

(1997) 03 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 348 of 1994

Dev Kala and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (1998) ACJ 632 : (1997) 3 ShimLC 48

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Indar Singh, A.G., M.S. Chandel, D.C. Jishtu, Rakesh Jaswal and Abhilasha Kumari, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Panta, J.—Petitioners, namely, Dev Kala (widow), Usha, Dodi, Kolti (minor daughters), Uttami (mother), Duni Chand and Jeet Ram, brothers of deceased Bhinder Singh have filed this writ petition claiming a sum of Rs. 2,00,000/- as compensation on account of the death of said Bhinder Singh in police custody by merciless beating by the police.

2. The relevant facts giving rise to the present writ petition are as follows:

3. On 2.6.1993 there was a robbery in village Mashara Thawa Kothi Naggar, District Kullu and Manali. Police registered case F.I.R. No. 110 of 1993 dated 4.6.1993 under Sections 457/380 Indian Penal Code. Chhaju Ram, respondent No. 4, was Station House Officer and A.S.I. Sohan Lai, respondent No. 5, was the Additional Station House Officer attached to Manali Police Station. Both these police officials had summoned Bhinder Singh amongst others in connection with the investigation of the said F.I.R. He was arrested on 5.6.1993. The petitioners have alleged that Bhinder Singh was given merciless beatings at the police station on the intervening night of 5/6.6.1993 and it appeared that he was beaten to death and the body thrown in Beas river which was ultimately

recovered near Pandoh, District Mandi, on 26.6.1993 in an absolutely decomposed state. When the whereabouts of Bhinder Singh were not known, his father Tape Ram (since dead) made a report, copy of which is placed on record as Annexure P-1, to the Superintendent of Police on 9.6.1993 requesting the latter to trace out his son and release him on bail. The Deputy Commissioner, Mandi wrote a letter to the Chief Engineer, Bhakhra Beas Management Board dated 21.6.1993, a copy whereof was sent to Tape Ram (Annexure P-2) stating therein that he had received information that a dead body of a boy was found fastened in gate No. 1 in Pandoh Dam and requested the Chief Engineer for reducing the flow of the water so that the body could be taken out. The dead body of Bhinder Singh was taken out from the dam and handed over to the petitioner Jeet Ram, brother of the deceased after conducting post-mortem on 26.6.1993 at 5.30 p.m. Jeet Ram also made a complaint regarding death of his brother in police custody, copy of which is placed at Annexure P-5. It is further alleged that the father of the deceased received a communication from the Superintendent of Police, Kullu dated 30.7.1993 making out an excuse that said Bhinder Singh had escaped from police custody and had committed suicide. It has further been alleged by the petitioners that the entire story that Bhinder Singh had escaped from police custody and had committed suicide by drowning is untenable. In fact, according to the averments of the petitioners, the police officials tried to cover up the murder of Bhinder Singh and a false report had been prepared without any proper investigation into the cause of death. The petitioners alleged that Bhinder Singh was severely beaten to death while in police custody and since Bhinder Singh was in the custody of the police, it was the duty of the police authority to produce him in court for seeking his remand. It is alleged that there has been violation of fundamental rights of the petitioners and the respondents have deprived Bhinder Singh of his life and personal liberties and further that the rights of the petitioners to be maintained and looked after by him. Petitioners have stressed that respondents are bound to explain the circumstances under which Bhinder Singh who was taken in custody disappeared and the circumstances under which his body was located and identified at Pandoh without the same having even been located or even identified by his relatives. It has further been alleged that Bhinder Singh had been done to death by the police officials when he was taken into custody on 5.6.1993 and his death had taken place while he was in police custody before he could be produced in the court or released from police custody. On the basis of these allegations, petitioners have claimed Rs. 2,00,000/- as compensation on account of the custodial death of Bhinder Singh.

4. A Division Bench of this Court sensing the seriousness of the allegations contained in the writ petition with the consent of the learned Counsel for the petitioners and learned Advocate General appointed the Deputy Inspector General of Police (CID) to conduct an inquiry into the matter and directed the Inquiry Officer to hold an inquiry into the grievances of the petitioners and submit his report together with evidence collected during the inquiry for

consideration of this Court within two months vide order dated 25.11.1994.

