

**HIGH COURT OF TRIPURA  
AGARTALA**

**W.P(c) No. 797 of 2021**

**1. Rasheda Khatun,**

W/o- Late Jamal Hossen, Village- Balardhepa, Dakshin Para, P.O- Rabindranagar, P.S- Sonamura, District- Sepahijala, Tripura, Age- 27

**2. Machhum Billal,**

S/o- Late Jamal Hossen, , Village- Balardhepa, Dakshin Para, P.O- Rabindranagar, P.S- Sonamura, District- Sepahijala, Tripura-799131, Age-14 years (Being minor, to be represented by the Petitioner No- 1 his mother.)

**3. Motassam Billal,**

S/o- Late Jamal Hossen, , Village- Balardhepa, Dakshin Para, P.O- Rabindranagar, P.S- Sonamura, District- Sepahijala, Tripura-799131, Age-10 years (Being minor, to be represented by the Petitioner No-1 his mother.)

**4. Amena Khatun,**

D/o- Late Jamal Hossen, Village- Balardhepa, Dakshin Para, P.O- Rabindranagar, P.S- Sonamura, District- Sepahijala, Tripura-799131, Age-6 years (Being minor, to be represented by the Petitioner No-1 her mother.)

**5. Peyara Khatun,**

W/o- Ali Aswab, Village- Balardhepa, Dakshin Para, P.O- Rabindranagar, P.S- Sonamura, District- Sepahijala, Tripura-799131, Age-56 years.

-----Petitioner(s)

*Versus*

**1. The State of Tripura,**

(To be represented by the Secretary, Department of Home, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, P.S - New Capital Complex, Agartala, West Tripura, PIN 799010

**2. The Director General of Police,**

O/o the DGP Tripura, Government of Tripura, Akhaura Road, Agartala, West Tripura, Pin-799001.

3. **The Superintendent of Police, Sepahijala District,**  
Govt. of Tripura, O/o the SP, Sepahijala, Tripura

4. **The Officer in-Charge,**  
Sonamura Police Station, Sonamura, Sepahijala District,  
Tripura

----- Respondent(s)

**BEFORE**

**HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY**  
**HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,  
Mr. Samarjit Bhattacharjee, Advocate.  
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. S. S. Dey, Advocate General.  
Mr. Ratan Datta, Public Prosecutor.

Date of hearing : 21<sup>st</sup> March, 2022.

Date of Judgment & Order : **22<sup>nd</sup> June, 2022.**

Whether fit for reporting : Yes.

**JUDGMENT AND ORDER**

**(S.G. Chattopadhyay, J)**

In this writ petition, a prayer has been made to call upon the State to pay compensation for the death of Jamal Hossain who died due to custodial torture in police lockup during the intervening night between 14.09.2021 and 15.09.2021. The writ petitioners are the wife, mother and children of the deceased who have made the following prayers:

***“(i) Issue Rule upon the respondents to show cause as to why, in the nature of mandamus and /or Order or direction shall not be issued whereby entrusting the investigation of Sonamura P.S Case No.2021 SNM 092, U/s-304/34 of IPC to CID Tripura, for carrying out the investigation under the supervision of the Hon’ble High Court of Tripura;***

(ii) *Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction shall not be issued whereby directing judicial inquiry by sitting District Judge of Tripura to enquire into the circumstances, leading to the custodial death of Jamal Hossain in police custody on 15.09.2021 & fix up the responsibility for such custodial death;*

(iii) *Issue Rule upon the Respondents to show cause as to why writ in the nature of mandamus and/or Order or direction shall not be issued whereby directing the Respondents to pay compensation of an amount of Rs.50 lakhs to the Petitioners for the death of Jamal Hossain in Police Custody of Sonamura Police Station.*

(iv) *Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction shall not be issued whereby direct the I.O of Sonamura P.S Case No.92/2021, to add Section-302 in Sonamura P.S Case No.92/2021, dated 15.09.2021, U/s 304/34 of IPC.*

(v) *Pass an interim order directing the Respondents to pay at least Rs-5 lakhs as interim compensation to the Petitioners.*

(vi) *Make the rules absolute,*

(vii) *Call for records,*

*Pass any further order/orders as this Hon'ble High Court considered fit and proper."*

