

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO. 5268 OF 2007

PETITIONER Ganeshi Bai

Versus

RESPONDENTS State of Chhattisgarh & Others

(Writ Petition under Article 226 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Rakesh Pandey, Advocate for the petitioner.
Shri V.V.S.Murthy, Dy. Advocate General for the State.

ORDER (OPEN COURT)
(Passed on 10th day of April, 2013)

Heard learned counsel for the parties.

1. By this petition, the petitioner seeks a compensation to the tune of Rs.10,00,000/- on account of death of her husband namely; Yashwant Satnami (since deceased), who is alleged to have died while he was in the police custody. The petitioner further seeks a direction to conduct enquiry in respect of death of her husband and take appropriate action against the erring officials.
2. Learned counsel appearing for the petitioner submits that on the basis of first information report lodged by one L.P. Patel, in respect of offence under Section 25 of the Arms Act, bearing Crime No. 206 of 2005, the police arrested the husband of the petitioner. Thereafter, the husband of the petitioner was produced before the Court, where his bail application was rejected and he was sent to the Central Jail, Bilaspur.
3. According to the petitioner, while the respondents No.3 & 4 i.e. police personnel were taking the husband of the petitioner by motorcycle, the said motorcycle dashed against one truck, as a result of which the husband of the petitioner died. Shri Pandey submits that thereafter the magisterial enquiry was conducted, however no action has been taken against the erring police personnel. Shri Pandey further submits that after the accident, the police have not taken any action to trace out the whereabouts of the truck. From the said fact, it is crystal clear that no accident has taken place and Yashwant Satnami died on account of assault and atrocities perpetrated by the police personnel.

The petitioner was fully dependent upon the income of the deceased and she was aged about 25 years and also having two small children of tender age. On account of death of Yashwant Satnami, the petitioner, her children and the parents of the deceased are facing lot of financial difficulties. Therefore, the respondent authorities may be directed to make payment of compensation to the tune of Rs.10,00,000/-.

4. On the other hand, learned counsel appearing for the State submits that while the deceased was taken to Central Jail, Bilaspur, he tried to escape from the clutches of the respondents No.3 & 4 and during that process, the truck dashed the deceased and immediately the truck ran away from the place of occurrence. Therefore, the respondents No.3 & 4 were not in a position to note-down the truck number. During the course of magisterial enquiry, no clear finding has been given that the death of deceased was caused due to police atrocities.
5. Shri Murthy, learned Dy. Advocate General further submits that after the incident an interim compensation to the tune of Rs.25,000/- has already been awarded to the petitioner. So far as the claim the petitioner to award a sum of Rs.10,00,000/- as compensation is concerned, for that the petitioner ought to have filed a civil suit, as the question of claim involves many question of facts which cannot be looked into while exercising the writ jurisdiction.
6. I have heard learned counsel for the parties, perused the pleadings and the documents appended thereto. It is indisputable that Yashwant died in the custody of police.
7. *In Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa and Others*¹, the Supreme Court observed that the legal representatives of the deceased, who met with the custodial death, were entitled to compensation for deprivation of fundamental right of personal liberty under Article 21 of the Constitution of India.
8. In another case wherein one Rishipal died in judicial custody, legal representatives of Rishipal filed a petition under Article 32 of the Constitution of India before the Supreme Court in *Ajab Singh and another v. State of Uttar*

¹(1993) 2 SCC 746

*Pradesh and Others*², the Supreme Court, while deprecating the death of persons in judicial custody, directed the Central Bureau of Investigation to investigate the cause of death and directed the State of Uttar Pradesh to pay a sum of Rs.5,00,000/- holding as under :

“9. The State of Uttar Pradesh is responsible in public law for the death of Rishipal and must pay compensation to the petitioners for the same. [See D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 : 1997 AIR SCW 233 : AIR 1997 SC 610 : 1997 CriLJ 743]. We think that it is appropriate, in the circumstances, to order the State of Uttar Pradesh to pay to the petitioners compensation for the death of Rishipal in the sum of rupees five lakhs within three months.....

10. This direction to pay compensation shall be without prejudice to the rights of the legal representatives of Rishipal to claim compensation in private law proceedings, if so entitled in law, against those found responsible for his death.”

9. In identical circumstances, this Court in *Dukharam v. State of Chhattisgarh & Others*³, directed payment of compensation to the tune of Rs.1,50,000/- by the State, further granting liberty to the petitioners to take recourse to traditional remedies for more compensation.
10. In view of the above, this Court is of the view that the personal liberty of the deceased has been deprived by the police, which is meant to protect the rights of the citizens and maintain law & order. Thus, it would be just and proper to award a sum of Rs.2,00,000/-. The respondent/State is directed to pay the said amount to the petitioner within a period of three months. Further, liberty is reserved to the petitioner to claim further compensation in private law proceedings, if so entitled in law.
11. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

J U D G E

²AIR 2000 SC 3421

³WP No.1427 of 2004 (decided on 30-3-2011)