VERDICTUM.IN

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 226 of 2014

Ajit Kumar ..... … Petitioner

Versus

1. The State of Jharkhand.
2. The Chief Secretary, the State of Jharkhand, Project Building, Dhurwa, Ranchi.
3. The Director General of Police, Jharkhand, Police Headquarter, Dhurwa, Ranchi.
4. The Home Secretary, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi.
5. The Additional Director General of Police, C.I.D., Ranikothi, Doranda, Ranchi.
6. The Deputy Superintendent of Police, Near Kuchehary, Ranchi.
7. Krishna Murari, Officer-in-Charge, Chutia P.S., Ranchi.
8. The Officer-in-Charge, Bundu, Ranchi.
9. The Superintendent of Police (Rural), Ranchi, near Kuchehary, Ranchi. ..... … Respondents

----

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Sumit Prakash, Advocate.
: Mr. Ravi Shanker Prasad, Advocate.
: Mr. Akash Deep, Advocate.
For the State : Mr. Manoj Kumar, G.A.-III.
: Mr. Deepankar, A.C. to G.A.-III.
For the Resp. No. 7 : Mr. Manoj Tandon, Advocate.
: Ms. Neha Bhardwaj, Advocate.
: Mr. Adamya Kerketta, Advocate.

12/ 21.06.2023 Heard Mr. Sumit Prakash, learned counsel appearing for the petitioner, Mr. Manoj Kumar, learned G.A.-III appearing for the State and Mr. Manoj Tandon, learned counsel appearing for the respondent No. 7.

2. This petition has been filed under Article 226 of the Constitution of India for a direction upon the respondents-State to pay compensation to the petitioner for his illegal detention of approximately four months i.e. between 14.02.2014 to 27.07.2014, the day, on which, the petitioner was released. Prayer is also made for instituting the FIR against the erring police officials.

3. Mr. Prakash, learned counsel appearing for the petitioner submits that initially only Sanha was instituted on the information of family of Preeti. He submits that on the basis of the *fardbeyan* of one Sukhram Lohra, the FIR has been lodged, wherein a body of one lady, aged about 25 years, near NH-33, seen to be a married lady has been found. He further submits that the hands of the lady were having bangles and it has been said in the FIR that the lady has been killed somewhere

VERDICTUM.IN

else and her dead body has been burnt. He further submits that the petitioner has been falsely implicated in this case. He further submits that while rejecting the bail application, the learned court has categorically observed that there is no iota of evidence except the confessional statement. He also submits that in between 17 and 18 February, 2014, the petitioner and other co-accused have been taken one place to other and have been brutally tortured and asked to confess that they raped and killed a girl called Preeti and burnt. In these backgrounds, learned counsel appearing for the petitioner submits that the petitioner has remained in jail between 14.02.2014 to 27.07.2014 for an offence under Sections 376(D), 302, 201 and 34 of the Indian Penal Code. He further submits that in the investigation, it has come that the said dead body was not of Preeti and that dead body was with regard to another woman. He further submits that the said Preeti has come forward and she was found alive and she has given her statement under Section 164 Cr.P.C., stating her age about 17 years. He submits that in view of that in a false case, the petitioner has been sent to jail and has been kept in illegal detention for the period between 14.02.2014 to 27.07.2014. He further submits that the CID has not found anything against the petitioner and the case diary dated 14.07.2014, which has been placed on record, which suggests that the petitioner has been found not guilty and thereafter the petitioner has been discharged by the learned court on 26.07.2014. He submits that the petitioner was having the bright career and he has appeared in the written exam of Staff Selection Commission and was about to appear in interview, but in the meantime, he has been implicated in the false case and that's why the entire career of the petitioner has been ruined by the hands of the police.

4. On the above grounds, learned counsel appearing for the petitioner submits that for illegally taken into custody, the petitioner is entitled for compensation and to buttress his argument, he relied in the case of ***S. Nambi Narayanan Versus Siby Mathews & Ors.,*** reported in **(2018) 10 SCC 804**. Relying on this judgment, he submits that the case of the petitioner is fully covered by the judgment of the Hon'ble Supreme Court and appropriate compensation may kindly be granted to the petitioner under Article 226 of the Constitution of India under the public law remedy, apart from the other remedy available under the law.

