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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12183-2016 (O&M)

Reserved on: 12.05.2025

Pronounced on: 20.05.2025

Daljit Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Veneet Sharma, Advocate
for the petitioner.Mr. Prateek Pandit, Advocate
Amicus Curiae.

Mr. Rishabh Singla, AAG, Punjab.

Mr. G.P.S. Bal, Advocate
for respondents No.4 and 5.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 seeking directions for a fair and impartial investigation of FIR No.69 dated 02.04.2015 under Section 304 of IPC registered at Police Station Cantonment, Amritsar in terms of the order dated 12.03.2015 (Annexure P-3) passed by this Court in CRM-M-24724-2013, as well as grant of adequate compensation.

2. Briefly, the facts, as alleged are that, on 23.05.2013, Arvinder Pal Singh alias Lovely, the son of the petitioner, was sitting in a barber shop when respondents No.5 and 6- Head Constable Prem Singh and Head Constable Sandeep Singh, respectively, arrived at the spot. Without giving any opportunity to surrender or making an attempt to arrest him, respondent No.5 shot Arvinder Pal Singh alias Lovely on the chest, from a point blank range.



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The gunshot resulted in his immediate death.

3. Learned counsel for the petitioner *inter alia* contends that the deceased was a 22-year-old boy who was illegally killed by respondent No.5. In order to safeguard their colleagues, subsequent to the occurrence, a false and concocted FIR bearing No.87 dated 23.05.2013 (Annexure P-1) under Sections 307, 353, 186, 332 IPC and Section 25 of the Arms Act was registered against the deceased at Police Station Cantonment, District Amritsar City, alleging that he attacked respondent No.6 with a knife and the gun shot was fired in self defence.

4. Further, a perusal of the Post Mortem Report dated 24.05.2013 (Annexure P-2) would indicate that the FIR(supra) has been registered by showing the deceased to be living at that point, even though he had died minutes after receiving the gun shot injury. Aggrieved by the blatant disregard for the process of law, the petitioner had approached this Court by way of CRM-M-24724-2013, and vide order dated 12.03.2015 (Annexure P-3), FIR was ordered to be registered against the erring police officials and the investigation in the same as well as FIR No.87 (supra) was transferred to the Crime Branch. In spite of the specific direction of this Court to register an FIR against the police officials for murder, FIR No.69 dated 02.04.2015 (Annexure P-4) was registered against them under Section 304 IPC. Further, neither has the investigation been concluded nor have respondents No.5 and 6 been arrested till date. Reliance is also placed on the judgments rendered by the Hon'ble Supreme Court in ***Rohtash Kumar vs. State of Haryana (2013) 14 SCC 290*** and this Court in ***Parkash Karu and others vs. State of Punjab and another*** in CWP-3342-2016 decided on 14.09.2022.0



5. *Per contra* learned State counsel as well as learned counsel for respondents No.5 and 6 submits that the deceased was a known miscreant, declared to be a Proclaimed Offender in two cases and one of them was for an attempted murder. It was the deceased who grappled with respondent No.6 and attacked him with a knife. Respondent No.5 issued several warnings to the deceased but he paid no heed to the same. Further, the shot was aimed at the left arm of the deceased, as also recorded in the PMR, which states that a shot hit his left arm. The bullet pierced through and entered his chest. The respondents-accused neither had any motive to kill the deceased nor engaged in an overt act that would cause it as evidenced from the fact that a solitary gun shot was fired, merely in self-defence. Moreover, the MLR of respondent No.6, available on record at Annexure P-5-6/1, would indicate injuries sustained by him, that further corroborates their defence. Moreover, the petitioner did not move any protest petition but merely recorded a statement objecting to the final report dated 14.10.2016 filed under Section 173 Cr.P.C. Reliance in this regard is placed on judgments rendered by the Hon'ble Supreme Court in ***Yogesh K. Bhatia vs. State of U.P. (1996) SCC(Cri) 94, Mohammad Yasin vs. Sattu (NCT of Delhi) and others (2009) 14 SCC 644*** and ***T.V. Eachara Warriar vs. T.O. Kunicharaman Nambiar and others (2003) SCC(Cri) 1043***.

6. Learned *Amicus Curiae* submits that according to FIR No.87(supra) the deceased was standing outside the barber shop when the respondents No.5 and 6 met him. However, in FIR No. 69 (supra), he is indicated to be present inside the shop. Moreover, the drill of Section 46 Cr.P.C., which provides a safeguard against police excesses, has not been followed even though no antecedents were indicated in FIR No.87(supra) to clarify why imminent arrest, by using excess force, was warranted. Further, a



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perusal of the PMR (Annexure P-2) would indicate that blackening and tattooing present around injury No.2. The blackening around the wound as well as the margins clearly indicate that the gun shot was fired from point blank distance. Moreover, there is no injury on the legs of the deceased, therefore, it is evident that respondent No.5 did not even attempt to warn him by shooting at a non vital part. Rather, he has directly been shot at the chest, thus, it cannot be said that the intention to kill was missing. The FIR No.69 (supra) has been registered against respondents No.5 and 6, as per orders of this Court, however, the same has been done under Section 304 IPC while it should have been Section 302 IPC. The peculiar circumstances of the present case indicate *mala fide* on part of the police officials involved. In fact, the concerned police force has been trying to shield their colleagues-respondents No.5 and 6. Further still, a second cancellation report is pending consideration before the concerned trial Court for 17.05.2025.

