unless it demonstrates to the satisfaction of the Court that the death was due to natural causes, the Court may reasonably infer otherwise and hold the State liable. The State ought also to be liable for the actions of its officers and employees. It is possible that in several cases exuberant officials would go beyond the call of duty or the SOP in place. In such cases, the State will remain liable for the acts and conduct of its officials, but the State will also be free to proceed against such officials and even extract the compensation that it has to pay from such officials in accordance with law. Though the classification indicated in the Haryana notification and as has been mindlessly adopted by the State appears to be abhorrent and obnoxious, there should be some other form of classification based on a precedent therefor in our jurisprudence. In respect of motor accident claims, there is a classification of the quantum of compensation payable based on the age of the victim. Accordingly, it is deemed fit and proper to classify the victims who have died in custody into three categories, namely, below 30; between 30 and 45; and, above 45.

26. Since the judgment of this Court in Smti. Meena S. Marak has already established the quantum, the sum of Rs. 15 lakh may be taken as the compensation payable for death in custody to the next of kin of a person age below 30. For

victims in the age-group of 30 to 45, the quantum of compensation should be Rs. 12 lakh and for those above 45 years, it should be Rs. 10 lakh. There is an element of subjectivity in arriving at such ballpark figures; however, when it comes to assessment of damages or quantification of compensation, there is an element of guesstimation that is always indulged in.”

11. Dealing with the first issue, it is pertinent to examine the panchnama prepared in accordance with Section 174 CrPC (corresponding Section 194 BNSS), which was conducted in the presence of Sub-Divisional Magistrate, Circle Officer, Inspector and jail authorities on the date of death itself at prison. It was recorded in the panchnama that the deceased had committed suicide by hanging himself from the ventilator of toilet using a muffler.

12. Moreover, the post mortem report indicates the presence of ligature mark around the neck and a superficial abrasion on the anterior aspect of mid of left lower leg. Furthermore, the inquest report prepared in accordance with Section 176 CrPC (corresponding Section 196 BNSS) has also been submitted, wherein after considering the statements of all the witnesses, it was concluded that the deceased had committed suicide. As per the statements of doctor who conducted post mortem examination on the body of the deceased, the injuries found on the body were minor in nature which were not sufficient enough to have resulted in death of the deceased.

13. It is undisputed that the deceased was in the custody of the State and had committed suicide. There may have been circumstances surrounding him which

drove him to take such an extreme step, resulting in a patently unnatural death. Ergo, the State is absolutely liable for the unnatural death of the deceased, as an amplified duty is cast upon the State for the death of a prisoner in custody of police without any exception. No State can shirk its duties and responsibilities for providing better facilities to prisoners. Accordingly the case of custodial death is made out in the present case.

14. Now adverting to the issue with regard to grant of compensation by the Writ Court, we may refer to a judgment of the Supreme Court rendered in **Rudul Sah v. State of Bihar** reported in (1983) 4 SCC 141. While dealing with a case of illegal detention even after an acquittal in a trial, the Court has categorically held that the kin of the deceased was entitled to compensation for the illegal detention and rejected the stale and sterile objection of the State that the compensation can be recovered by filing a suit for damages. The relevant paragraphs of the judgment are delineated below:

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release

from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation

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. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

15. Moreover, in **Nilabati Behera** (Supra), the Hon'ble Supreme has recognised compensation for custodial deaths as public law remedy and held that in cases of violation of fundamental right by state's instrumentalities or servants, Writ Court can direct the State to pay compensation to the victim or his/her legal heir(s) by way of monetary amends. The relevant paragraphs of the judgment are quoted herein below:-

"23. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs 1200 to Rs 1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) CrPC and Section 141(3) of the Motor Vehicles Act, 1988.

24. Accordingly, we direct the respondent State of Orissa to pay the sum of Rs 1,50,000 to the petitioner and a

further sum of Rs 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of this Court within three months."

16. In **Re-Inhuman Conditions in 1382 Prisons** (Supra), the Hon'ble Supreme Court has extensively and in great detail dealt with the issue of custodial death and held as under:-

"9. On the issue of defining natural and unnatural deaths, the learned Amicus Curiae drew our attention to the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). According to ICRC, "death" is the irreversible cessation of all vital functions, including brain activity. Death is "natural" when it is caused solely by disease and/or the aging process. It is "unnatural" when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident). We have perused the guidelines provided by ICRC and are of the view that these guidelines deserve consideration and circulation by the Central Government and all the State Governments.