5. The inquiry was conducted by Tashi Dava, Inspector General of Police (CID), Himachal Pradesh and after examining the witnesses, the Inquiry Officer submitted his report dated 24.1.1995. The finding in the report was that Bhinder Singh had not been killed by the Manali Police and the circumstances pointed to the strong possibility that it was Bhinder Singh who was seen drowning into the river Beas near Raison by Nathi Devi on 6.6.1993. The Inquiry Officer also found that the allegations of the petitioners that Bhinder Singh was tortured to death by Manali Police and his body thrown into the river have not been substantiated.

6. A joint reply on behalf of respondent Nos. 1 to 3 has been filed by Amar Nath Sharma, Superintendent of Police, Kullu. It is admitted that said Bhinder Singh was arrested in case F.I.R. No. 110 of 1993 under Sections 457/380 of Indian Penal Code on 5.6.1993. It is stated that during investigation Bhinder Singh showed his intention to recover the stolen property and also to help the police in apprehending the co-accused and for that purpose Bhinder Singh was sent in police custody from Police Station, Manali at 1.30 p.m. on 6.6.1993 along with Constable No. 145 Shashi Kapoor, Constable No. 1019 Swaran Kumar and Constable No. 1037 Chaudhary Ram to a place known as Raison with the direction that they would wait for S.H.O. Police Station, Manali at the camping site at Raison. In this reply, it is stated that aforesaid constables along with Bhinder Singh proceeded earlier from Police Station Manali since Bhinder Singh had already fixed the time with the co-accused for the purpose of disposal of stolen property and the Station House Officer had to detain himself for urgent official work at Manali. After performing the duty entrusted by the Superintendent of Police to the respondent Chhaju Ram, S.H.O. and Sohan Lal, A.S.I, rushed to Raison at 2.15 p.m. on 6.6.1993 where the stolen property was to be recovered at the instance of Bhinder Singh. On reaching Raison these respondents were informed by the aforesaid constables that Bhinder Singh had absconded from their custody and he was not traceable. The police party made effective search to locate and apprehend said Bhinder Singh but they could not succeed. A case under Sections 224 and 223, Indian Penal Code was registered vide F.I.R. No. 112 of 1993 against Bhinder Singh and the aforesaid three constables in Police Station, Manali by respondent Chhaju Ram regarding the escape of Bhinder Singh from their custody. The challan has been presented in the court of Addl. Chief Judicial Magistrate, Kullu and the case No. 77-1 of 1994 titled State v. Shashi Kapoor is pending for trial in the said court. In this affidavit, it is stated that one Bikram Singh resident of Raison made a statement during investigation that he saw Bhinder Singh running away on the National Highway towards Kullu side and was being chased by the constables, but he could not be caught by them. Later on during investigation it came to light that Nathi Devi, wife of Moti Ram, resident of Dobhi saw said Bhinder Singh jumping from the Raison Bridge into river Beas on the same day and the dead body of Bhinder Singh was found on the gates of Pandoh Dam. On receipt of information from the Superintendent of Police, Mandi, A.S.I. Hukam Singh of Kullu District was

deputed to Pandoh and the relatives of Bhinder Singh were also informed by the local police requesting them to go to Pandoh to identify the dead body. The dead body of Bhinder Singh was recovered on 26.6.1993 and postmortem was conducted on the dead body by the Medical Officer, District Hospital, Mandi. It has been denied that Bhinder Singh died due to any torture or beating given by the police or his death occurred in police custody. It is further submitted that Bhinder Singh was to be produced before the Judicial Magistrate 1st Class for remand within 24 hours of his arrest. Since arrest was made on 5.6.1993 at 11 p.m., therefore, he could be produced before 11 p.m., next day, i.e. within 24 hours. It is further stated that Bhinder Singh was also prosecuted earlier in case F.I.R. No. 179 of 1990 dated 8.10.1990 u/s 380 of Indian Penal Code by Police Station Manali. However, he was acquitted by the Additional Chief Judicial Magistrate, Kullu and appeal against his acquittal is still pending before this Court.