7. He further submits that since the death of the deceased has been caused by a police official, using his service revolver, his family deserves to be compensated. Extra-judicial killing, even if the deceased was a dreaded criminal, must not be condoned as it creates an atmosphere of distrust in our law enforcement agencies. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***People's Union for Civil Liberties and another vs. State of Maharashtra and others (2014) 10 SCC 635***, ***Rohtash Kumar vs. State of Haryana (supra)***, ***Narmada Bai vs. State of Gujarat and others (2011) 5 SCC 79*** and this Court in ***Harjit Kaur vs. State of Punjab and others 2018(3) R.C.R.(Criminal) 224*** and ***Manjit Kaur vs. State of Punjab and others 2016(2) R.C.R.(Criminal) 383***.



8. Having heard learned counsel for the parties and the learned Amicus Curiae, it transpires that Arvinder Pal Singh alias Lovely a 22-year-old man was shot dead by respondent No.5, a police official. It is a matter of record that the injury on the deceased had a black ring around it, which clearly indicates that the bullet was shot from a very small, perhaps point blank distance. That being the case, the narrative put forth by respondents No.5 and 6 seems rather untenable.

9. Further still, while it is their case that they warned the deceased multiple times before shooting at him, the bullet injuries are on his arm and chest. It is rather curious as to why, if it was at all required, did respondent No.5 not aim for the legs of the deceased. Additionally, it seems to be a considerable exaggeration to argue that the bullet pierced through the arm and entered the chest of the deceased deep enough to rupture the left lung and cause his death. Moreover, the initial version pertaining to the incident was that it occurred outside the barber shop. However, a perusal of the record indicates that during investigation, the owner of the said shop namely Gaurav Saini categorically stated that the deceased had a mobile phone charging inside and that the entire incident also occurred inside the shop.

10. While it is true that the deceased was arraigned as an accused in 09 other cases, most of which pertain to robbery, and was also declared a Proclaimed Offender in two of them; however, the same does not give a right to the police officials to indulge in excesses to conduct his arrest. Moreover, the police officials form a part of a professional and trained force. As such, it can be reasonably assumed that they possess the ability to arrest a man, armed merely with a knife, without killing him, especially when they are armed with their service pistol. Allowing the act of respondent No.5 to go unchecked would



effectively mean validating a death sentence, passed not in line with the due process of law, but by the law enforcement agency donning the role of the judge, jury and executioner. A two Judge bench of the Hon'ble Supreme Court in *Extra Judicial Execution Victim Families Association (EEVFAM) and others vs. Union of India and Others* 2016 AIR SC 3400, speaking through Justice Madan B. Lokur, made the following observations:

"120. In Rohtash Kumar v. State of Haryana, 2013(2) RCR (Criminal) 321 : 2013(2) Recent Apex Judgments (R.A.J.) 299 : (2013) 14 SCC 290 this Court cautioned against the use of retaliatory force even against a dreaded criminal. It was held:

"It also appears that he [the appellant] was declared absconder. But merely because a person is a dreaded criminal or a proclaimed offender, he cannot be killed in cold blood. The police must make an effort to arrest such accused. In a given case if a dreaded criminal launches a murderous attack on the police to prevent them from doing their duty, the police may have to retaliate and, in that retaliation, such a criminal may get killed. That could be a case of genuine encounter. But in the facts of this case, we are unable to draw such a conclusion."

121. Finally, reference may be made to Darshan Singh v. State of Punjab, 2010(1) RCR (Criminal) 751 : (2010) 2 SCC 333 wherein this Court held:

*"When there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also a settled position of law **that a right of self-defence is only a right to defend oneself and not to retaliate. It is not a right to take revenge.**"*

*122. From the above , **it is abundantly clear that the right of self-defence or private defence falls in one basket and use of excessive force or retaliatory force falls in another basket . Therefore, while a victim of aggression has a right of private defence or self-defence (recognised by Sections 96 to 106 of the I.P.C.) if that victim exceeds the right of private defence or self-defence by using excessive force or retaliatory measures, he then becomes an aggressor and commits a punishable offence. Unfortunately occasionally, use of excessive force or retaliation leads to the death of the original aggressor. When the State uses such excessive or retaliatory force leading to death, it is referred to as an extra-judicial killing or an extra-judicial execution or as this Court put it in People's Union for Civil Liberties v. Union of India and another , 1997(2) RCR (Criminal) 161 : (1997) 3 SCC 433 it is called "administrative liquidation". Society and the courts obviously cannot and do not accept such a death caused by the State***



since it is destructive of the rule of law and plainly unconstitutional.
(emphasis added)

