

**Odisha Human Rights Commission
Toshali Bhawan (2nd Floor)
Satya Nagar, Bhubaneswar – 751007**

OHRC Case No.5338 of 2015

Sri Prabir Kumar Das

....Petitioner

ORDER

24TH December, 2016

Shri Prabir Kumar Das, Advocate & Human Rights activist, Bhubaneswar enclosing newspaper cuttings of 'The Dharitri', 'The Samaj' and 'The Sambad' all dated 2.12.15 alleged that one Chandan Kumar Das aged about 32 years, a resident of Tulasi Chaura area of Baripada town in Mayurbhanj district who was arrested by Baripada Town Police on 30.11.15 in connection with a theft case vide Baripada Town PS Case No.384/2015 was found hanging with a bed-sheet tied around his neck inside the toilet of the Police Station in the morning of 1.12.15 at about 10.30 AM and when he was taken to the District Headquarters' Hospital, Baripada, the doctor declared him dead. The mother and brother of the deceased accused alleged that the death of the accused was due to custodial torture perpetrated on him by the police. The petitioner also alleged that the CC TV camera installed in the Police Station had gone out of order for quite a long time. The petitioner further alleged that even in the case of suicide of an accused while he was in the care and custody of the police, the police is bound to be accountable for such

an event inasmuch as it is the obligation of theirs to see that the safety and security of the arrestee is properly maintained without any threat to its life. The petitioner prayed for payment of adequate compensation to the next of the kin of the deceased.

On receipt of the complaint of the petitioner, the S.P., Mayurbhanj was asked to cause an enquiry into the matter and submit his report to the Commission. Accordingly, the S.P., Mayurbhanj got the matter enquired into through Shri B.N.Jena, Deputy Superintendent of Police, HRPC, Baripada and forwarded the enquiry report vide his letter dated 3.2.16. Perused the said enquiry report of the DSP, HRPC, Baripada. According to the report, on the written report of one Shri Jimuta Kumar Nanda, a resident of Parade Padia, Ward No.16 (Shriramachandrapur) under Baripada Town PS limits in Mayurbhanj district, a theft case was registered vide Baripada Town PS Case No.384 dated 29.11.15 and Shri Umesh Chandra Nayak, ASI of Police was entrusted with the investigation. The police investigation commenced with the assistance of the scientific team and the services of the police dog. After the police dog led the investigating team to the house one Raju @ Chandan Das, who had then absconded from the locality, the police made a verification of his antecedents and found that Chandan Das @ Raju was earlier involved in Baripada Town PS Case No.176 dated 7.6.14 under Section 379 IPC (GR Case No.596/14) and Baripada Town PS Case No.11 dated 6.1.15 under the same Section of the IPC (GR Case No.27/15) and in both the cases chargesheets have been submitted

against him and the same are sub judice. Against this background, the Inquiring Officer suspecting the involvement of Chandan Das @ Raju arrested him on 30.11.15 at 4.00 PM and recovered two gold bangles from his possession which were reported to have been stolen from the house of Jimuta Kumar Nanda, the complainant in Baripada Town PS Case No.384 dated 29.11.15 and seized the gold ornaments in presence of the witnesses with proper seizure list. Thereafter, information regarding the arrest of the accused Chandan Das @ Raju was duly sent to his family members. After proper verification of the accused and inspection of the Hazat, the accused Chandan Das @ Raju was kept in the PS Hazat after maintaining necessary record vide SDE No.717 dated 30.11.15 at 5 PM. The Sentry C/197 Shri Tapan Kumar Barik was properly briefed to keep a close eye on the accused. Also, the IO Shri UC.Nayak, ASI of Police who was present at the Police Station as Dairy Charge Officer (DCO) was keeping a watch on the accused in the Hazat. On the next morning, i.e. on 1.12.15 Shri Bikartan Lenka took over charge from Shri U.C.Nayak, ASI of Police and was well aware of the fact of confinement of the accused Chandan Das @ Raju in the Hazat.

