

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-751007

O.H.R.C. CASE NO.2765 OF 2015

Prabir Kumar Das

&

Biswapriya Kanungo

-

.... Petitioners

ORDER

2nd September, 2016

Shri Prabir Kumar Das, Advocate & Human Rights Activist so also Mr. Biswapriya Kanungo and Bijay Kumar Panda, learned Advocates of Bhubaneswar in their separate petitions by drawing the attention of the Commission to various news reports published in different Odia dailies alleged that one Goutam Bag, son of Laxmidhar Bag of village Jurabandh under Kantabanji Police Station limits in the district of Bolangir was in Police care and custody but while in such protective custody, he died on 11.07.2015. It is alleged that to cover up the incident, the plea of the Police was Goutam Bag committed suicide in the toilet around 7 AM on 11.07.2015. The petition of Shri Prabir Kumar Das further reveals that one alleged woman Maoist namely Nirmala and the deceased, who was accompanying the said Maoist Nirmala when alighted from the train in Titilagarh Railway Station on 08.07.2015, they were taken into custody. It is also stated that Nirmala, who is a resident of Chhatisgarh was returning along with Goutam Bag from Visakhapatanam since Nirmala was undergoing treatment there as she had sustained some injuries. Goutam Bag, after being interrogated by Police Officers and when his identity was confirmed, he was allowed to go to his village Jurabandh under Kantabanji Police Station limits on 09.07.2015. Though Police had a plan to nab more Maoists, when they would be coming to the deceased's house to snatch away Nirmala from the house of the deceased but it could not materialize as the arrest of the woman Maoist Nirmala was known to the other ultras. Goutam Bag having perceived threat to his life as a Police informer, proceeded to Kantabanji Police Station on 11.07.2015, where he was allegedly kept in

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the Police barrack and his dead body was found in the toilet, which situate near the barrack. According to the petitioners, when admittedly the deceased was in protective custody of the Police and he having died in Police custody, the State has utterly failed to ensure the safety of an individual and, accordingly, for such custodial death of the deceased, the State is to pay monetary compensation to the next of kin of the deceased and for appropriate action against the errant Police Officers.

The Commission on receipt of the complaint called for a report from the DIG of Police, Northern Range, Sambalpur. The report of the DIG of Police, Northern Range, Sambalpur specifically reveals that on 10.07.2015, information was received by Police that a lady Maoist cadre involved in different cases is coming to Titilagarh by train from Visakhapatnam. Accordingly, as per the direction of the SP, Bolangir, the SDPO, Patnagarh proceeded to Titilagarh and verified the information. Shri P.K.Mohapatra, SDPO, Patnagarh was accompanied by other Police Officers. They detained two persons namely a male and a female and on verification, the male person disclosed his identity as Goutam Bag, son of Laxmidhar Bag of Jurabandh under Kantabanji Police Station limits of Bolangir district but the woman did not disclose her identity in detail for which both were taken to Titilagarh Police Station. Since the identity of Goutam Bag was established, he was allowed to go but the lady Maoist cadre was taken to Kantabanji Police Station for further interrogation by a team of Police Officers, where her identity was established as Nirmala, a Maoist cadre of Bolangir Platoon of CPI(M). Nirmala was arrested by Shri P.K.Mohapatra, SDPO, Patnagarh at 6.30 PM on 10.07.2015 in connection with Khaprakhol PS Case No.127 of 2012 under Sections 147,148,121,121(A),124 of the IPC read with Section 149 of the IPC as well as under Sections 25 & 27 of the Arms Act and under Section 16(1)(a),18(b) and 20 of the UAP Act as well as under Section 17 of the Criminal Law Amendment Act . Nirmala was forwarded to the Court of SDJM, Patnagarh on 11.07.2015. The report of the DIG of Police, Northern Range, Sambalpur further reveals that on

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11.07.2015 at 5.30 PM, Goutam Bag, the deceased came to Kantabanji Police Station and reported that he is being threatened by Maoists as Police had arrested one of the lady cadres and seized arms and ammunitions. It is also revealed by Goutam Bag that he has taken Nirmala to Visakhapatnam for treatment out of fear of Maoists as she needed urgent medical attention. Since Goutam Bag was depressed after receiving life threat from the Maoists, the IIC, Kantabanji Police Station calmed him down, assured him of full help and security from the Maoists and sent him to the residential barrack to take rest. Around 7.30 AM, it was found that Goutam Bag had attempted to commit suicide in the toilet of the barrack, where he has been sent to take rest. Finding Goutam Bag in an unconscious condition, he was immediately shifted by the IIC, Kantabanji Police Station and others to Kantabanji CHC from where he was referred to the Titilagarh Sub-Divisional Hospital for treatment. However, the Medical Officer of Titilagarh Sub-Divisional Hospital declared him (Goutam Bag) dead. Over the death of Goutam Bag, Titilagarh PS UD Case No.16 dated 11.07.2015 has been registered and is under inquiry. The doctors, who conducted post-mortem over the dead body of the deceased, opined that death was caused because of Asphyxia due to pressure on neck. The conclusion of the DIG of Police, Northern Range, Sambalpur shows that from examination of the members of the victim's family, relatives and others as well as the Police personnel and based on perusal of documents, the possibility of foul-play over the death of Goutam Bag is a remote possibility.