7. A separate reply has been filed by respondent Chhaju Ram, S.H.O., Manali, wherein he has admitted the arrest of Bhinder Singh in connection with F.I.R. No. 110 of 1993 on 5.6.1993. His statement in his reply affidavit is the same as has been stated by the Superintendent of Police on behalf of respondent Nos. 1 to 3 as referred to above. However, he has also stated that said Bhinder Singh and constables went in a bus to Raison where they were to wait for his arrival along with respondent ASI Sohan Lal for the purpose of recovery of the stolen property at the instance of Bhinder Singh. He stated that Bhinder Singh did not die in police custody or due to the fault of police, but he was himself responsible for his death.

8. During the course of inquiry the petitioner Dev Kala, aged 21 years, stated in her evidence that in the month of "Jeth" of 1993 respondent Chhaju Ram, S.H.O. and respondent Sohan Lal, A.S.I, and one Home Guard jawan in uniform along with Mohinder, Pradhan, Gram Panchayat, Naggar, came to her house and told her that her husband Bhinder Singh along with Tara Chand and Prem Chand, residents of Chanalti, was involved in Thawa Temple theft case and Bhinder Singh was arrested but escaped from police custody. They searched for Bhinder Singh in the house and threatened her and other members of the family that they had concealed him somewhere. Bhinder Singh was searched for at many places but could not be traced. After a few days, petitioner Jeet Ram, elder brother of her husband, told her that body of Bhinder Singh was recovered near Pandoh Bridge. The dead body was identified by the respondent Jeet Ram and her father-in-law Tape Ram. She expressed her suspicion that her husband had been tortured to death by Chhaju Ram and Sohan Lal, etc., as he was in their custody. Uttami Devi petitioner, mother of the deceased corroborated the statement of Dev Kala. She also stated that a few days after the visit of S.H.O. Chhaju Ram and ASI Sohan Lai, etc., to her house, some policemen had come from Police Post Patlikuhl and told them that one dead body had been recovered at Pandoh and it may be identified to ascertain whether that was of Bhinder Singh. Petitioner Duni Chand, brother of the deceased, aged about 16 years also corroborated the statement of Dev Kala. Petitioner Jeet Ram, brother of the

deceased, is running a grocery shop at Katrain. He stated that on 6.6.1993 at about 9 a.m. some residents of his village came to his shop and told him that Manali Police had taken away 3 boys including his brother Bhinder Singh in connection with Thawa Temple theft case. Thereafter, he along with his father went to the Police Post Patlikuhl and thereafter to the Police Station, Manali. On inquiry at the Police Station, Manali, he was told that Bhinder Singh was in police custody and they could meet him only for two minutes. He met Bhinder Singh who told him that he was innocent and that he was being beaten up mercilessly. According to him he met him around 11/12 o'clock during the day. He further stated that Bhinder Singh could not properly stand and complained that he had received beatings on both his feet. At that time Tara Chand s/o Ved Ram and Prem Chand s/o Miru Ram, both residents of Chanelti, were kept in separate rooms. He along with his father kept sitting outside till 4 o'clock when his father told him to go to the shop. On 8.6.1993 at about 8 a.m. his father came to the shop and told him that on 7.6.1993 evening, respondents Chhaju Ram, S.H.O., Sohan Lal, A.S.I., along with Mohinder Singh, Pradhan, Gram Panchayat, Naggar had visited their house at Mashara and abused him and informed him that his son had escaped from police custody. They also directed his family members to search for Bhinder Singh and produce him in the thana. They searched for Bhinder Singh everywhere but could not find him. His father, thereafter wrote to Superintendent of Police, Kullu on 9.6.93 informing him of Bhinder Singh's arrest by Manali Police and his inability to know the whereabouts of his son and reply to this letter was received from S.P., Kullu, later on. He stated that after 18/20 days he was told by his family members that they had been informed by policemen from Police Post, Patlikuhl that a dead body answering the description of Bhinder Singh had been found by the side of the river at some distance beyond Pandoh Dam and that somebody should go to identify it. Thereupon he along with 2/3 people went to Pandoh and identified the dead body as that of Bhinder Singh from the clothes worn by him and one broken tooth. Post-mortem examination of the dead body was conducted in District Hospital, Mandi and thereafter the dead body was handed over to him. He expressed his suspicion that his brother had been tortured to death by S.H.O., Police Station, Manali and others as Bhinder Singh was in their custody.

