



2025:CGHC:23811-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 503 of 2024**

Prema Haththel Wd/o Late Suresh Haththel, aged about 49 years R/o
Budhwari Bazar, Korba, Tehsil and District- Korba (Chhattisgarh)

... Petitioner(s)**versus**

1 - State of Chhattisgarh Through Secretary, Home and Police Affairs,
Mahanadi Bhawan, New Mantralaya, District- Raipur, Chhattisgarh

2 - Director General of Police, Police Head Quarter, District- Raipur,
Chhattisgarh

3 - Superintendent of Police Korba, District- Korba (Chhattisgarh)

4 - Chief Superintendent of Police Korba, District- Korba, Chhattisgarh

5 - Collector Korba, District- Korba (Chhattisgarh)

6 - Sub Divisional Magistrate, Korba District- Korba (Chhattisgarh)

7 - Station House Officer Police Station Civil Line Rampur, Korba,
District- Korba (Chhattisgarh)

... Respondents

For Petitioner : Mr. Anshul Tiwari, Advocate

For Respondents : Mr. Shashank Thakur, Dy. Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Order on Board****Per Ramesh Sinha, Chief Justice****13.06.2025**

1. Heard Mr. Anshul Tiwari, learned counsel for the petitioner. Also
heard Mr. Shashank Thakur, learned Deputy Advocate General
appearing for the respondents/State.

2. By way of this writ petition the petitioners have prayed for following reliefs:-

“1] That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ directing an independent agency, such as the Central Bureau of Investigation (CBI), or discretion to the Hon'ble Court, to investigate the custodial death of Suresh Haththel.

2] May kindly be pleased to issue a writ of mandamus directing the respondent authorities to immediately furnish the post-mortem report, magisterial inquiry report, CCTV footage from the relevant police stations, and other related documents to the petitioner.

3] May kindly be pleased to award adequate monetary compensation to the petitioner under public law remedy for the custodial death of her son, in line with precedents set by the Hon'ble Supreme Court in the matter of Nilabati Behera v. State of Orissa reported in 1993 (2) SCC 746.

4] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), the Hon'ble Court may kindly be please to grant any other relief which is deemed fit and proper in the aforesaid facts and circumstances of the case.”

3. Learned counsel the petitioner submitted that it is a case of custodial death, though as per judicial enquiry report, the cause of death is mentioned that the deceased died due to Myocardial Infection as he was suffering from coronary arteries disease, but as per postmortem report, following injuries were found :-

(i) An abrasion of size 1.5 cm x 0.8 cm, present on the left half of the forehead, situated 2.5 cm above the mid of the left eye brow. It is red in color.

(ii) An abrasion of size 3 cm x 1 cm present on posteromedial aspect of the upper 1/3 of the left forearm. It is red in color.

(iii) Multiple abrasion of length varying from 0.5 cm to 3 cm and width varying from 0.1 cm 1 cm, present on anterior aspect of the left knee. On dissection, diffuse subcutaneous hemorrhage underlying the injuries and comminuted fracture of the patellar bone, present.

(iv) Penetrating lacerated wound of size 3 cm x 1 cm (gaping) x muscles/bone deep present over anterior aspect of the middle 1/3 of the left leg. Margins of the wound were irregular and contused.

4. Learned counsel for the petitioner further submitted that the affidavit submitted by the respondent State, through Shri Bhushan Ekka, CSP Korba, is a calculated attempt to obscure the truth and evade accountability for the custodial torture and subsequent death of Suraj Haththel. The State's version of events is riddled with contradictions, procedural irregularities, and a blatant disregard for constitutional safeguards. The State's claim that Suraj Haththel sustained injuries due to a "fall on the railway line" (para 3 of the affidavit) is implausible and unsupported by evidence. The photographs of the deceased's body (Annexure P/2) unequivocally reveal multiple severe injuries, including contusions, lacerations, and marks consistent with blunt force trauma, which cannot be attributed to a mere accident. The State's

attempt to link these injuries to a fall during apprehension is a desperate fabrication to shield the responsible police personnel. Further, the State's reliance on FIR No. 212/2024 (Annexure A/1 of the Affidavit filed by State) at Thana Pali, which allegedly involves "unknown persons," is suspect, as no connection between this FIR and Suraj's custodial detention has been established.