11. The Constitution of India, by virtue of Article 21, grants a fundamental right to life, which would undoubtedly include the right to live a dignified, safe and secure life. In the absence thereof, all other rights and privileges lose meaning. In that vein, A two Judge bench of the Hon'ble Supreme Court in ***Public Union for Civil Liberties vs. State of Maharashtra (supra)***, speaking through Justice R.M. Lodha, issued detailed guidelines to be followed in the matters of investigating the cases of death caused by the police, for thorough, effective and independent investigation:

“31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant - PUCL, amicus curiae and the affidavits filed by the Union of India, State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation :

*(1) Whenever the police is in **receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing** in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.*

*(2) **If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay.** While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.*

*(3) **An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer** (at least a level*



above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek :

- (a) To identify the victim; colour photographs of the victim should be taken;*
- (b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;*
- (c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;*
- (d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;*
- (e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;*
- (f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be Incharge/ Head of the District Hospital. Post-mortem shall be videographed and preserved;*
- (g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.*
- (h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.*

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the Investigating Officer, must be concluded expeditiously.



(9) *In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.*

(10) *Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:*

- (i) Date and place of occurrence.*
- (ii) Police Station, District.*
- (iii) Circumstances leading to deaths:*
 - (a) Self defence in encounter.*
 - (b) In the course of dispersal of unlawful assembly.*
 - (c) In the course of affecting arrest.*
- (iv) Brief facts of the incident.*
- (v) Criminal Case No.*
- (vi) Investigating Agency.*
- (vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:*
 - (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and*
 - (b) whether use of force was justified and action taken was lawful.*

(11) *If on the conclusion of investigation the materials/evidence having come on **record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.***

(12) *As regards compensation to be granted to the **dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.***

(13) *The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.*

(14) *An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.*

(15) ***No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence.** It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.*



(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.” (emphasis added)

12. A perusal of the record does not indicate that the alleged secret information received by the police, regarding the whereabouts of the deceased, was reduced to writing. Further, an FIR was only registered against the erring police officials due to the intervention of this Court after a petition bearing no. CRM-M-24724-2013 was filed by the petitioner- mother of the deceased. However, the intention of the police authorities to shield their colleagues is rather conspicuous. The same is also buttressed by the fact that FIR No.69(supra) was registered against respondents No.5 and 6 under Section 304 of the IPC while it clearly should have been done under Section 302 of the IPC. A two Judge bench of the Hon’ble Supreme Court in ***Prakash Kadam vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189*** has categorically held that police officers cannot and should not be excused in the matters pertaining to extra-judicial killings, especially since they form a part of the law enforcement mechanism. In fact, it was further clarified that any orders by a superior to engage in the same must be refused. The following was opined:

*“25. We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. **Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law.** In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties.*



26. We warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that 'orders are orders', nevertheless they were hanged. **If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The 'encounter' philosophy is a criminal philosophy, and all policemen must know this.** Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them.”

13. Furthermore, the petitioner is mother who has lost her 22-year-old son in an incident that occurred in the year 2013 ago, but her quest for justice still remains unfinished. It was only due to her efforts that an FIR was registered against the erring officials and the matter was ordered to be investigated by the Crime Branch. Not only has she lost her young son, for the last 12 years, she has had run from pillar to post to get the incident fairly investigated. Therefore, this Court finds it to be a fit case for grant of compensation, as the death of the son of the petitioner was caused due to excesses on part of the State law enforcement agency.

14. In view of the discussion above, the present petition is allowed in the following terms:

(i) The State of Punjab is directed to grant of compensation of Rs. 15,00,000/- to the petitioner within a period of 08 weeks from receipt of a certified copy of this order.

(ii) The concerned jurisdictional Magistrate is directed to assess the second cancellation report in terms of the judgment rendered by this Court in ***Pawan Kharbanda vs. State of Punjab and another*** 2025(1) Law Herald 456.

(iii) The petitioner will be at liberty to pursue alternate remedies with respect to her dissatisfaction with the investigation as an FIR already stands registered in terms of the order dated 12.03.2015 (Annexure P-3) passed by this Court in CRM-M-24724-2013.



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15. A copy of this order be provided to the learned State counsel for compliance.
16. Pending miscellaneous application(s), if any, shall also stand disposed of.
17. Before parting with this order, this Court would like to express its gratitude to the learned *Amicus Curiae* for his significant assistance.

(HARPREET SINGH BRAR)
JUDGE

20.05.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No