9. One Tara Chand was also taken along with Bhinder Singh and Prem Chand to Police Post, Patlikuhl in a green Gypsy by respondents Chhaju Ram, A.S.I. Sohan Lai and other policemen. Tara Chand stated that S.H.O. Chhaju Ram had interrogated him for some time and wanted to know about the conduct and antecedents of Bhinder Singh and Prem Chand. He had stated that he could hear cries but he could not say as to who were the persons crying although he was sure that cries were emanating from within the Police Post around 9 p.m. On the next day he saw Bhinder Singh and Prem Chand kept in separate rooms in Police Station, Manali but he was later on let off by the police.

10. Inspector Chhaju Ram, S.H.O., Police Station, Manali appeared before the Inquiry Officer and stated that on the intervening night of 3/4.6.1993 a burglary

took place in Thawa Temple in which idol and property worth Rs. 43,00,000/- had been stolen. A case F.I.R. No. 110 of 1993 dated "4.6.1993 under Sections 457/380, Indian Penal Code was registered and the investigation thereof was taken by him in his hand. One Prem Chand on interrogation disclosed that Bhinder Singh was involved in the case. On interrogation of Bhinder Singh, it came to light that he had been visiting one Tara Chand in order to learn tailoring work. Bhinder Singh admitted on 5.6.1993 that he along with three other accomplices had committed theft in the temple and they were still hiding in the jungle. Bhinder Singh was arrested in connection with that case on 5.6.1993 at 8.30 p.m. On 6.6.1993 he was sent to camping site Raison in custody of constable Shashi Kapoor, Chaudhary Ram and Sarwan Kumar with the directions that they should wait for him at the camping site. After the VIP duty and arranging the white car he along with Addl. S.H.O. Sohan Lal left fox-camping site and reached there. The constables told them that Bhinder Singh had escaped from their custody under the pretext of urinating whereupon statement of constable Shashi Kapoor was recorded u/s 154, Criminal Procedure Code and on the basis of that statement case F.I.R. No. 112 of 1993 dated 6.6.1993 u/s 223 was registered against erring constables. He stated that during the investigation it came to light that one Nathi Devi had seen Bhinder Singh jumping into the river Beas after escaping from the police custody. He further stated that after escaping from police custody Bhinder Singh had committed suicide by jumping into the river Beas from the Raison Bridge which had been proved during investigation of the case u/s 224, Indian Penal Code and the main reasons he further stated for committing suicide were receipt of notice from the Hon'ble High Court in case F.I.R. No. 179 of 1990, Police Station, Manali, his maltreatment in the hands of his family members and his immediate arrest in the temple theft case. He further stated that he along with A.S.I. Sohan Lal had travelled from the Police Station to camping site Raison in a white Ambassador taxi No. HPZ 254. After the departure of A.S.I. Sohan Lal, he along with three constables searched for Bhinder Singh at the camping site and at Raison bazar. They were told by some people that somebody had jumped from Raison Bridge into the river which act was witnessed by some women whose names and addresses could not be ascertained. The statement of this witness is totally in contradiction to the statement of Constable No. 145 Shashi Kapoor u/s 154 Criminal Procedure Code on the basis of which F.I.R. No. 112 of 1993 dated 6.6.1993 (Annexure R-2) was recorded by this witness. The said constable in his statement stated that the constables Chaudhary Ram, Sarwan Kumar and Bhinder Singh alighted from a bus at camping site Raison, Bhinder Singh asked them that he wanted to urinate and he was asked to urinate in their presence and on such pretext he ran away towards Raison. They chased him but he succeeded in running away and thereafter they had searched for him at Raison, Bihal, Shird, Kharahal, Khumarda, etc., but his whereabouts were not known. There is no mention in this statement which was made earlier in point of time that Bhinder Singh jumped into the Beas river immediately after escape and he was seen jumping by any person at Raison bazar. This statement does not state