NHRC and suicide prevention

10. It has been pointed out by the learned Amicus Curiae that a disproportionately large number of unnatural deaths are attributable to suicides. In this regard, it has been brought to our notice by the learned Amicus Curiae that in relation to suicides in prisons, the National Human

Rights Commission or NHRC has published a monograph sometime in December 2014 entitled "Suicide in Prison — Prevention Strategy and Implication from Human Rights and Legal Points of View". This monograph records that during the period 2007-2011, deaths in prisons on account of suicide formed 71% of the total number of unnatural deaths. It was also pointed out that the average suicide rate among the general public for this period is 11 (per 100,000) whereas the average suicide rate in prison is 16.9 (per 100,000). In other words, the average suicide rate in prisons is over 50% more than in normal conditions. The monograph refers to certain communications issued by NHRC from time to time on the aspect of custodial deaths, but we will refer to them in somewhat greater detail a little later.

12. Detailing the characteristics of a prison environment that make suicides in prisons more likely, NHRC monograph mentions the following:

1. Authoritarian environment
2. No apparent control over the future
3. Isolation from family, friends and community
4. The shame of incarceration
5. Dehumanising aspects of incarceration
6. Fears
7. Staff insensitivity to the arrest and incarceration phenomenon
8. Hostility and bullying by other inmates
9. Lack of adequate medical and psychological counselling and treatment facility
10. Delay in deciding the parole.

14. NHRC has suggested various protective factors or

measures that could be employed to reduce the number of suicides in prisons. Among them are visits and contact that the prisoner could have with the family, constructive occupation in prison, instilling hopes and plans for the future and support from staff.

15. NHRC also conducted a National Seminar on Prison Reforms on 15-4-2011. The recommendations made in the National Seminar have also been indicated in the monograph as also some actionable points for suicide prevention programmes. In its conclusion, NHRC has recorded that the success of efforts to prevent suicides in prisons depends on the ability and willingness to identify the vulnerability of each prisoner, provide necessary supervision and support and offer alternative ways of coping and reducing emotional distress. It is noted that any proposed piecemeal solution to the problem of suicides in prisons will not result in any long-term improvement.

16. What we have mentioned above is only a brief indication of the extent to which NHRC has put in an effort to bring about a composite monograph and a detailed study on suicides in prisons. In our view, this would certainly be useful to prison officials and staff in reducing, if not eliminating suicides in prisons. The monograph prepared by NHRC, in our opinion, deserves to be freely distributed amongst the staff and prisons all over the country since it is a document of immense utility insofar as suicide prevention in prisons is concerned.

38. The need for an inquiry into every death in custody was also emphasised by the learned Amicus Curiae, who submitted that there was discrepancy of data between deaths reported in prisons as per NCRB and deaths reported in prisons as derived from the data available with

NHRC. It was submitted by the learned Amicus Curiae that this discrepancy needs to be reconciled and adequate reasons must be provided for every death that takes place in a prison.

48. 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 undertrial or a convict. A few such illustrations may be noted:

(a) *Nina Rajan Pillai v. Union of India* [*Nina Rajan Pillai v. Union of India*, 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104]

48.1. 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. State of Maharashtra* [*Kewalbai v. State of Maharashtra*, 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601]

48.2. 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* [*Bheduki Buragohain v. State of Assam*, 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517]

48.3. The undertrial 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 [Madhuben Adesara v. State of Gujarat, 2016 SCC OnLine Guj 1956]

48.4. 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 [Banalata Dash v. State of Orissa, AIR 2012 Ori 97]

48.5. 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 [Amandeep v. State of Punjab, 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191]

48.6. The deceased was assaulted by a co-prisoner and succumbed to injuries in the hospital. Due to the unnatural death in custody, the Punjab and Haryana High Court awarded compensation to the next of kin of the deceased.

(g) Tmt. Rohini Lingam v. State [Tmt. Rohini Lingam v. State, 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822]

48.7. 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 E.K. v. State of Kerala [Sabu E.K. v. State of Kerala, 2016 SCC OnLine Ker 22210 : (2016) 4 KLJ 105]

48.8. 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 police officers concerned was concluded.

(i) Ravindra Nath Awasthi v. State of U.P. [Ravindra Nath Awasthi v. State of U.P., 2009 SCC OnLine All 337 : (2009) 2 AWC 2090]

48.9. 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) Madina v. State of Rajasthan [Madina v. State of Rajasthan, 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484]

48.10. 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) Dukharam v. State of Chhattisgarh [Dukharam v. State of Chhattisgarh, (2011) 3 MPHT 81]

48.11. 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. [Santosh Kumari v. State of H.P., 2007 SCC OnLine HP 45 : 2008

ACJ 1684]

48.12. 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 J&K v. Sajad Ahmad Dar [State of J&K v. Sajad Ahmad Dar, 2015 SCC OnLine J&K 160]

48.13. The victim died due to cardiopulmonary 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 and Kashmir High Court awarded the compensation to the next of kin of the deceased.