[2] The facts taken from the writ petition are as under:

27 years old Jamal Hossain alias Kala who was serving as a Cleaner in Dubai came home in the month of September, 2021 to enjoy his vacation with his family consisting of his mother, wife and children. He was scheduled to return to Dubai on 22.09.2021 for which he already bought a return ticket from Indigo Airlines. On 14.09.2021 at about 11.30 pm a police team consisting of 6/7 police personal led by Sri Tapan Debnath entered into the house of the petitioners and enquired as to whether Jamal Hossain was at home. As soon as Jamal came out of his room, the police team caught hold

of him and started beating him. Before leaving along with Jamal Hossain, one of the members of the police team remarked that everybody would see the dead body of Jamal Hossain on the following day. On 15.09.2021 at about 7.30 am Md. Aktar Hossain and Mst. Ajufa Khatun came to the police station to see their brother. Police did not allow them to meet their brother. At around 9.30 a.m. they were informed that their brother Jamal Hossain died in the lockup. Petitioners alleged that when the police team was assaulting Jamal Hossain at the time of his arrest, his wife and mother begged of them to refrain from beating him. But they did not pay heed to their request. It has been alleged that as a result of their torture, Jamal Hossain who was completely fit before his arrest, died in police lockup within few hours of his arrest. Wife of the deceased lodged a written FIR with the Officer-in-charge of Sonamura P.S which was registered as Sonamura P.S. Case No.2021 SNM 092 under Section 304 read with Section 34 IPC. According to petitioners, Jamal Hossain died due to severe custodial torture by police for which they claimed compensation of a sum of Rs.50,00,000/-(rupees fifty lakhs) and appropriate action against the persons who were responsible for the death of Jamal Hossain.

[3] The State respondents filed counter affidavit on 17.12.2021 along with the enclosures. In the counter affidavit, it has been asserted that a police team led by Tapan Debnath, Asstt. Sub-Inspector of Police of Sonamura police station went to the house of Jamal Hossain during the

intervening night between 14.09.2021 and 15.09.2021 at about 11.56 pm to arrest Jamal Hossain in execution of arrest warrant which was issued against him in Special NDPS Case No.18/2016 under Section 22(c) of the NDPS Act pending before the Special Judge, Court No.3 at Agartala and another arrest warrant which was issued in Case No.PRC(W)(D) 392 of 2009 under Section 392 IPC pending in the Court of SDJM, Bishalgarh. Feeling the presence of police at his home, Jamal Hossain tried to escape through the rough terrain in the backyard of his house. While running away, he fell and he was caught by the police team. It has been asserted in the counter affidavit that immediately after arrest he was taken to Sonamura Community Health Centre for medical examination. The accused did not complain of any illness at that time. The doctors who examined him also found him fit. Accordingly, he was brought to the police station and kept in the police lockup in Sonamura police station. At around 02:04 hours Jamal complained of chest pain. He was again taken to Sonamura Community Health Centre where he was examined by Dr. Prabal Das. The deceased was advised ECG for which he was taken to Melaghar Sub-Divisional Hospital. The attending doctor at Melaghar Sub-Divisional Hospital examined him and after prescribing some medicines, he released Jamal Hossain from hospital. He was then brought back to the lockup of Sonamura Police Station at around 0416 hours. Subsequently at around 7.30 pm on 15.09.2021 when the Sentry called him to wake him up, he did not respond. The Medical Officer was

called who declared him dead. Immediately thereafter a *Suo Motu* UD case was registered at the police station vide Sonamura P.S UD Case No.15 of 2021 under Section 174 Cr. P. C to ascertain the actual cause of death. The post-mortem of the deceased was conducted and the doctors opined that he died of “acute coronary artery disease”. It has been asserted by the State respondents that the CC TV footage of the police lockup in which the deceased was kept at the material time would reveal that no torture was committed to the deceased. According to the State respondents, he suffered some simple injuries while he was trying to evade police arrest and he was never assaulted by any member of the police team.

[4] After the incident had happened, the District Magistrate and Collector, Sepahijala District under Order No.F.2(47)/DM/SPJ/JDL/2020 /8734-37 dated 15.09.2021 appointed the Addl. District Magistrate and Collector of his district to conduct a magisterial enquiry to ascertain the real cause of death of Jamal Hossain alias Kala and submit a detailed report for taking next course of action.