that S.H.O. Chhaju Ram was present at the spot along with said constables searching for Bhinder Singh after his escape from their custody. Constable Sarwan Kumar in his statement has stated that during June, 1993 he was posted at Manali on temporary duty. He was directed by the S.H.O. to report to him by 2 p.m. in civilian clothes on 6.6.1993. He along with constable Chaudhary Ram reached at Police Station Manali at about 2.15 p.m. in civilian clothes but S.H.O. was not available. They were then told by M.H.C. that the S.H.O. wanted two of them to report to him at the petrol pump located at a distance of about 1 1/2 km. towards Kullu. They were taken to petrol pump on a motor cycle by the M.H.C. and when they reached the pump they found Inspector Chhaju Ram in civilian clothes standing outside a white Ambassador car No. HPZ 254. S.H.O. told them to sit in the car in which A.S.I. Sohan Lal, driver, constable Raj Kumar, one stranger boy and constable Shashi Kapoor all in civilian clothes were sitting. The car started moving towards Kullu side and after covering a distance of about 2 to 2 1/2 kilometres, he inquired from the S.H.O., where they were going and for what purpose. On his inquiry, the S.H.O. told him that the boy was to get the thieves arrested. When they reached Shirad bifurcation short of Eye Hospital, Raison, he, constable Chaudhary Ram and Shashi Kapoor were asked to get down by the S.H.O. and they were instructed to stand there and to come to him when he would give signal. After 30/ 35 minutes he gave them a signal whereupon they went to him. They saw the Addl. S.H.O., constable Raj Kumar and car driver present there and the car was facing towards Manali side. The S.H.O. told them that the boy had escaped and that search be mounted. On this all three of them along with constable Raj Kumar ran on the road towards Kullu and searched for him up to Post Office. On their return they did not find either S.H.O. or Addl. S.H.O. on the spot and then they got into the car and searched for the boy up to I.T.B.P. Complex, Babli but in vain. Thereafter, they left for Manali. When they reached the office of the S.H.O. at Manali, they found S.H.O., Addl. S.H.O. and A.S.I. Moti Ram sitting there. S.H.O. told them that the boy had run away and that a case u/s 224, Indian Penal Code was registered against him. Thereafter A.S.I. Moti Ram dictated and A.S.I. Sohan Lal wrote down in the daily diary showing the escape of the boy from police custody and he along with Chaudhary Ram and Shashi Kapoor were asked to put their signatures on the entries made in the Roznamcha. They requested the S.H.O. to read out the Roznamcha report and other papers to them before obtaining their signatures. The S.H.O. told them that either they should sign the papers or get suspended or dismissed and also told them that they had to serve under him. He further stated that the S.H.O. then promised and swore in the name of his children that he would see that no harm could be caused to them. He further stated that their signatures had been obtained under pressure and assurance. After about two days, the S.H.O. told them that the stranger boy was an accused and had run away and he could also have died. They were directed by the S.H.O. not to discuss this matter anywhere, other wise strict action would be taken against them. It is also stated by him that S.H.O. had obtained their signatures and threatened that he would file a case against them if they discussed this issue. He

deposed that they have attended the court many a time and that they have been made accused whereas stranger boy was never in their custody. Similar statement has been made by constable Chaudhary Ram and constable Shashi Kapoor before the Inquiry Officer. They also stated unequivocally that the boy who escaped was not in their custody. They also stated that the S.H.O. told them at Police Station, Manali that no harm would be caused to them in case they put their signatures on the Daily Diary Report and a paper which subsequently was recorded as F.I.R. u/s 224, Indian Penal Code against them. They were forced to sign the Daily Diary Report and other documents under pressure and allurements. A bare perusal of the statements of the S.H.O. and the constables recorded by the Inquiry Officer, had given a contradictory version about escaping of Bhinder Singh from police custody and thereafter their efforts of searching him at the banks of Beas river.

11. If the entire evidence recorded by the Inquiry Officer is perused, a grave doubt arises as to whether the statements of S.H.O. Chhaju Ram and A.S.I. Sohan Lal are trustworthy and believable. It is not out of place to mention here that even with regard to the time at which Bhinder Singh was arrested, there is a material discrepancy. While according to one version, he was arrested at 11 p.m. on 5.6.1993, the other version is that he was arrested at 8.30 p.m. There is no explanation for this discrepancy. It is not possible to reject offhand the contention of learned Counsel for the petitioner that two police officials had conveniently attempted to conceal the true facts about Bhinder Singh and in order to save their skin, they had thrown the blame upon the constables against whom a case has been registered u/s 223 of the Indian Penal Code. The material on record is hardly sufficient to accept the version that Bhinder Singh managed to escape from police custody on 6.6.1993 and committed suicide by jumping into the Beas river. Unfortunately, the Inquiry Officer has not considered the statements of all the witnesses examined by him in the proper perspective. We have no hesitation to hold that the conclusion arrived at by the Inquiry Officer is unsustainable.

