

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 27928 of 2023**

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

*Basanti Puhan* ..... *Petitioner(s)*  
-versus-  
*State of Odisha & Ors.* ..... *Opposite Party(s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

*For Petitioner(s)* : *Mr. Byomakesh Tripathy, Adv.*

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

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-20.11.2023**

**DATE OF JUDGMENT:-08.02.2024**

**Dr. S.K. Panigrahi, J.**

1. The Petitioner through this Writ Petition seeks compensation from the Opp. Parties for the severe loss caused to her due to the custodial death of her only son and for loss of her only support.

**I. FACTUAL MATRIX OF THE CASE:**

2. The brief fact of the matter is that the only son of the petitioner namely Amrit Puhan (hereinafter 'deceased') aged about 22 years, was pursuing his education in +3 commerce Paliya Binda college. He was having romantic relationship with one girl namely Disa Jethua, daughter of Rajesh Jethua resident of Charmpa, Badrak, and both of

them eloped from the house on 04.03.2018. After few days of the said occurrence, the local police and the said Rajesh Jethua came to the house of the petitioner and threatened her for dire-consequences and finally threatened to kill the son of the petitioner.

3. Rajesh Jethua had also lodged an FIR against the deceased. After 43 days, on 14.04.2018 at about 1 'o' clock on mid-day, the deceased and the aforesaid girl were arrested by the Odisha police near Silvasa Police Station, Goa. From there, the Odisha police team alongwith Rajesh Jethua and his companions brought both of them to Kolkata by flight and thereafter stayed in a hotel at Kolkata and where the accompanying arresting police officials along with Rajesh Jethua brutally assaulted the deceased. On 16.04.2018 the police officials were bringing them back from Kolkata to Badrak by train. The petitioner has alleged that during course of traveling, the police officials and Rajesh Jethua killed her son by forcefully pushing him down from the running train.
4. The petitioner has alleged that Rajesh Jethua had conspired with the Odisha police officials to kill the deceased. For which the petitioner by way of CRLMP No.732 of 2018 had registered an FIR in such matter. Further, due to inaction of the Opp. Parties in the matter of the investigation of the FIR, the Petitioner had again approached this court by way of CRLMP 1415 of 2019 for transferring of the investigation to an independent investigating authority like the C.B.I.
5. The body of the deceased was brought to the B.M.O.H Narayangarh Block, Belda R/H on 16.04.2018 at about 10.30 am when doctor

declared him dead. Then B.M.O.H Narayangarh Block, Belda gave written information to OIC Belda P.S which was received at 12.35 pm on the same day which was then registered as U.D case No-25 dated 16.04.2018 and magisterial inquest also done accordingly.

## II. PETITIONER'S SUBMISSIONS:

6. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of his contentions:
7. It is an admitted fact that the deceased was in the custody of the Opp. Parties and died a custodial death. The Opp. Parties intentionally pushed down the deceased out of the train in between Bakhrabad and Kushmuri level crossing.
8. It was ascertained during the investigation by the Belda P.S police that ASI Trinath Bhoi, C/265 Sanmay Patra and C/346 Janmenjoy Bal of Bhadrak Town police Station, Odisha were with the deceased at the time of incident.
9. The final opinion report of doctor states that the nature of death whether homicidal, suicidal or accidental depends on circumstantial evidences. The facts on records raises many inference and presumption towards the criminal liabilities and conspiracy of the opp. Parties,
10. The death of the petitioner's son was clearly a motivated act of the Opp. Parties and it is abuse of public instrumentalities and resources too. It takes 5 hr 59 min (299.7 km) via NH16 Howrah to Bhadrak and 3 hr 21 min (131.1 km) via NH16 Bhubaneswar to Bhadrak. Still they brought the deceased through the route of Kolkata when there was

facility of direct flight to Bhubaneswar. Moreover while they kept the deceased near the exit doors of the train, they kept the right gate of the bogey open and two police personnel were in duty.

11. If at all, it is considered for the sake of argument that it was negligence still the law in regard to the liability of state functionaries for acts of negligence has been well settled in a series of decisions, many of which deal with deaths of persons while in judicial custody. These would apply with equal force to a situation of proven case of death while in police custody as a result of negligence of the police. Once a person is in the custody of the police, the security of that person's life and liberty is in their hands. They are answerable for whatever happens to the person in their custody.

### III. SUBMISSIONS OF OPPOSITE PARTY NO.3:

12. Per *contra*, learned counsel for the Opp. Party No.3 intently made the following submissions:
13. The victim girl Disa Jethua (17) and the FIR accused Amrit Pohan (deceased) wanted to return back with them as they had already realized their fault. The police team along with minor-girl-Disa Jethua accompanied by her parents and the deceased came to Kolkata by flight on 15.04.2019 evening and they stayed at railway platform for the whole night. Next morning on 16.04.2018 at 07.25am, they left Howrah boarding Fālūknama Express train (Train no- 12704) for Bhadrak.
14. In coach no S-1, berth no. 5 and 6 Rajesh Jethua.and Bandana Jethua were accommodated with Disa Jethua and in berth no.21,

.constable/346, Janmenjaya Bal was accommodated. In the same coach at berth, no-58, 59- and 60, AŞI Trinath Bhoi, C/265 Sanmaya Patra and the deceased were accommodated. While travelling when Amrit Puhan disclosed that he was not feeling well and wanted to vomit; he was taken near the wash basin by C/265 Sanmaya Patra and ASI Trinath Bhoi, and the deceased washed his face. Again after passing Belda railway station, the deceased wanted to go near the wash basin to vomit and accordingly he was taken there. The left side door near the wash basin was closed but the right side door was open. The deceased refreshed himself and in a sudden motion rushed near the right side door and jumped out of the train. The incident was so sudden that the police could not get any scope to prevent the unexpected occurrence.