[5] Pursuant to the order of the District Magistrate and Collector, the ADM of the district has conducted enquiry and submitted his report dated 11.01.2022 which has been placed before us in sealed cover.

[6] It would appear from the report that the Inquiry Officer has recorded the statements of the material witnesses including the doctors who

examined Jamal Hossain before his death, the doctors who conducted the post-mortem examination, Ranjit Debnath, who was in the same lockup at Sonamura police station with the deceased at the material time, the police officer who arrested Jamal Hossain from his home and the family members of Jamal Hossain including his wife and mother. After enquiry, the Addl. District Magistrate and Collector has drawn the following conclusion in his report:

**“ 12. Inference.**

*In view of the above findings and observation, prima facie, it appears that the deceased Jamal Hossain alias Kala, S/o Ali Ashwab of Balerdhepa, P.S Sonamura, Sepahijala district, Age about 33 years, had been found dead inside the lockup of Sonamura P.S on 15.09.2021 at about 7 am, after being retained in the custody since night of 14.09.2021. He was arrested by the Police from Sonamura P.S at the night of 14.09.2021 as per Warrant issued against Special NDPS Act, 18/2016 which was issued by Judge Special Court NDPS Act 1985 (Court No. 3) West Tripura, Agartala and another Case No.PRC(WP)-392/09 issued by SDJM. Bishalgarh. Before taking into custody a medical check-up was conducted on him at Sonamura CHC from where he was found normal. Afterwards he was taken to the lockup where he complained that he was having pain at his chest. Again he was taken to Sonamura CHE where he was treated primarily, but there was no improvement in his condition. Accordingly, he was referred to the Sub-Divisional Hospital at Melaghar where he had no complaint. The doctor-on-duty advised to get an ECG done next morning, as no facility was there in the Sub-Divisional Hospital as well as in private at night. Subsequently he was taken back to the lockup at Sonamura PS. Rest of the night he was detained in the lockup along with another person namely, Ranjit Debnath who was also detained for different reason. No complaint had been received by the officials on-duty since after Jamal Hossain was detained in the lockup. In the morning Jamal Hossain was found dead inside the lockup which was under lock and key. Necessary formalities like inquest, post mortem had been done after the said person was found dead. As per post mortem report, some external injuries of ante mortem in nature had been found on the body of the deceased which was suspected to be caused by impact of some hard, blunt, elongated and*

*cylindrical object. Age of this injury was fresh (within 24 hours of infliction) at the time of death. On completion of the said post mortem examination, the team of the Doctors, who conducted the post-mortem opined that cause of death was acute coronary artery disease. On careful examination of all the relevant reports as well as deposition of the witnesses, CCTV footage as well as circumstantial evidences, it is opined that the cause of death of Jamal Hossain alias Kala was natural which was due to acute coronary artery disease.”*

[7] Heard Mr. P. Roy Barman, learned Sr. Advocate who is appearing for the petitioners along with Mr. Samarjit Bhattacharjee and Mr. Kwasik Nath, Advocates. Also heard Mr. S. S. Dey, learned Advocate General appearing along with Mr. Ratan Datta, learned Public Prosecutor for the State respondents.

[8] It is contended by Mr. Roy Barman, learned senior advocate that Jamal Hossain who was completely fit before his arrest died within few hours of his arrest in the police lockup which has made it clear that Jamal Hossain died in the police lockup due to custodial torture. Counsel contends that the deceased was pursuing his occupation as a Cleaner in Dubai for the last few years. He had a valid Indian passport and only in the month of February, 2021 a hospital named ‘Life Hope Hospital L.L.C’ of Dubai issued a certificate of fitness in favour of the deceased (Annexure-1). Counsel also contended that deceased also bought a ticket from Indigo airlines for returning to Dubai and he was scheduled to return to Dubai by Indigo Flight No.6E-961 on 22.09.2021 (Annexure-2). Counsel has contended that the deceased was a 27 years’ old young man who was



pursuing his occupation in Dubai for maintaining his family in India. It was unlikely that he would suddenly die in the police lockup unless he was tortured in the custody. Counsel contends that during post mortem examination, several ante-mortem external injuries in the body of the deceased were discovered. State respondents could not offer any plausible explanation as to how the deceased received those injuries. It has been argued that the said injuries prove custodial violence on the deceased. Counsel therefore, urges the Court to grant adequate compensation to the writ petitioners and issue direction for appropriate action against the persons who are responsible for the death of Jamal Hossain.