5. On the other hand Mr. Manoj Kumar, learned G.A.-III

VERDICTUM.IN

appearing for the State submits that during the course of investigation, the dead body of the deceased has been identified by the family members of the deceased and thereafter the petitioner-Ajit Kumar and two others have been made accused in this case. He submits that on 19.02.2014, unnamed accused persons namely Ajit Kumar and Amarjeet Kumar were arrested and sent to jail and after completion of investigation, the chargesheet has been submitted vide chargesheet No. 50 of 2014 dated 15.05.2014 under Sections 376(D), 302, 201 and 34 of the Indian Penal Code against Ajit Kumar (petitioner) and Amarjeet Kumar. He further submits that on 14.06.2014, Preeti Kumari appeared before the police, where her parents and resident of her locality have identified her and her statement was recorded under Section 164 Cr.P.C. and thereafter it has been found that there was no relation in between unknown dead body (which was identified by the family members of Preeti Kumari) and Preeti Kumari. He further submits that in these backgrounds, a final form has been submitted in favour of Ajit Kumar (the petitioner) and Amarjeet Kumar as a mistake of fact before the learned court, vide final form No. 55 of 2014 dated 19.06.2014 under Sections 376(D), 302, 201 and 34 of the Indian Penal Code. He further submits that the Director General of Police, Jharkhand, Ranchi himself has scrutinized the case and suspended all the three police officers, i.e. the Investigating officer of the case, the then Officer-in-Charge of Bundu Police Station and the then Officer-in-Charge of Chutia Police Station and also directed for further investigation of the case by the CID, Jharkhand, Ranchi. He further submits that against the three police officers, departmental proceedings have also been initiated against them.

6. On the above backgrounds, Mr. Manoj Kumar, learned G.A.-III appearing for the State submits that the police has no ill motive to harass the petitioner and this Court under Article 226 of the Constitution of India may not pass any order for compensation, as the petitioner is having the alternative remedy and to buttress his arguments, he relied in the case of ***Sube Singh Versus State of Haryana & Ors.*** reported in **(2006) 3 SCC 178**. As such, he submits that this petition may kindly be dismissed.

7. In view of the above submissions of learned counsel appearing for the parties, this court is required to examine as to whether the case is made out for compensation or not and this Court, sitting under Article 226 of the Constitution of India can award the compensation in

VERDICTUM.IN

favour of the petitioner or not ?

8. It is an admitted fact that a sanha was lodged for murder of Preeti Kumari and subsequently the dead body of a woman was found, where the police found that the said dead body is of Preeti Kumari and in these backgrounds, the petitioner and other accused persons have been made accused and the petitioner has been taken into custody and he has remained in custody between 14.02.2014 to 27.07.2014. Admittedly Preeti Kumari was not dead, as she appeared before the police and she has also given her statement under Section 164 Cr.P.C. and thereafter the police has submitted the final form, stating the mistake of fact against the petitioner and other accused. Thus, it is crystal clear that for a crime, which has not been committed by the petitioner, who was a student, he has been made accused and was also languishing in jail between 14.02.2014 to 27.07.2014 and this fact is not in dispute. Accordingly, the illegal detention of the petitioner is an admitted fact in view of the fact that the police itself has submitted the final form as mistake of fact. Not only this even the Director General of Police, Jharkhand has found the case as false and he has initiated departmental proceedings against three of the erring police officers, which is also an admitted fact in view of the counter affidavit, filed on behalf of the State. Thus, the case of illegal detention by the police is made out. Further the entire prosecution initiated by the police against the petitioner was malicious and it has caused tremendous harassment and immeasurable anguish to the petitioner. This is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State police was dealing with the case that too against the petitioner, who is a student and the police on its own has submitted the final form as mistake of fact and the case has been found to be false, that's why, the Director General of Police, Jharkhand has initiated a departmental proceeding against three of the erring officers. The liberty and dignity of the petitioner, which are basic to his human rights were jeopardized, as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence and this situation invites the public law remedy for grant of compensation for violation of the fundamental right, envisaged under Article 21 of the Constitution of India for saving the life command, self-respect and dignity.