The Commission on receipt of the petitions of the petitioners had also directed the Addl. DG of Police, HRPC, Odisha, Cuttack to cause an inquiry and report about the death of Goutam Bag in Police custody. The report of the Addl. DG of Police, HRPC, Odisha, Cuttack dated 20.08.2015 reveals that he had entrusted the inquiry to Shri Srikrishna Behera, Addl. SP of Police, State HRPC, Odisha, Cuttack and had enclosed the report of Shri Behera. On perusal of the report of the Addl.

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SP of Police, State HRPC, Odisha, Cuttack, the Commission finds that Goutam Bag was in Police barrack of Kantabanji Police Station on 11.07.2015 as the deceased appeared at 5.30 AM at Kantabanji Police Station out of fear and reported about the threat to his life from the Maoists and he expressed his inability to stay in his village and was panic stricken. Goutam Bag was calmed down and assured protection and rehabilitation in other place by the Police and as per his wish, he took rest temporarily in Police barrack located in Kantabanji Police Station premises along with AN Cell personnel, who were also taking rest in the barrack. It is also reported that around 7.15 AM, Goutam Bag proceeded to the toilet and attempted to commit suicide by hanging with his "Gamuchha" (Towel) inside the toilet. He was rescued in a unconscious state and shifted to Kantabanji CHC immediately, where the Medical Officer, Dr. Dillip Sahu attended him and provided preliminary treatment and referred him to the Titilagarh Sub-Divisional Hospital, where he was declared dead.

The report of the Addl.SP, State HRPC, Odisha, Cuttack reveals that Goutam Bag, the deceased and Hemant Mishra of AN Cell had gone to the twin toilets of the barrack and though Hemant Mishra returned after attending the call of nature and waited for Goutam Bag but since Goutam did not return and did not respond, he forcibly pushed the door and found Goutam Bag unconscious and hanging from the skylight iron rod.

Thus, the entire report of the Addl. SP of Police, State HRPC, Odisha, Cuttack is also in the line of the report of the DIG of Police, Northern Range, Sambalpur. After having such reports, the Commission also noticed Shri Pradip Kumar Mohapatra, SDPO, Patnagarh as well as Shri J.Bhukta, IIC, Kantabanji Police Station to appear before the Commission along with the papers relating to the arrest of Maoist cadre Nirmala of Bolangir Platoon of CPI(Maoist).

After perusing all the materials on record, the Commission thought it prudent to have the response of Shri P.K.Mohapatra, SDPO,

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Patnagarh as well as Shri J.Bhukta, IIC, Kantabanji Police Station in the matter, when pursuant to the direction of the Commission, they appeared in person on 20.11.2015.

Shri Pradip Kumar Mohapatra, who is the SDPO, Patnagarh in his written response in connection with the arrest of Nirmala @ Manjula @ Urmila Majhi in Khaprakhhol PS Case No.127 of 2012 states that he has investigated into Khaprakhhol PS Case No.127 of 2012 and also other Maoist related cases arising out of Khaprakhhol PS jurisdiction. He also further states that on 10.07.2015 while he was at Patnagarh received information that a lady Maoist cadre, who was involved in different Maoist related cases of Bolangir district coming to Titilagarh by train and, accordingly, he discussed the matter with the SP, Bolangir and after getting permission proceeded to Titilagarh to verify the truth or otherwise of the information and to take follow up action. On arriving at Titilagarh Police Station at 10.50 AM, informed the IIC, Titilagarh Police Station about the information, which he had received and requested him to depute some officers to assist him. He also informed the SDPO, Titilagarh and, accordingly, at 11 AM he along with the SDPO, Titilagarh, WSI Anjali Kumbar, SI of Police P.R. Mohanty, ASI of Police, Hadu Behera, Constable 240 G.Chand proceeded to Titilagarh Railway Station and during verification, they found one woman aged about 25-35 years was following a man suspiciously and, accordingly, they detained them. On being asked, the male person disclosed his name as Goutam Bag, son of Laxmidhar Bag of village Jurabandh under Kantabanji PS limits of Bolangir district but the woman did not disclose her detail identity except disclosing her name as Urmila. Accordingly, both Goutam and Urmila were taken to Titilagarh Police Station and when the identity of Goutam Bag was confirmed and established, he was allowed to go to his native place at 1.30 PM but since the identity of Urmila could not be established, for further interrogation after informing the SP, Bolangir, she was taken to Kantabanji Police Station. During interrogation at Kantabanji Police Station, Urmila confessed about her involvement in the