[9] Mr. S. S. Dey, learned Advocate General appearing for the State on the other hand vehemently opposes the petition and argues that deceased left the country for Dubai only to evade police arrest from the cases pending against him. Learned Advocate General has contended that pursuant to a secret information to the effect that accused returned home, the police team conducted a raid in his house to execute those arrest warrants. Jamal Hossain received the external injuries when he tried to escape for which the police officers cannot be held responsible in any manner. Counsel argued that for formal medical check up he was produced at the nearest hospital immediately after his arrest and the doctors after careful examination found him completely fit. In the night when he complained of chest pain he was again brought back to Sonamura Community Health

Centre from where he was taken to Melaghar Hospital. The attending doctors prescribed some medicines and released him from hospital. Only thereafter he was brought back to Sonamura Police Station and even the medicines prescribed by doctors were administered to him. Thereafter in the police lockup he died of “acute coronary artery disease” for which no police officer was responsible. Learned Advocate General also argued that CC TV footage of the police lockup would also reveal that there was no assault on him in the police lockup. Learned counsel further contended that the State respondents *suo motu* appointed an officer of the rank of Addl. District Magistrate and Collector of the concerned district to conduct an inquiry into the matter, whose report would indicate that the allegation of custodial torture was not at all true. Since there is no proof of custodial violence learned Advocate General, urges the Court to dismiss the petition.

[10] In her FIR lodged immediately after the death of her husband in police lockup, Smt. Rasheda Khatun, wife of the deceased categorically stated that while dragging her husband to the police vehicle after his arrest from home on 14.09.2021, he was severely beaten by police. She even caught hold of the feet of the police officials and begged of them to refrain from beating her husband. Even in the morning of 15.09.2021 she was never allowed to meet her husband till she was informed at around 9.30 am that her husband died in the police lockup. Her statement has also been recorded by the Addl. District Magistrate and Collector on 09.12.2021 in the course

of the magisterial enquiry where she supported her FIR statement. In her statement before the Addl. District Magistrate and Collector, wife of the deceased stated that her husband was completely fit before he was arrested by police. She also stated that her husband was beaten by police on his chest and back. Smt. Peyara Khatun, mother of the deceased also made similar statement to the Addl. District Magistrate and Collector. She stated that police was striking her son with the butt of the rifle on his chest. When he fell on earth he was hit with the butt of the rifle on his back. Then he was dragged to the police vehicle. She heard one of the members of the police team saying that her son would die.

[11] Dr. Prabal Ghosh of Sonamura Community Health Centre who examined the deceased twice in his health centre stated during the magisterial enquiry that he found no external injury in the body of the deceased. Similarly, Dr. Mahaboor Rahman of Melagarh Hospital who examined the deceased between 1.00 am and 2.00 am on 14.09.2021 also stated during the magisterial enquiry that he did not find any injury mark. Surprisingly, the team of doctors who conducted the post mortem examination of the deceased recorded in the post mortem examination report that there were ante mortem external injuries on the body of deceased Jamal Hossain. They confirmed it in their statement recorded during the magisterial enquiry. It would be appropriate to reproduce the following

extract from the statement of Dr. Sutirtha Dasgupta who was one of the autopsy surgeons:

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While conducting the said post-mortem examination, we found that Rigor mortis was present all over the body. P.M Lividity was on back of trunk and fixed. Mouth and both eyes were partially closed. Face and eyes were congested. Tongue was inside the oral cavity and intact. There was an old healed depigmented irregular shaped scar mark of 1.5 cm x 1 cm dimension, present over the back of right elbow joint. Another old healed hyperpigmented irregular shaped scar mark of 4cm x 2cm dimension was present over uppermost part of deltoid region of right arm. Mouth and both eyes were partially closed. Face and eyes were congested. Tongue was inside the oral cavity and intact.