(n) Meena Singh v. State of Bihar [Meena Singh v. State of Bihar, 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573]

48.14. 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 v. State of M.P. [Lawyers for Justice v. State of M.P., 2015 SCC OnLine MP 7488 : AIR 2015 MP 212]

48.15. The victim was facing trial for offences under Section 302 of the Penal Code, 1860. 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.

The need to compensate

54. 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 realises 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.

55. 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 realise 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.”

CONCLUSION

17. In view of the foregoing analysis, this Court finds that the death of the deceased occurred while in custody and control of the State authorities, and that the material placed on record unmistakably establishes a violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. Custodial torture is a naked violation of human dignity and degradation that destroys self-esteem and being of the victim to the absolute core. Custodial torture is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. Despite recommendations for banishing torture from the investigative system, growing incidence of torture and deaths in police custody and prisons continue to persist. Custodial violence and deaths strike the very core of the rule of law and are an affront to human dignity. The State, being the custodian of life and liberty of persons in its custody, bears a strict and non-delegable duty to ensure their safety. Failure to discharge this obligation attracts public law liability.

18. The explanations offered by the respondents is neither cogent nor sufficient to displace the presumption of the death of the petitioner's son eventuated in prison. Accordingly, the onus which squarely lay upon the State to account for the circumstances leading to the death, has not been satisfactorily discharged. The contention of the State that the death was due to suicide and was not an unnatural death does not hold water as has been categorically demonstrated by the judgments as discussed above. The Hon'ble Supreme Court in **Re-Inhuman Conditions in 1382 Prisons** (Supra) has

categorically held that a suicide would amount to an (internal) intentional injury and would be an unnatural death wherein the liability would squarely fall on the State. In light of the same, one may patently come to a conclusion that the facts of the present case disclose a clear infringement of constitutional protections, warranting intervention under Article 226 of the Constitution.

19. It is well settled, *inter alia*, in **Nilabati Behera** (Supra) and **D.K. Basu** (Supra) that this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is empowered to award monetary compensation as a remedy in public law for established violations of fundamental rights, independent of and in addition to remedies available in private law. Monetary compensation, while not a complete substitute for the loss of life, could provide some measure of solace for the bereaved family and act as a deterrent against future custodial violence.

20. With regard to the issue of the amount of compensation to be paid to the victim, in the judgment of Meghalaya High Court in **Suo Motu Custodial Violence** (Supra), a categorization was made with regard to the quantum to be paid creating three categories- (a). sum of Rs.15 lacs for a person below the age of 30 years; (b). between the age group of 30 to 45 years quantum of Rs.12 lacs and (c). for those above 45 the quantum to be Rs.10 lacs. However, it appears that this judgment has been stayed by the Hon'ble Supreme Court in **The State of Meghalaya Vs. Killing Jana and others** in SLP(C) Diary No.47683/2023 vide order dated January 22, 2024

especially with regard to the categories created by the High Court for award of different compensations based on the age of the victim. In light of the same, one cannot apply the said judgment as an authoritative precedent for taking a decision on the quantum of compensation. In recent years, as illustrated in the judgments cited above, the High Courts and the Hon'ble Supreme Court have awarded a sum of Rs.10 lacs for custodial deaths.

21. Upon sifting through the ratios laid down in the aforesaid judgments, the following steps must be taken as a preliminary step in case of custodial death:

A. The family members of the deceased must be informed immediately by the jail authorities about the death of the deceased. A panchnama with independent panchas shall be prepared immediately on the spot in accordance with Section 174 CrPC (corresponding Section 194 BNSS) without any delay.

B. A post mortem examination must be conducted promptly mentioning the cause of death without any delay. The video recording of the post mortem examination in case of custodial death of the deceased must be mandatorily carried out.

C. An inquest report by the judicial magistrate concerned must be submitted in accordance with Section 176 CrPC (corresponding Section 196 BNSS) immediately after considering all the witnesses, post mortem report and panchnama.

D. The monetary compensation in order to provide solace to the next of kin of the deceased in custody must be paid as fixed by National Human Rights

Commission after considering the peculiar facts and circumstances of the individual custodial death case.

22. Accordingly, the writ petition is allowed. Consequently, the respondents are directed to pay compensation of Rs.10,00,000 (Rs Ten Lacs Only) to the legal heirs of the deceased within a period of three weeks from date.

23. This compensation shall be without prejudice to the right of the petitioners to pursue appropriate civil or criminal proceedings against the officials concerned. The State Government is further directed to frame guidelines fixing compensation by adopting relevant and cogent parameters in awarding compensation in custodial death cases akin to the multiplier method based on age, income and dependants as available under the Motor Vehicles Act, 1988.

24. The writ petition stands allowed in the above terms.

(Shekhar B. Saraf,J.)

(I agree)

(Manjive Shukla,J.)

February 20, 2026
Ashutosh/Cks