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murder of Murali Meher of Rengali in the year 2012 and other Maoist cases of Bolangir district and, accordingly, he arrested her on 10.07.2015 at 6.30 PM in Khaprakhhol PS Case No.127 of 2012 and while she was in Police custody led to the house of Goutam Bag in village Jurabandh and gave recovery of one country-made Mouzer Pistol with Magazine, 4 numbers of ammunition of 7.65 mm bore kept in a yellow colour carry bag along with other articles from the house of Goutam Bag in his absence. After medical examination, accused Nirmala @ Manjula @ Urmila Majhi was forwarded to the Court of SDJM, Patnagarh on 11.07.2015.

The IIC, Kantabanji Police Station namely Shri J. Bhukta in his response stated before the Commission in writing that on 11.07.2015 at 5.30 AM, Goutam Bag, son of Laxmidhar Bag of village Jurabandh under Kantabanji Police Station limits appeared before the Diary Charge Officer namely ASI of Police, R.N.Tripathy and wanted to meet him to pass on some urgent informations. The said fact was entered in the Station Diary Entry Book of Kantabanji Police Station vide Station Diary Entry No.214 dated 11.07.2015 at 5.30 AM (Annexure-1). In his response, Shri Bhukta further stated that on getting information from ASI of Police Shri R.N.Tripathy, he arrived at the Police Station and met Goutam Bag, who disclosed before him that due to arrest of one lady Maoist cadre namely Nirmala @ Manjula @ Urmila Majhi, whom he had taken to Visakhapatnam for urgent medical treatment, he was being threatened by Maoists for which he apprehends danger to his life. Since Goutam Bag was under tension and was depressed, Shri Bhukta assured him of full help and security and rehabilitation at another place and, accordingly, as per the wish of Goutam Bag, he was allowed to take rest in the Police residential barrack in the Police Station premises along with Anti-Naxalite Cell personnel Hemanta Mishra and others. The said fact has been recorded in the Station Diary Entry Book vide Station Diary Entry No.215 dated 11.07.2015 at 5.50 AM (Annexure-2). The response further reveals that around 7.30 AM, APR Havildar K.B.Rana of Striking

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Force Guard informed him of raising of hullah from the barrack toilet. They rushed to the toilet and on arrival near the frontage of the toilet, found Goutam Bag in an unconscious condition being carried from the toilet by Hemanta Mishra, APR Constable 461 S. Naik and others. Goutam Bag was shifted to CHC, Kantabanji, where he was attended to by Dr. Dillip Kumar Sahu, who referred him to higher center and, accordingly, Goutam Bag was shifted to Sub-Divisional Hospital, Titilagarh, where he was received dead. Mr. Bhukta further mentioned in his response that on the death of Goutam Bag, Titilagarh PS UD Case No.16 dated 11.07.2015 was registered and was being enquired into by Inspector of Police Shri S.Ch.Ray, IIC Titilagarh Police Station. The family members of Goutam Bag were informed through local Gram Rakhi and, accordingly, they had attended the inquest process and the dead body of Goutam Bag was handed over to them after the post-mortem examination was over.

There are ample materials on record to show that the deceased Goutam Bag was in the protective custody of Kantabanji Police and he was allowed to take rest in the Police barrack inside the Police Station premises along with other Anti-Naxalite Cell personnel.

Mr. Biswapriya Kanungo and Mr. Prabir Kumar Das, learned Advocates very vociferously submitted before the Commission that the conduct of the Police Officers appears to be highly suspicious and it can be safely be concluded that only to cover up their guilt even if Goutam Bag was in their custody, they managed to manipulate the Police records to show that Goutam Bag, who was also nabbed along with Nirmala @ Manjula @ Urmila Majhi, a Maoist cadre from Titilagarh Railway Station was allowed to leave Kantabanji Police Station, when his identity was established that he is a man from village Jurabandh under Kantabanji Police Station limits. Besides that it was also very strenuously urged that when as per the disclosure statements of accused Nirmala @ Manjula @ Urmila Majhi, she led Police and the witnesses to the house of Goutam Bag and gave recovery of a Mouzer Pistol loaded with Magazine

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and 4 numbers of live ammunition of 7.65 mm bore along with other articles, it appears something very strange that Police did not proceed legally against Goutam Bag for having abated in the commission of the crime by accused Nirmala who is involved in a case of murder and other Maoist related cases. Perusal of the disclosure statement recorded by SDPO, Patnagarh dated 10.07.2015 i.e. of Nirmala @ Manjula @ Urmila Majhi reveals that the loaded Mouzer was seized along with other articles, which were kept in a yellow colour carry bag which had been concealed under a cot of the house of Goutam Bag and such seizure took place at 7.45 PM and that fact was also clearly and categorically mentioned in the Case Diary maintained in connection with Khaprakhol PS Case No127 of 2012.