The following external injuries were also found on the dead body:

- 1) A tramline bruise was obliquely present over right side of upper part of back of trunk, dimension:9 cm x 1 cm. The upper lateral end of this injury was situated just below the shoulder top and the lower medial end was situated 10 cm from midline. The pale area of this tramline bruise was 0.6 cm.
- 2) A tramline bruise was obliquely present over back and outer aspect of left arm, dimension: 15 cm x 1 cm. The upper lateral end of this injury was situated 5 cm below the shoulder top and the lower medial end was situated 2 cm left from midline over the back of left elbow joint. The pale area of this tramline bruise was 0.6 cm.

Above mentioned injuries were ante mortem in nature and caused by impact of some hard, blunt, elongated and cylindrical object. Age of this injury was fresh (within 24 hours of infliction) at the time of death.”

[12] The State respondents in their counter affidavit tried to defend the case by saying that the deceased received the injuries when he tried to escape through the rough terrain of the backyard of his house to evade police arrest. This is not acceptable to us because the plea of the State

respondents that deceased received the external injuries by falling on rough terrain in the backyard of his house while he was trying to evade police arrest does not derive support from the observation made in the magisterial enquiry report. Under paragraph-11 at page-22 of his report the Addl. District Magistrate and Collector has observed as under:

*“c. There may be some physical tussle at the time of arrest which may be the cause of external injury, as reflected in the Post mortem report.”*

[13] Suspicion also arises from the statement of Ranjit Debnath who was in the same lockup with deceased Jamal Hossain on 14.09.2021 as an accused in another case. He stated during magisterial enquiry that at around 1.30 pm when Jamal was brought to the police lockup, he was crying in pain loudly. Hearing the cries of Jamal Hossain, Ranjit woke up from sleep. Jamal was then pushed into the lockup. He continued crying over a quite long period of time. He was complaining of severe chest pain. However, Ranjit had gone into sleep. In the morning he woke up when he heard one Sentry guard calling him. Being asked by the guard, he also called Jamal to wake up. But, Jamal did not respond to his call. Thereafter, the police officers entered into the lockup. After a while he came to know that Jamal Hossain died.

[14] From the facts and circumstances stated herein above, the allegation of custodial torture on the deceased cannot be ruled out. The mother as well as the wife of the deceased were present when deceased

Jamal Hossain was arrested. Mother of the deceased had categorically stated during the magisterial enquiry that police gave a hard blow on the chest of his son by the butt of the rifle and when he fell on the ground another blow was given on his back. Wife of the deceased also stated during the magisterial enquiry that her husband was being beaten constantly until he was lifted in the police vehicle. She even caught hold of the feet of some of the police staff and requested them to refrain from beating her husband. Ranjit Debnath who was in the police lockup with the deceased also stated that deceased was crying in severe chest pain in the lockup before he died. Surprisingly, the doctors who examined the deceased in Sonamura Community Health Centre as well as in Melaghar Hospital did not find any external injury in the body of the deceased whereas in the post-mortem report it has been clearly indicated that there were external injuries in the body of the deceased which were ante mortem and fresh in age.

[15] In the counter affidavit the state respondents have pleaded that the injuries were caused to the deceased due to his falling on the rough terrain while he was trying to evade police arrest by running away through the backyard of his house whereas in the magisterial enquiry report in paragraph-11 it has been stated that '*some physical tussle at the time of arrest which may be the cause of external injury, as reflected in the Post mortem report*'.

[16] In these highly suspicious facts and circumstances of the case custodial violence on the deceased, as alleged, cannot be brushed aside. Having said so, we are of the view that it would not be inappropriate to award a reasonable amount of monetary compensation to the petitioners for the death of Jamal Hossain in police lockup.

[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 Vrs. 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.”

[Emphasis in original]

[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.



[19] We make it clear that the observations made herein shall not have any bearing on any prosecution, if any, in connection with the alleged incident.

[20] In terms of the above, the petition stands allowed and disposed of. Pending application(s), if any, shall also stand disposed of.

**(S.G.CHATTOPADHYAY), J (INDRAJIT MAHANTY), CJ**

*Dipankar*



सत्यमेव जयते