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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010410832026

+ **W.P.(CRL) 2659/2026**

AKASH & ANR.

.....Petitioners

Through: Dr. Ajay Chaudhary and Mr. Sahil
Mudgal. Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS.Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC with
SI Pankaj Kumar, PS Jyoti Nagar.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

02.09.2026

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1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), seeking directions to respondent no.1 to take appropriate action against respondent nos. 2 and 3 in relation to the allegations of illegal detention, custodial assault, torture and extortion levelled by the petitioners. The petitioners also seek initiation of departmental proceedings against the said respondents and compensation of ₹5,00,000/- each.

FACTUAL BACKGROUND

3. Briefly stated, a theft is alleged to have taken place during the intervening night of 12/13.06.2026 on the first floor of premises bearing no. D-1/729, Gali No. 7A, Ashok Nagar, Delhi. In relation thereto, FIR No.



267/2026 was registered on 13.06.2026 at Police Station Jyoti Nagar, North-East District, Delhi, against unknown persons. The petitioners state that they were tenants on the ground floor of the said premises and were not named in the FIR.

4. According to the petitioners, they were initially taken to Police Station Jyoti Nagar on 13.06.2026, where they were detained for about six hours. They allege that respondent nos. 2 and 3 demanded and received a sum of ₹25,000/- before permitting them to leave.

5. The petitioners further allege that they were again called to the police station on 18.07.2026 and were pressurised to confess their involvement in the theft. Upon their refusal, they were allegedly assaulted by respondent no. 2. They contend that they had been called in connection with the investigation as witnesses. In support thereof, reliance is placed upon a notice under Section 179 of the BNSS dated 18.07.2026. The notice placed on record is addressed to petitioner no. 1 and requires him to appear at the police station on 19.07.2026 at 3:00 p.m.

6. Following a PCR call stated to have been made by the elder brother of petitioner no. 2, the petitioners were taken to GTB Hospital. The MLC of petitioner no. 2 was prepared at about 11:30 p.m. on 18.07.2026. It records a history, as stated by petitioner no. 2, of physical assault at Police Station Jyoti Nagar at about 9:00 p.m. and notes tenderness and swelling over different parts of his body. No MLC relating to petitioner no. 1 has been placed on record.

7. The petitioners thereafter submitted complaints dated 19.07.2026 and 29.07.2026 to the SHO concerned and the Deputy Commissioner of Police, North-East District, respectively. Alleging that no action was taken thereon,



they have approached this Court seeking action against the concerned police officials, initiation of departmental proceedings and compensation.

SUBMISSIONS ADVANCED

8. Learned counsel for the petitioners submits that the present petition seeks action against the concerned police officials for allegedly subjecting the petitioners to custodial torture, in violation of their rights guaranteed under Article 21 of the Constitution of India. It is submitted that the petitioners had been called as witnesses in connection with the investigation but were subjected to cruelty while in police custody.

9. Learned counsel draws the attention of this Court to the medical record placed on record, which notes swelling and tenderness over different parts of the body. Reliance is placed upon the decision of the Supreme Court in ***D.K. Basu v. State of W.B., (1997) 1 SCC 416***, to submit that even an accused cannot be subjected to torture while in police custody.

10. Learned counsel further draws the attention of this Court to the FIR dated 13.06.2026, and submits that no allegation has been made therein against the petitioners. It is further submitted that the respondents had themselves treated the petitioners as witnesses in connection with the investigation.

11. *Per contra*, learned APP for the State submits that the concerned petitioner had not been called as a witness and was being proceeded against as an accused. It is submitted that the complainant had, in a subsequent handwritten complaint, expressed suspicion against the said petitioner and that a notice under Section 35(3) of the BNSS had been issued to him for the purposes of investigation.

12. Learned APP further submits that the call to the emergency number 100



was not made while the petitioner was inside the police station. According to the State, the petitioner had already come out of the police station and a crowd had gathered, whereafter the said call was made. It is, therefore, submitted that the call does not substantiate the allegation of custodial assault in the manner alleged.

ANALYSIS AND FINDINGS

13. This Court has heard the learned counsel for the parties and has perused the material placed on record.

14. At the outset, there can be no dispute that no person, whether a witness or an accused, can be subjected to torture or cruel, inhuman or degrading treatment while in police custody. The safeguards laid down by the Supreme Court in ***D.K. Basu v. State of W.B. (supra)*** are binding upon every police official. At the same time, before this Court can direct action against the concerned officials or award compensation in exercise of its jurisdiction under Article 226 of the Constitution of India, the allegations of custodial violence must find prima facie support from the material placed on record.

15. Much emphasis has been placed upon the fact that the petitioners were not named in the FIR. The FIR, however, was registered against unknown persons and, therefore, the absence of their names therein does not necessarily lead to the conclusion that they could only have been called as witnesses. The State has referred to a subsequent handwritten complaint, wherein the complainant is stated to have expressed suspicion against the concerned petitioner, as well as to a notice issued under Section 35(3) of the BNSS. The petitioners, on the other hand, rely upon the notice under Section 179 of the BNSS to contend that they had been called as witnesses. Be that as it may, the real issue is not the capacity in which the petitioners were called, but whether



the material on record establishes the allegation of custodial assault.

16. The MLC placed on record pertains only to petitioner no. 2. It records a history, as stated by petitioner no. 2, of physical assault at Police Station Jyoti Nagar at about 9:00 p.m. on 18.07.2026 and notes tenderness and swelling over different parts of his body. The MLC, therefore, constitutes contemporaneous medical material showing that petitioner no. 2 was examined and certain injuries were noticed. However, the history recorded therein is based upon the account given by petitioner no. 2 and does not identify the person who allegedly caused the injuries. No independent or corroborative material has been placed on record connecting respondent nos. 2 and 3 with those injuries. Further, no corresponding MLC of petitioner no. 1 has been filed, despite the allegation that both petitioners were assaulted.

17. The call made to the emergency number 100 also does not take the matter any further. While the petitioners rely upon the said call as a circumstance following the alleged assault, the State submits that it was made after the concerned petitioner had come out of the police station and a crowd had gathered. The PCR call record has not been placed before this Court and, therefore, the timing and circumstances of the call cannot be determined from the material presently available. There is also no independent material substantiating the allegation that a sum of Rs.25,000/- was demanded and paid. The subsequent complaints submitted by the petitioners reiterate their version of the incident but, in the absence of any corroborative material, cannot by themselves establish the allegations made therein.

18. This Court is mindful of the serious nature of the allegations levelled by the petitioners. However, a finding of custodial violence against individual police officials, followed by directions for departmental action and payment



of compensation, cannot be returned merely on the basis of disputed assertions. On the material presently placed on record, this Court is unable to conclude that respondent nos. 2 and 3 subjected the petitioners to illegal detention or custodial torture. Consequently, no ground is made out for granting the reliefs sought in the present petition.

19. Accordingly, the present writ petition is dismissed.
20. Pending application(s), if any, also stand(s) disposed of.
21. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

SEPTEMBER 2, 2026/JYH/PG