At 10.15 AM when Shri B.Lenka, ASI of Police was busy lodging a complaint of one Smt. Bebi Barik, the accused Chandan Das @ Raju asked the Sentry Constable to take him for attending to the call of nature and accordingly the DCO directed the Sentry W.C./1240 Diptimayee Barik to take the accused to the toilet for the purpose. As it was cold then, the accused was about to enter the

toilet by covering his body with one bed-sheet, but he was not allowed to go warped with the bed sheet. The accused being inside the toilet allowed the water tap to flow in full force to avoid any sound. Since the accused did not come out of the toilet after a reasonable period of time, the Sentry W.C. Diptimayee Barik knocked the door of the toilet, but there was no response from the accused, after which the ASI of Police Shri B.Lenka forcibly pushed the door of the toilet and found the accused hanging himself with the help of a torn portion of the said bed sheet. However, with the help of a sword, the ligature was cut from the exhaust fan and the accused was immediately taken to the District Headquarters' Hospital, Baripada in a serious condition for treatment, but upon arrival there, Dr. Kishore Kumar Panda, SMO decared him dead.

Thereafter, on receipt of the Casualty Memo from the Medical Officer, Baripada Town PS UD Case No.105 dated 1.12.15 was registered and Shri B.N.Jena, DSP, PCR Cell took up the enquiry of the case. As per the prescribed guidelines, the inquest was done by Shri D.Routray,OAS, Sub Collector and Sub Divisional Magistrate in-charge, Baripada and a team of doctors conducted the autopsy. During inquest some visible swelling over thigh of the deceased was noticed whereas the Medical Officers conducting the autopsy detected four bruises and an abrasion on the body of the deceased. The Medical Officers conducting the autopsy opined that the injuries found on the body of the deceased are ante-mortem in nature and

time was within 24 hours since the death and the death of the deceased was due to asphyxia on account of hanging.

During the course of inquiry, it came to light that before the accused Chandan Das @ Raju was arrested, he was assaulted by some public near Gasala Chhak, Baripada due to his involvement in the burglary case. Further, it is mentioned that after the death of the accused, her mother Smt. Mona Das who was of the view that her son was assaulted by some people came up with a complaint being instigated by some local persons against Baripada Town Police Station staff who had allegedly assaulted her son which resulted in his death and accordingly, Baripada Town PS Case No.386 dated 1.12.15 was registered. The allegation of assaulting the accused Chandan Das Raju @ while in police custody was not proved.

The allegation made by the petitioner was not proved as Shri Ratikanta Giri, IIC, Baripada Town PS was absent from the Police Station headquarters on some official duties.

It was admitted in the report that the CC TV installed at Baripada Town PS had gone out of order long back, i.e., since June, 2015 due to heavy lightning vide SDE No.306 dated 13.6.15.

The report further speaks that following the spot visit by the Scientific Officer, DFSL, Mayurbhanj and photographs and video recordings of the scene of the crime, there was a possibility that one can commit suicide by hanging from the exhaust fan by using a cloth as a ligature. Further, the mark of partial toe prints on the wall of the bath-cum-latrines room supports the fact that one can approach

the exhaust fan by climbing up the partition wall and tie one end of the ligature with it. According to the report of the Director, SFSL, Bhubaneswar, while one end of a torn piece of bed sheet was on the neck of the deceased, the other end was in the exhaust fan and the torn part of the bed-sheet was the one and the same cloth and torn manually. Further, the cut end characteristics on the cloth used as ligature was possible by a cutting instrument similar to the seized sword.

Towards the concluding part of the enquiry report, it has been mentioned that Shri U.C.Nayak, ASI of Police, Shri B.Lenka, ASI of Police and Diptimayee Barik, Sentry C/1240 have been placed under suspension for their negligence in duty.

Also perused the enquiry report of Shri P.K.Behera, SDJM, Baripada into the custodial death of the accused Chandan Das @ Raju vide Baripada Town PS Case No.384 dated 29.11.2015. The learned SDJM, Baripada was of the opinion, it was a case of suicidal hanging and it is suspicious as to how the deceased could procure the ligature in spite of the presence of the police personnel in the Police Station.

The Commission in making available a copy of the enquiry report of the DSP, HRPC, Baripada to the petitioner sought for his response to the same. Perused the response of the petitioner dated 20.12.16.