9. No argument has been advanced with regard to custodial torture, however, in the case of ***D.K. Basu Versus State of West Bengal***,

VERDICTUM.IN

reported in **(1997) 1 SCC 416**, the Hon'ble Supreme Court while dealing with the aspect of torture in paras-10 to 12 held as under:-

> *"10. 'Torture' has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of human civilisation.*
>
> *'Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.'*
>
> *— Adriana P. Bartow*
>
> *11. No violation of any one of the human rights has been the subject of so many conventions and declarations as 'torture' — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. 'Custodial torture' is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.*
>
> *12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."*

10. In view of the above judgment of Hon'ble Supreme Court emphasis is on physical pain, but definitely there is mental torment. In ***Joginder Kumar Versus State of U.P. & Ors.***, reported in **(1994) 4 SCC 260**, the Hon'ble Supreme Court in paras 8 and 9 held as under:-

> *"8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late,*

VERDICTUM.IN

this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. *A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider; of meeting the challenge which Mr Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered. In People v. Defore [242 NY 13, 24 : 150 NE 585, 589 (1926)] Justice Cardozo observed:*

"The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the Adams case (People v. Adams [176 NY 351 : 68 NE 636 (1903)]) strikes a balance between opposing interests. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass."

11. In ***Kiran Bedi Versus Committee of Inquiry & Anr.***, reported in **(1989) 1 SCC 494,** the Hon'ble Supreme Court has reproduced an observation in para-25 from the decision in ***D.F. Marion Versus Davis*** as under:-

"25. …….'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security,

VERDICTUM.IN

> *and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.'"*

12. Further reputation of an individual is an insegregable facet of his right to life with dignity was the subject matter in the case of ***Vishwanath Agrawal Versus Sarla Vishwanath Agrawal***, reported in **(2012) 7 SCC 288**.

13. The excessive use of force by the police was also the subject matter before the Hon'ble Supreme Court in the case of ***Delhi Judicial Service Association Tis Hazari Court, Delhi Versus State of Gujarat & Ors.***, reported in **(1991) 4 SCC 406**, where in para-39 it was held as under:-

> ***"39.*** *Constitutional hurdles over, now we would revert back to the incident which has given rise to these proceedings. The genesis of the unprecedented attack on the subordinate judiciary arose out of confrontational attitude of the local police against the Magistracy in Kheda. The Chief Judicial Magistrate is head of the Magistracy in the district. Under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, he exercises control and supervision over the investigating officer. He is an immediate officer on the spot at the lower rung of the administration of justice of the country to ensure that the police which is the law enforcing machinery acts according to law in investigation of crimes without indulging in excesses and causing harassment to citizens. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of*

VERDICTUM.IN

arrest from a court. The amplitude of this power casts an obligation on the police to take maximum care in exercising that power. The police must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated. See Sunil Batra v. Delhi Administration [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] . In Prem Shankar Shukla case [(1980) 3 SCC 526 : 1980 SCC (Cri) 815] this Court considered the question of placing a prisoner under handcuff by the police. The Court declared that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of custody or escort. The Court emphasised that the police did not enjoy any unrestricted or unlimited power to handcuff an arrested person. If having regard to the circumstances including the conduct, behaviour and character of a prisoner, there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence, the police may put the prisoner under handcuff. If a prisoner is handcuffed without there being any justification, it would violate prisoner's fundamental rights under Articles 14 and 19 of the Constitution. To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security of a prisoner. In Prem Shankar Shukla case [(1980) 3 SCC 526 : 1980 SCC (Cri) 815] , Krishna Iyer, J. observed: (SCC p. 529, para 1)

"If today freedom of the forlorn person falls to the police somewhere, tomorrow the freedom of many may fall elsewhere with none to whimper unless the court process invigilates in time and polices the police before it is too late."

(emphasis in original)

The prophetic words of Krishna Iyer, J. have come true as the facts of the present case would show."