12. The most material witnesses on which the Inquiry Officer has mainly relied upon are Bikram Ram alias Bikram Singh and Nathi Devi. It has come in the statement of Bikram Ram that during the month of "Jeth" in the year 1993, the exact date he did not remember when he was working on the flower bed of his house located near the camping site, he saw a boy running on the road towards Raison around 3 p.m. He stated that he saw his back and he was wearing a pant and jacket, the colour of which he did not remember. He further stated that after about one hour, he saw three constables in uniform walking fast towards Raison and he did not see their faces. The next day at about 2/2.30 p.m. three police persons came to his house and asked him whether he had seen a boy whereupon he told them about what he had seen the day before and they had recorded his statement and obtained his signatures before leaving. He also stated that after 2/ 3 days, he came to know that some 2/3 days back a boy had jumped into the river. It is nowhere stated by this witness that it was Bhinder Singh who jumped

into the river and he identified the said boy.

13. It has come in the evidence of Nathi Devi that in the month of September, 1993, she saw a person drowning in the river, a little below the bridge, who was vigorously flailing both his hands as if he was struggling to come out of the water. When she came to Raison after crossing the bridge, people were talking of somebody having jumped into the river and she also told them that she had seen a person drowning in the river, whereupon a thin man standing there wrote down her name and address on a piece of paper. After that incident about 15/16 persons ran down by the side of the river. She stated that after about one month a policeman in uniform came to her house and asked her to put her signature or thumb impression on a piece of paper on which already something was written down. She stated that on her asking the police official told her that the paper pertained to the fact that she had seen a person drowning in the river. It has also come in her statement that about 15/ 16 days prior to recording of her statement by the Inquiry Officer one policeman in civilian clothes visited her house and told her that she would be summoned in connection with incident of drowning of a person she had witnessed and urged her that she should make the same statement that she had made earlier. It has also been stated byjier that the same person had again visited her house the day previous to the recording of her statement and asked her to give the statement that she had made earlier. From a close scrutiny of her statement, it becomes clear that she has nowhere stated in her evidence that she saw Bhinder Singh jumping into the river on 6.6.1993. It has come in her evidence that she had been asked by the police official time and again to make the statement that she saw the same person drowning in the river in the month of "Jeth". Her evidence is not a conclusive proof that it was Bhinder Singh who escaped from police custody and jumped into the river on the alleged date, i.e., 6.6.1993.

14. Chitar Singh, driver of the white Ambassador car No. HPZ 254 also made a statement before the Inquiry Officer. He stated that one day at about 3 p.m. during summer of 1993, the clerk of taxi union, Manali had asked for a vehicle and he was directed to report to the S.H.O. No entry in any register was made in this connection. He was known to the S.H.O. who was waiting for him at Police Station, Manali. There was another police officer with the S.H.O. in uniform having two stars on each shoulder who now stood transferred to Shimla. On his arrival at the police station, the S.H.O., another police officer and three constables who were wearing civilian clothes, caught one boy who was standing there and put him in his taxi. He was told by the S.H.O. that they were going to some distance towards Kullu. After reaching 10/15 yards from the Raison Bridge, the S.H.O. asked them to stop the vehicle. On this he parked the vehicle on the left side of the road and all other occupants got down and went back towards the bridge. After sitting in the car for some time, he also came out and went to the bazar. He purchased "biri" from the shop. During this time, he saw the S.H.O. and the aged officer sitting in a tea shop and one of the three constables was sitting on a boulder near the bridge while the other two were standing across the