Thus, it was contended that the story which is advanced by the Police authorities that Goutam Bag committed suicide is nothing but to cover up the latches that Goutam was in Police custody since 10.07.2015 and even if it is assumed that Goutam Bag appeared at Kantabanji Police Station early in the morning i.e. at 5.30 AM and disclosed before the IIC that he apprehends danger to his life from the Maoists after arrest of Nirmala @ Manjula @ Urmila Majhi for which he was kept in the Police barrack, it is difficult to believe that he chose to commit suicide in the premises of the Police Station but not in his own house and had traversed a long way in the Maoist infested area to come to Kantabanji Police Station in the wee hours of 10/11.07.2015.

Law is very well settled that it is the bounden duty of the Police to take all precautions to see that an accused in custody should not get any scope to commit suicide. Admittedly, Goutam Bag was in protective Police custody and was kept in the barrack, where Anti-Naxalite Cell Police personnel were taking rest. There is no material on record to show if Kantabanji Police and especially the IIC of Kantabanji Police Station had taken any steps to prevent Goutam Bag from committing any desperate act. In umpteen number of cases, the Apex Court have consistently held that Police authority has got a greater

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responsibility to ensure that an accused, who is a citizen of this country in custody is not deprived of his right to life. He must be afforded with minimum necessities of life. (2013 (Supp.-1) OLR-664 Ritima Dehury Vrs. State of Orissa and others). There is no material on record much less the family members of the deceased has come forward to say that the deceased had ever complained of receiving of any threats from the Maoists. In State of Madhya Pradesh Vrs. Shyamsundar Trivedy (AIR 1995 SCW 2793), the Apex Court had observed that death in custody “ is not generally shown in the records of the lock-up and every effort is made by the Police to dispose of the body or to make out a case that the arrested person died after he was released from custody. The Police lock-up, where generally torture or injury is caused is away from the public gaze and the witnesses are either Police men or co-prisoners, who do not like to appear as prosecution witnesses due to fear of retaliation by the superior officers of the Police. It is often seen that when a complaint is made against torture, death or injury, in Police custody, it is difficult to secure evidence against the Policemen responsible for resorting to third degree methods, since they are in charge of Police Station records which they do not find difficult to manipulate. Even assuming that the plea of the Police that the deceased committed suicide, it is very difficult to accept that in absence of any ill-treatment and mental torture, the deceased committed suicide in the toilet of the Police barrack.

Article 21 of the Constitution of India is a part of the scheme for fundamental rights which occupies a place of pride in the Constitution which mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Therefore, the cry for justice becomes louder and warrants immediate remedial measures. The vulnerability of human rights assumes a traumatic torture when functionaries of State fails to protect the citizens. There is responsibility on the Police or Prison authorities to ensure that the citizen in its custody is not deprived of his right to life. Duty to care on the part of the State is strict and admits of no

exceptions. Thus, where there is infringement of fundamental right is established, the Commission cannot stop by giving a mere declaration but it must proceed further and give compensatory relief not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State in not protecting the fundamental rights of the citizens. 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 right to life of a citizen and the State is vicariously liable for its act. In the assessment of compensation, emphasis has to be on the compensatory and not on the punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender. The quantum of compensation will of course depends on the peculiar facts of the case and no strait-jacket formula can be evolved in that behalf. The amount of compensation so to be recommended by this Commission and paid by the State is only to redress the wrong done.

In the peculiar fact situation of the case and keeping in mind the age of the deceased to be 35 years, the Commission recommends to the Government in the Home Department to pay monetary compensation of Rs.4,00,000/- (Rupees four lakhs) to Smt. Durmila Bag, widow of the deceased Goutam Bag under Section 18(a)(i) of the Protection of Human Rights Act, 1993 within two months from the date of receipt of this order. Out of the total compensation amount, Rs.3,00,000/- (Rupees three lakhs) shall be kept in Fixed Deposit in a local nationalized bank for a period of five years in the name of Smt. Durmila Bag, while the interest accruing thereon shall be paid to her every year. The balance amount of Rs.1,00,000/-(Rupees one lakh) shall be paid to Smt. Durmila Bag in cash.

A copy of this order be sent to the Principal Secretary to Government in the Home Department, Odisha, Bhubaneswar for necessary compliance of the recommendation of the Commission within the stipulated period of two months.

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Put up on 07.11.2016 awaiting compliance/action taken
report from the Principal Secretary to Government, Home Department.

**JUSTICE B. K. MISRA
ACTING CHAIRPERSON**

2nd September, 2016