



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

W.P.(C) No.9897 of 2014

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Babita Munda *Petitioner(s)*

-versus-

State of Odisha and Ors. *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Gyanendra Ch. Swain, Adv.*

For Opposite Party (s) : *Mr. G.R.Mohapatra , ASC*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-19.07.2024

DATE OF JUDGMENT: -06.09.2024

Dr. S.K. Panigrahi, J.

1. This Writ Petition has been filed concerning the unnatural death of a convicted prisoner, Nandia @ Nandu Munda. The Petition alleges that the prisoner endured both mental and physical torture at the hands of the jail authorities. It is claimed that this severe and unbearable mistreatment led him to take his own life. The petition asserts that the jail authorities are solely responsible for abetting his suicide through their conduct. Hence, the Petitioner seeks a direction of this Court to the State for awarding compensation to her for such death in custody.



I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) Nandu Munda, the father of the Petitioner, was convicted by the Sessions Judge, Keonjhar, in a Sessions Trial case and was sentenced to rigorous imprisonment for a term of 10 years, along with a monetary fine.
- (ii) On 1.09.2010, approximately at 3:45 PM, Nandu Munda was discovered hanging by another convicted individual, Kedar Barik inside the latrine adjacent to the latrine of Ward No.14.
- (iii) Warden Shyam Sundar Majhi, along with Kandara Munda, and Krushna Chandra Naik arrived at the scene and found Nandu Munda suspended by a towel tied around his neck from the skylight. The Warder lifted him, and Kandara Munda removed the towel and administered water to his mouth.
- (iv) Subsequently, the incident was reported to the Assistant Jailor, who then informed the Jailor. Both officers promptly proceeded to the location, and the matter was reported to the Jail Medical Officer, who arrived at the scene, conducted a thorough examination, and ultimately referred NanduMunda to the District Head Quarter Hospital, Keonjhar for advanced treatment. Unfortunately, upon arrival at the hospital, he was pronounced dead by the attending Medical Officer.
- (v) Following the death, an inquest report was prepared in the presence of the Petitioner's family and the Executive Magistrate. A post-mortem examination was conducted at the District Head Quarter



Hospital, Keonjhar. Upon completion of all legal formalities, the deceased's body was released to the Petitioner's family for burial. Since the death was in custody and the jail authority was in charge of his safety and security, they utterly failed to protect him, hence, the Petitioner seeks for compensation by filing the present Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

- (vi) During the incarceration of the deceased, he suffered both physical and mental abuse at the hands of the jail authorities. The Petitioner was informed of this mistreatment by her father on multiple occasions during her visits. Despite bringing these issues to the attention of the Jail Superintendent, who assured an investigation, no such inquiry was conducted before the tragic and untimely death of Nandu Munda.
- (vii) The Petitioner contends that, notwithstanding the official determination of suicide, the circumstances surrounding his death indicate culpable homicide due to the ongoing mistreatment by jail personnel.
- (viii) Her father's death is enveloped in a suspicious circumstance, casting serious doubts on the conclusion of suicide by the authorities.
- (ix) The Petitioner further alleges that, in a bid to evade accountability, the jail authorities transferred the victim to the District Head Quarter



Hospital, Keonjhar at the last moment, where he died under questionable and doubtful circumstances.

- (x) The Opposite Parties are accused of fabricating a false narrative to avoid legal repercussions and responsibility for the incident, falsely attributing the death to suicide.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. *Per contra*, learned counsel for the Opp. Parties earnestly made the following submissions in support of his contentions:

- (i) Any atrocity which might have been committed against the deceased has been chargesheeted after a thorough investigation and, therefore, the allegation of negligence is false. The authority had never inflicted any physical or mental torture in any way.

IV. EXAMINATION OF THE LEGAL MATRIX:

5. I have heard rival contentions.

6. In the context of Section 439 of the Code of Criminal Procedure, Supreme Court has provided the definition of “custody” in *Niranjan Singh v. PrabhakarRajaramKharote*¹ wherein inter alia it was observed as under:-

“When is a person in custody, within the meaning of Section 439, Cr.P.C.? When he is in duress either because he is held by the Investigating Officer or other police or allied authority or is under the control of the Court having been remanded by Judicial order, or having offered himself to the Court’s jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the Court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439.

¹1980 Cri.L.J. 426



This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibbling and hide-and- seek niceties sometimes heard in Court that the police have taken a man into formal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubiotics are unfair evasions of the straightforwardness of the law.... Custody, in the context of Section 439 (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court."

7. Furthermore, in *Lay Maung v. Emperor*,² the Court inter alia observed as under:-

"As soon as an accused or suspected person comes into the hands of a police officer he is, in the absence of any clear and unmistakable evidence to the contrary, no longer at liberty and is therefore, in "custody" within the meaning of Sections 26 and 27 of Evidence Act"

8. It is the conceded position that the deceased died while in custody of the police i.e. in jail premises. A perusal of contentions of the Opp. Parties shows that even though the identity of the persons guilty of negligence for the death of Nandu is in dispute but the fact that he died in custody due to negligence of officials is not in dispute.
9. This Court has given its anxious consideration to this unfortunate episode and feels that in the circumstances of the case, it is necessary for the police/prison personnel to show that there was no negligence on their part. After all, when a prisoner is in custody, it is the duty of the police/prison personnel to keep him alive and well till judicial remand.