14. In analyzing the aforesaid judgments of Hon'ble Supreme Court, it is crystal clear that for the lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made this petitioner to suffer the said humiliation. The cries of the human justice when he feels that the insensible act has crucified his self-respect and the petitioner, who was having a bright career and completed Staff Selection Commission Exam, thus the petitioner was illegally kept in judicial custody between 14.02.2014 to 27.07.2014 period for a crime, which has

VERDICTUM.IN

not been committed by this petitioner, who happened to be a student at that time and if the illegal detention is proved, in view of the above judgments of Hon'ble Supreme Court, the compensation under the Public Law Remedy can be granted by the court under Article 226 of the Constitution of India.

15. In the case relied by Mr. Manoj Kumar, learned G.A. appearing for the State in ***Sube Singh (Supra),*** the guidelines have been issued by the Hon'ble Supreme Court, in which type of cases, compensation can be granted by the High Court or Supreme Court and in the said case, Hon'ble Supreme Court found that there is no clear or incontrovertible evidence about custodial torture nor any medical report or any injury or disability and in that case the grievance of the petitioner was against the different police officials in different police stations at different point of time and several allegations are proved to be exaggerated and false by Hon'ble Supreme Court and in that background, the Hon'ble Supreme court has come to the conclusion that it is not a case to consider the award of compensation. In the said judgment, this aspect of the matter has been clarified by the Hon'ble Supreme Court in para-47, wherein their Lordships have been pleased to record that we should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration where there is no medical report or visible marks or independent evidence. For ready reference, the said para-47 is quoted hereinbelow:-

> *47. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier para are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to*

VERDICTUM.IN

such matters. In State of M.P. Vs. Shyamsunder Trivedi - 1995 (4) SCC 262, reiterated in Abdul Gafar Khan and Munshi Singh Gautam (Supra),this Court observed :-

"[R]arely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available...... Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues.

.... The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case....., often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture."

16. In ***Sube Singh Case (Supra)*** further in para-38, it has been held that infringement of a fundamental right under Article 21 against the State is an appropriate and effect remedy subject to upon the facts and circumstances of the each case. Para-38 of the said judgment is quoted hereinebelow:-

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering

VERDICTUM.IN

compensation under section 357 of Code of Civil Procedure."

17. Thus, the case relied by Mr. Manoj Kumar, learned G.A.-III appearing for the State is not helping the State, as it has not been said that cases, where it has been proved that the petitioner's fundamental right has been illegally taken away, the High Court cannot decide the same and at the same time only the guidelines have been framed by the Hon'ble Supreme Court. The court is required to find out whether the case of interference sitting under Article 226 of the Constitution of India has been made out or not.

18. In the case in hand, admittedly the police has taken the petitioner in custody for a crime, which, he has not committed and subsequently the police has submitted the final form stating the mistake of fact, the petitioner was discharged by the learned court considering that the CID has further stated that nothing has found against the petitioner. If the police officers had been little more careful in discharge of their duties, the petitioner would not have been deprived of his liberty. Police is the main stay of the Administration of the State. It has a duty to ensure that outlaws are firmly dealt with in accordance with law. But it must confirm to the rules of law and the mandate of the Constitution of India in its functions and if it would go beyond the law to do anything in the name of Administration, it would shake the very foundation of a Constitutional democracy. Thus, the case of the petitioner is maintainable under Article-226 of the Constitution of India under the Public Law Remedy.

19. In view of the above facts, reasons and analysis the argument by Mr. Manoj Kumar, learned G.A.-III appearing for the State so far as maintainability of this petition under Article 226 of the Constitution of India is answered accordingly and the Court held that if the case is made out for interference under Article 226 of the Constitution of India, the public law remedy is available to the petitioner. In the case in hand, admittedly, the petitioner was illegally arrested and thereafter he has been discharged on the submission of final form by the police, accordingly, the case of compensation is made out.

20. As such, the respondent-State through respondent No. 4 shall pay a sum of Rs. 5,00,000/- (rupees five lakhs) in favour of the petitioner within six weeks from the date of receipt / production of this order, as a

VERDICTUM.IN

compensation for illegally detaining the petitioner into the custody for the aforesaid period.

21. It is open for the respondent-State to recover the said amount from the salary of the erring police officers, for whom act, the petitioner was languishing in jail, if they found guilty.

22. The trauma, already faced by the petitioner as well as humiliation in the society that cannot be restored by way of said compensation, however, that compensation will console to the petitioner to forget the past and take the life onwards in future.

23. This petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-