5. It has been further argued that the State's reliance on the post mortem report to argue against custodial violence is untenable. The report itself documents injuries (abrasions, bruises, inflicted by hard blunt force and inflicted with pointed articles), which, while deemed insufficient to cause death, corroborate the petitioner's allegation of physical assault. The State's theory of death due to cardiac arrest is a red herring, even if Suraj had pre-existing condition, the custodial torture acted as a proximate trigger, rendering the State liable for exacerbating a medical vulnerability.
6. It has been also argued that the judicial inquiry report (Annexure A/3) admits that CCTV footage from Police Station Darri was submitted only for the truncated period of 11:00 PM to 2:47 AM on the night of the incident. Crucially, the footage after 2:47 AM when Suraj Haththel was allegedly "taken out" of the police station is conspicuously missing. The State's claim that the CCTV system malfunctioned due to a "power cut" is demonstrably false, as the Magistrate explicitly noted that no evidence (such as electricity department records or generator logs) was produced to substantiate the alleged electricity failure. This glaring omission

confirms the footage was deliberately withheld or destroyed to erase evidence of custodial violence during the critical period when Suraj was removed from custody.

7. On the pointed query being made to learned State counsel regarding the aforementioned injuries found over the dead body of the deceased as per postmortem, he submitted that the said injuries were found on the leg and the knee and as per opinion of the team of the Doctors, who had conducted postmortem, injuries mentioned in the post mortem report are not sufficient to cause death in ordinary course of nature and the deceased was habitual of consuming alcohol due to which there was myocardial infection due to which he was died.
8. We have heard learned counsel for the parties and perused the documents appended with writ petition.
9. Leading case dealing with custodial death and compensation is the matter of ***Saheli v. Commr. of Police*** reported in ***(1990) 1 SCC 422***, wherein the Hon'ble Supreme Court has held thus:-

"10. It is now apparent from the report dated December 5, 1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power

vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration.

11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held herein before that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortuous acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the SHO of Anand Parbat Police Station, Shri Lal Singh."

10. Another case on the subject is the matter of ***Smt. Nilabati Behera alias Behera alias Lalita Behera vs. State of Orissa*** reported in ***AIR 1993 SC 1960*** where the Hon'ble Supreme Court had occasion to give its observation on the point of custodial death.

The Hon'ble Supreme Court had observed as follows;-

"16. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is `distinct from, and in addition to, the remedy in private law for

damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights.

33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of

public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers. to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings."

11. In ***D.K. Basu v. State of West Bengal*** reported in **1997 (1) SCC 416**, the Hon'ble Supreme Court has exhaustively considered this question and held that monetary compensation should be awarded for established infringement of fundamental rights under Article 21 of the Constitution of India i.e. right to life and held thus;-

"Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society."

12. The Hon'ble Supreme Court in the decision rendered in ***Malkiat Singh Vs. State of U.P.*** reported in ***1998 (9) SCC 351***, awarded a compensation of Rs.5 lakhs to the father whose son was killed in an alleged encounter with police.
13. In ***Ajab Singh v. State of UP*** reported in ***(2000) 2 SCC 521***, the Hon'ble Supreme Court, while considering about the compensation in respect of custodial death of a person who was remanded to judicial custody and while in jail, he was removed to hospital where he died and on consideration of post-mortem report it stated that he died due to shock and haemorrhage due to ante-mortem injuries, while ordering payment of compensation by refusing to accept the defence of the State Government, held that when such deaths occur, it is not only to the public at large that those holding custody are responsible, they are responsible also to the Courts under whose orders they hold such custody.
14. The High Court of Madras in ***Rajammal v. State of Tamil Nadu*** reported in ***(2008) 3 MLJ 167***, while considering the quantum of compensation in respect of custodial death of a person, who died due to the assault of the police personnel, held that the family of the deceased needs to be reasonably compensated and holding so, enhanced the compensation from Rs.3 lakhs to Rs.5 lakhs. For better appreciation, paragraphs 15 and 16 thereof are extracted hereunder:

"15. It is also seen from the grounds of the memorandum of appeal that the appellant's sons were aged 23, 20 and 15 years and daughters were aged

22, 18 and 17 years at the time of death of her husband. These particulars furnished by the appellant regarding her children were not disputed by the respondents in any way. Thus, it is clear that the family of the deceased is crunching under financial difficulties, presumably because of the sudden loss of the head of the family prematurely, that too in usual circumstances, which are attributed to police excesses. From the above particulars furnished by the appellant, which remain unchallenged, it is further clear that the appellant has to give in marriage a daughter and also two sons, besides looking after her grand-son, whose parents committed suicide.

16. Considering all these facts and circumstances of the case, we consider it appropriate to enhance the compensation ordered by the learned single Judge from Rs.3 lakhs to Rs.5 lakhs as has been prayed for by the petitioner in the writ petition. This writ appeal is allowed accordingly. No Costs."

15. Likewise, in ***Santosh Kumari v. State of HP*** reported in **(2011) 3 MPHT 81** the victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural death while in custody, the Himachal Pradesh High Court awarded compensation to the next of kin of the deceased.
16. An unnatural death in judicial custody where one person was killed by a co-prisoner was the subject-matter of discussion in ***Amandeep v. State of Punjab*** reported in **2012 SCC Online P&H 19844** and the High Court of Punjab & Haryana awarded compensation to the next of kin of the deceased due to the unnatural death in custody.

17. The Hon'ble Supreme Court in its judgment in ***Re-Inhuman Conditions in 1382 Prisons*** reported in ***(2017) 10 SCC 658*** has discussed the need to compensate in custodial death cases in following pertinent words;-

“55. Over the last several years, there have been discussions on the rights of victims and one of the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims - sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

18. The above quoted judgements make it clear that for the violation of fundamental rights of a citizen by the State or its servants, in the purported exercise of their powers, the affected citizen can resort to the remedy in public law by taking recourse to Article 226 of the Constitution of India. It further makes it clear that the compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort,

through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law. Thus, it is settled law that compensation can be awarded for violation of fundamental rights in public law domain.

19. Above being the position of fact and law, we have no hesitation in holding that the petitioner, who is mother of the deceased Suraj Haththel, is entitled to compensation for wrongful loss of his son and the State being the employer of the employees on account of whose negligence the death of deceased took place, is liable to pay such compensation to the petitioners.
20. Now the question is what should be the amount of compensation. The Courts have time and again deprecated such conduct on the part of the police / jail officials, which is spelt out above, and therefore the compensation, which is to be awarded, should also have a deterrent effect on the State so that its officers should not be encouraged to indulge in such acts which may result in loss of a human life, a fundamental right guaranteed under the Constitution of India. Therefore, taking into consideration the facts and circumstances of the case, in particular the fact that the petitioner has lost the estate, love & affection, and dependency due to untimely death of deceased Suraj Haththel at the age of 27 years on account of negligence on the part of the employees of the State, we are inclined to issue a writ of mandamus directing the respondent-State to pay a compensation of Rs.2,00,000/- (Rupees Two Lakh) to the petitioner within a period of eight weeks

from the date of this order, failing which this amount will carry interest at the rate of 9% per annum from the date of passing of this order. The Secretary, Home and Police Affairs, Government of Chhattisgarh (respondent No.1) or Director General of Police, Chhattisgarh (respondent No.2) shall ensure payment of the compensation awarded within the time limit specified.

21. In the result, the writ petition stands **allowed** to the extent indicated above.
22. The Registrar (Judicial) is directed to send a copy of this order to the Secretary, Home and Police Affairs, Government of Chhattisgarh, Raipur (respondent No.1) and Director General of Police, Chhattisgarh, Raipur (respondent No.2) forthwith.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Head-Note

Monetary compensation should be awarded for established infringement of fundamental rights under Article 21 of the Constitution of India i.e. right to life.