²AIR 1924 Rang 173



10. It is not known as to how the deceased was able to roam in the premises unsupervised and devise a setup for suicide without anyone interfering or at least witnessing the episode until it was too late. It is impossible to believe that the prison premises would have been left empty without any prison personnel being present around there. All these matters would be cleared after the completion of the investigation of this whole episode and medical/chemical examination of the dead body of the deceased.
11. When a person is taken into custody, it is the paramount duty of the state to keep him safely. If there is any dereliction of that duty, undoubtedly, the onus will be on the prison staff and the personnel in-charge to show that there was no negligence on their part. Even assuming for a moment that the case before this Court is one of suicide, this Court would like to state that there is a duty on the part of the State to show that there was no negligence on the part of its staff. However, it cannot be ruled out that there may be some cases where in spite of best efforts by the prison staff and security; a prisoner commits suicide by a method that is beyond the control of anyone. In those cases, if the prison personnel can show that they were not negligent, it is possible that they may be absolved of the blame. Ultimately, it all depends on the facts of each case.
12. However, in all situations of custodial fatalities, whether by suicide or crimes committed by the police, the onus is unquestionably on the state to demonstrate that there was no carelessness on their side. I may at this stage refer to a decision of the Supreme Court reported in the case of



Nilabati Behera v. State of Orissa.³ While dealing with that case, the Apex Court has held as follows:

“In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State’s plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State’s liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Arts. 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudal Shah in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Arts. 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.”

13. The Supreme Court while reiterating the powers of the Court in granting compensation further held that:

“18. This view finds support from the decisions of this Court in the Bhagalpur binding cases :Khatri (II) v. State of Bihar and Khatri (IV) v. State of Bihar . Wherein it was said that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation v. Union of India , Misra, C.J. stated that ‘we have to

³1993 SCR (2) 581



develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future there is no reason why we should hesitate evolve such principle of liability'. To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the Court's power to grant relief."

14. Similar view has been echoed in *People's Union for Civil Liberties v. Union of India and another*,⁴ wherein the ratio decided in *Nilabati Behera's* case (supra) was relied upon and it was further held that in assessment of the compensation, the emphasis has to be on the compensatory and not on punitive manner. Moreover, a Division Bench of this Court in *Ahalya Pradhan v. State of Orissa*,⁵ wherein the custodial death was leveled as a suicide, this Court came to the conclusion that the legal heirs of the deceased are entitled to receive compensation.
15. It is the duty of the jail authorities to ensure safety and security of the inmates of the jail. Only when there is negligence on their part, such an incident could take place. Though the authorities have termed the incident as a suicide, foul play cannot be ruled out at this stage. Irrespective, the police/prison authorities owe a duty of care and caution to an arrested person and must take reasonable care to ensure that he does not suffer physical injury as a consequence of his own acts, or the acts of a third party. Therefore, this Court comes to the conclusion that it is a case of custodial death and the authorities are responsible for the same. The authorities being the employees of the

⁴AIR 1997 SC 1203

⁵2009 (1) OLR 526



State of Odisha, the State is vicariously liable for the death of the aforesaid deceased.

16. In light of the aforesaid discussion, it is pertinent to award compensation to the petitioner. However, in my opinion, the counsel for the Opp. Parties has rightfully contended that a full compensation cannot be granted without the completion of inter alia the investigation of the death, departmental inquiry, etc. Ergo, it would be reasonable, at this stage, to award an interim compensation to take care of the necessary expenses of the Petitioner and her family.
17. In the facts and circumstances of the case, this Court feels that it would be appropriate to order to the State of Odisha to pay to the petitioner compensation of Rs.2,00,000/- as an interim compensation. The said amount shall be deposited by the State before the District Legal Services Authority of the concerned District within six weeks from the date of presentation of an authenticated copy of this judgment/order. This direction to pay the compensation is without prejudice to the rights of the legal representatives to claim compensation in private law proceedings, if so entitled in law, against those found responsible for his death.
18. The State of Odisha is directed to take proactive measures to complete the investigation and the following trial as well as the disciplinary proceedings against those who are responsible for the death of Nandu and order accordingly.
19. Rule is made absolute in the aforesaid terms. The State shall pay to the Petitioner the cost of filing of this Writ Petition which has been



occasioned unnecessarily. Accordingly, the State shall pay Rs.25,000/- towards the cost of litigation to the Petitioner within six weeks from the date of presentation of an authenticated copy of this judgment/order.

20. With the aforesaid observations, the present petition stands disposed of.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 6th September, 2024/*