



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 3851/2023**

PANKAJ KUMAR SHARMA

..... Petitioner

Through: Mr. Dhruv Gupta, Advocate

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Hetu Arora Sethi, ASC for
GNCTD with Mr. Arjun Basra,
Advocate for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking compensation for his illegal arrest and detention in the police lock-up on 02.09.2022 at Police Station Badarpur.
2. The facts in brief leading to the filing of this writ petition are as under:-
 - i. On 02.09.2022, a complaint was received *vide* DD No.85A at Police Station Badarpur stating that 'lady ko sbzi wale ne chaku maar diya h'. The said complaint was marked to SI Rajeev Gautam who reached the spot where he found one Smt. Kranti and the Petitioner herein.
 - ii. It is stated that the lady was not sent for any medical examination nor was her statement recorded. It is stated that SI Rajeev Gautam brought the Petitioner to the Police Station and placed him in lock-



up through SI Shamim Khan, who had put the Petitioner in the lock-up at 11:01 PM and let the Petitioner out of the lock-up at 11:24 PM. Material on record also record reveals that the Petitioner was put inside the lock-up without any formal arrest/FIR or DD entry.

- iii. It is stated that pursuant to the said incident, the Petitioner filed a complaint to the Commissioner of Police (Hqs.), but no action had been taken against the erring officers.
 - iv. Stating complete inaction on the part of the Police on the complaint made by the Petitioner regarding his illegal detention in a police lock-up without any formal arrest, the Petitioner has approached this by filing the instant writ petition claiming compensation.
3. Notice was issued on 27.03.2023. Status Report has been filed on behalf of Respondents No.1 to 3 stating that inquiry was initiated against Respondent No.4 & Respondent No.5 herein, i.e., SI Rajeev Gautam and SI Shamim Khan, and a punishment of censure has been imposed on them.
 4. Heard learned Counsel for the Petitioner and the Respondents, and perused the material on record.
 5. Material on record indicates that on the complaint filed by the Petitioner, the matter was investigated by the PG Cell/South East District, Sarita Vihar.
 6. The facts arising from the investigation reveal that on 02.09.2022, at about of 9:00 PM, one Smt. Kranti W/o Sant Ram R/o 2161/12, Gali No.61, Third 60 foot road, Molarband Ext. Badarpur, Delhi had a fight with the vegetable seller and, in the said fight, the Petitioner was injured and came to



the shop of the Petitioner herein and told the Petitioner that she had been stabbed.

7. It is stated that the Petitioner herein called the police. However, when the police reached the spot, they picked up the Petitioner and placed him in the lock-up. The fact that the Petitioner was picked up from the spot without an FIR against him, subsequently brought to the Police Station and placed in the lock-up has not been disputed by the State authorities.

8. The facts of the case reveal that, even though it was for a short period of time, the Petitioner was deprived of his personal liberty, a right protected under Article 21 of the Constitution of India. It is evident that the authorities acted in a high-handed manner without respecting the Petitioner's liberty placed him in the lock-up without following due procedure of law or the principles that have been laid down when an arrest is made.

9. The Apex Court in D K Basu v. State of West Bengal, 1997 (1) SCC 416, had directed the following requirements to be fulfilled in case of arrest. Paragraph 35 of the said judgment reads as under:-

"35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of



arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also



examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board. "

10. This Court is deeply troubled by the fact that the Petitioner was not even arrested. He was simply picked up from the spot, brought to the Police Station and placed inside the lock-up for no rhyme or reason. The high-handed way in which the Police authorities have acted, throwing to winds the constitutional and fundamental rights of a citizen, is appalling. This



Court is troubled at the way the citizens are being treated by the Police authorities who behave as if they are above the law. A punishment of censure alone is not sufficient in the facts and circumstances of this case.

11. The Apex Court in D K Basu (supra) also observed as under:-

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

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46. *In Nilabati Behera case [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] , it was held: (SCC pp. 767-68, para 32)*

“Adverting to the grant of relief to the heirs of a victim



of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' Lord Denning in his own style warned:

'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence.... This is not the task of Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive



lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.' ”

12. Similarly, in Nilabati Behera v. State of Orisa & Ors., 1993 (2) SCC 746, while dealing with the power of a constitutional court to award compensation rather than relegating such person to file a suit for recovery of damages, the Apex Court observed as under:-

"22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

13. The said principle is now well established that in cases where there can be no dispute of facts, the constitutional courts have the power to award compensation in case a person has been deprived of his life and liberty



without following the procedure established by law.

14. The time spent in the lock-up by the Petitioner, even for a short while, cannot absolve the police officers who have deprived the Petitioners of his liberty without following the due procedure established by law. A punishment of censure which is not likely to have any effect on the career of the police officers will not be a sufficient deterrent to the officer. The censure should be of such nature that other officers too must not emulate such actions in future. This Court is of the opinion that a meaningful message must be sent to the authorities that police officers cannot be law unto themselves. In the facts of this case, even though the illegal detention of the Petitioner was only for about half an hour, this Court is inclined to grant compensation of Rs.50,000/- to the Petitioner, which shall be recovered from the salaries of Respondents No.4 and 5.

15. With these observations, the writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2023

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