The petitioner respectfully submitted that the police personnel of Baripada Town Police Station have committed grave

negligence, for which the accused Chandan Das @ Raju could get a bedsheet to hang himself inside the toilet. The petitioner also submitted that while some visible swelling over thigh of the deceased was noticed during inquest, the Medical Officers conducting the autopsy have detected four bruises and an abrasion on the body of the deceased. The Medical Officers have opined that the injuries found on the body of the deceased were ante mortem in nature. The petitioner further submitted that the CC TV which was installed at Baripada Town Police Station had ceased to function long back due to heavy lightning in the month of June, 2015 as has been admitted in the enquiry report vide SDE No.306 dated 13.6.15. The petitioner contended that it is proved beyond doubt that the CCTV was not functioning at the time of occurrence of the incident.

According to the petitioner, the injury marks, i.e., swelling, bruises and abrasion found on the body of the deceased which were ante mortem in nature and more importantly, the non-functioning of the CCTV installed in the Police Station lend credibility to the allegation of torture being perpetrated on the deceased when he was in police care and custody. The petitioner stoutly held the view that it was very difficult to accept that in absence of any ill-treatment or mental torture, the deceased committed suicide while being in control in the police hazat.

The petitioner while submitting his response has heavily relied upon the judgement dated 14.3.2012 of the Hon'ble Orissa High Court, Cuttack in WP(C) No.7431 of 2011 (Ritima Dehuri vrs. State

of Odisha) as reported in the Orissa Law Reviews-2013 (Supp.-I) OLR-664 wherein their Lordships held the opinion that “.....in any event, 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.” In the said judgment, it was also stressed that Hon’ble Supreme Court in several decisions observed that “the precious right guaranteed under Article 21 of the Constitution of India cannot be denied to the under trial or other prisoners in custody, except according to the procedure established by law. The police authority has a greater responsibility to ensure that an accused, who is a citizen of the country, in custody is not deprived of his right to life.....”

The petitioner has also drawn attention of the Commission to the observation of the Supreme Court in *Munshi Singh Gautam vrs. State of Madhya Pradesh* (AIR 2005 SC 402:2005 9 SCC 631) which reads as below;

“ Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody died. 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..... ignoring the ground realities, the fact situation and the peculiar

circumstances of a given case.....often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged.....”

The Commission having gone through the enquiry report of the DSP, HRPC, Baripada stumbled upon the fact that when the police staff then present in the Police Station did not allow the accused to go inside the toilet for relieving himself by covering his body with the bed-sheet though the atmosphere was cold outside, then how can be it possible for the accused to get a piece of bed-sheet to use it as a ligature for committing suicide. Thus, it is clearly seen that there is complete mismatch in both the statements of the police. Hence, the conduct of the police staff is highly suspicious and it can be safely concluded that there was foul-play in the entire incident.

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, in the instant, as it is seen, the police personnel, who were then present in the Police Station, were completely oblivious of their responsibility to ensuring full protection to the life of the accused while in custody. The top Court of the country have consistently held the view that police authority has an onerous responsibility to ensure that an accused being in custody, who is a citizen of the country is, under no circumstances whatsoever deprived of his right to life. He

must be afforded with the bare necessities of life. It is relevant to mention that in *Madhya Pradesh vrs. Shyamsundar Trivedy* (AIR 1995 SCW 27930, the apex Court had observed that “the police lock-up, where generally torture or injury is caused is away from the public gaze and the witnesses are either policemen 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 the plea of the police that the deceased committed suicide, it is very difficult to accept that in the toilet in absence of any ill-treatment and mental torture, the deceased committed suicide in the toilet of the Police Station”.

Needless to say, the violation of human rights assumes a horrendous proportion when the functionaries of the State fails to protect the lives of its citizen. Thus, it is clearly established that in the present case, the Right to life of accused as guaranteed under the Fundamental Rights under the Constitution of India has been infringed at the hands of the law enforcing agencies. Therefore, it is an inescapable fact that the victim’s family is to be awarded appropriate compensation not only for the wrong done to him but also depriving his parents from the care and services of their son once and for all. Since the State in a broader sense have failed to

protect the life of its citizen before the due procedure of law came into operation, it is bound to pay the compensation for the custodial death of the accused who was arrested and kept in the police lock-up by the police. Since the victim was only a man of 32 years, the Commission recommends the Government in Home Department to pay a monetary compensation of Rs.4,00,000/- (Rupees four lakhs) only to the parents of the deceased Chandan Das @ Raju as per the provision as enshrined under Section 18(a)(i) of the Protection of Human Rights Act, 1993 within two months from the date of receipt of this order.

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

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

24th December, 2016