15. He has submitted that police had not arrested the deceased Amrit Puhan though there was allegation against him in Bhadrak Town PS case No.66 dated 06/03/2019, under Section 363 IPC. The averments of allegation of assault, to the son of the petitioner by the police team on their way to Bhadrak is not true.
16. He submitted that District police is a professional investigating agency and is not likely to succumb to any pressure of fellow feeling. The investigation of the case is presently, conducted by S., Shoyan Swain of Bhadrak Rural police station, though the place of occurrence of the instant case is coming under the jurisdiction of Belda Police station, Dist- Paschim Mednapur, West Bengal.

17. The place of occurrence of the instant case is coming under the Jurisdiction of Belda Police station Dist Paschim Mednapur West Bengal. In connection, with death of Amrit Puhan, Belda police has registered an unnatural death case vide Belda P.S U.D case no-25 dt.16-04- 2018 and is investigating into the matter. While conducting investigation S.I Atin Banarjee has taken sincere efforts and has observed the mandatory procedures. He has conducted inquest of the body in presence of Executive Magistrate and has video graphed the same. He has also conducted videography of postmortem examination which was done by Dr. S.S Das, department of "F.M.T Mednapur College and hospital. S. Atin Banarjee had also informed CJM, Mednapur to conduct Judicial inquiry in the matter to avoid any future complication or misgiving.

#### IV. COURT'S REASONING AND ANALYSIS:

18. In the context of Section 439 of the Code of Criminal Procedure, Supreme Court has provided the definition of "custody" in *Niranjan Singh v. Prabhakar Rajaram Kharote*<sup>1</sup> 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*

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<sup>1</sup> 1980 Cri.L.J. 426

*physical hold of an officer with coercive power is in custody for the purpose of Section 439. 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."*

19. Furthermore, in **Lay Maung v. Emperor**<sup>2</sup> 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"*

20. The Opposite Parties have clarified that in coach no S-1, berth no. 5 and 6 Rajesh Jethua and Bandana Jethua were accommodated with Disa Jethua and in berth no.21, constable/346, Janmenjaya Bal was accommodated. In the same coach at berth, no-58, 59- and 60, ASI Trinath Bhoi, C/265 Sanmaya Patra and the deceased were accommodated. While travelling when Amrit Puhan disclosed that he was not feeling well and wanted to vomit; he was taken near the wash basin by C/265 Sanmaya Patra and ASI Trinath Bhoi, and the deceased

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<sup>2</sup> AIR 1924 Rang 173

washed his face. Again after passing Belda railway station, the deceased wanted to go near the wash basin to vomit and accordingly he was taken there. The Opposite party has claimed that there was no arrest, however, the behavior of the police officials while escorting him back states as if the deceased was in the custody of the police.

21. This court has given its anxious consideration to this unfortunate episode and is of the opinion 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.
22. 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, then 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 his Court is one of negligence, 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 security staff can show that they were not negligent, it is possible that they may be absolved of the blame worthiness. Ultimately, it all depends on the facts of each case.



23. However, in all situations of custodial fatalities, whether by negligence or crimes committed by the police, the onus is unquestionably on the state to demonstrate that there was no carelessness on their part. This Court would like to refer to a decision of the Supreme Court reported in the case of *Nilabati Behera v. State of Orissa*<sup>3</sup>. While dealing with this 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 Rudul 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."*

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

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<sup>3</sup> 1993 SCR (2) 581

*"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 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.*

25. Similar view has been taken in *People's Union for Civil Liberties v. Union of India and another*<sup>4</sup>, 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*<sup>5</sup>, wherein the custodial death was leveled as a suicide, the Division Bench of this Court came to the conclusion that the legal heirs of the deceased are entitled to receive compensation.

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<sup>4</sup> AIR 1997 SC 1203

<sup>5</sup> 2009 (1) OLR 526

26. It is 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 negligent act of the deceased, 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 State of Orissa, the State is vicariously liable for the death of the aforesaid deceased.
27. In light of the aforesaid discussion, it is pertinent to award an compensation to the petitioner. However, 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.
28. In the facts and circumstances of the case, this Court feels appropriate to order 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 in this Court within ten weeks from today. 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.

29. With the aforesaid observations, this Writ Petition stands disposed of.

*(Dr. S.K. Panigrahi)*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the 8<sup>th</sup> Feb., 2024/*