bridge on the other side of the river. He further stated that after some time there was a hue and cry in the bazar and a word went round that some person had fallen into the river and some woman had seen him, Then all the policemen and residents of Raison went down along with the bank of the river. He also ran along with them but nothing could be found. He categorically stated that he had not seen the woman who had seen that person falling. When they returned after the search of the person who was alleged to have fallen into the river, the S.H.O. and other police officials were not present at the place where they had got down from his vehicle. Out of three constables, two constables kept searching for that person on the banks of the river whereas third one came and sat in his car who asked him to take him to Babeli in search of that person. On reaching Babeli they sat on the bank of the river and kept an eye on the river. After sitting there for about 20 to 25 minutes, they returned to Raison where the other two constables also met them but the S.H.O. and other police officer were not there. They kept waiting for the arrival of the S.H.O. and the other police officer for about 10/15 minutes but both the officers had not returned and then he along with the three constables returned to Manali in his vehicle. He further stated that on reaching the police station, the S.H.O. gave him a piece of paper containing written statement and directed him to make a statement according to what was written on that piece of paper. He further stated that piece of paper had been lost by him but there was a world of difference between what was written in that piece of paper and the truth. The statement of this witness is clearly contrary to the case put forward by the respondents that three constables took Bhinder Singh in a H.R.T.C. bus from Police Station, Manali to Raison camping site. According to this witness, the accused was taken in his car from the police station by five police officials including the S.H.O. The evidence of this witness has not been disbelieved by the Inquiry Officer. It is not known how the Inquiry Officer has chosen to ignore the evidence of this witness and come to the conclusion that the version given by the police officials was true. A perusal of the statement of this witness confirms to a great extent the suspicion in the mind of the court, which has been expressed earlier in para 11.

15. It is pertinent to note here that a letter, Annexure P-2, dated 21.6.1993 written by Deputy Commissioner, Mandi to the Chief Engineer, Bhakhra Beas Management Board requesting the latter that he should give order/direction to get the water lessened from gate No. 1 at Pandoh Dam as it had been brought to his knowledge that one boy from Naggar village had died by drowning in Beas river and the copy of this letter was addressed to Tape Ram, father of the deceased. It is not known as to how a copy of that letter was addressed to the father of the deceased on 21.6.1993 when admittedly, the body of the deceased was recovered only on 26.6.1993 and handed over to Jeet Ram, brother of the deceased at 5.10 p.m. It passes one's comprehension as to how the Deputy Commissioner, Mandi, could have come to the conclusion on 21.6.1993 itself that the body said to have been seen at Pandoh Dam was that of Bhinder Singh, son of Tape Ram. There is no explanation on record as to why and how copy of the

letter written to Chief Engineer, B.B.M.B., was forwarded to Tape Ram. Nothing has been brought on record during the inquiry by the police officials about the identification of the dead body of Bhinder Singh before his dead body was identified by his brother.

16. Dr. K.C. Sharma, Medical Officer, Zonal Hospital Mandi, conducted the postmortem examination on the dead body of Bhinder Singh at 12.30 p.m. on 26.6.1993. According to his medical report the body was highly decomposed, maggots were found all over the body and rigor mortis was absent. He found one black pant, leather belt and two woollen socks and a cuff present on right wrist of the dead body. Both eye-balls absent from the sockets, hair absent, nose decomposed, right hand fingers absent from middle phalanges including thumb. Left front incisor tooth absent. Brain matter putrefied and jelly-like, lungs jelly-like and congested. Heart was normal. According to the opinion of the doctor due to advanced stage of putrefication it was not possible to give the cause of death. He also stated that no definite opinion can be given whether the injuries were ante-mortem or post-mortem. From the perusal of the report of the doctor, it is not clear whether Bhinder Singh died because of committing suicide by jumping into the river. In the event of failure of the doctor giving definite opinion about the cause of death, it was the duty of the police authority to have a final opinion of the expert of Forensic Science if the police authority was very serious about the cause of the death of deceased Bhinder Singh. This aspect of the matter also casts doubts about the fairness of the police authority in dealing with the matter.

17. The question before us is whether respondents are liable to pay compensation to the petitioners, according to whom, Bhinder Singh, husband of petitioner No. 1 and father of petitioner Nos. 2 to 4 suffered custodial death. Respondents are contesting this proceeding on the footing that the said Bhinder Singh had escaped from the police and committed suicide. It is submitted by the learned Advocate General that this Court has to arrive at a finding of fact that Bhinder Singh died while he was in the custody of the police before the question of payment of compensation is decided. It is also his contention that the question whether Bhinder Singh escaped from police custody is the subject-matter of a judicial proceeding already pending before Additional Chief Judicial Magistrate, Kullu. According to the learned Advocate General this Court should not embark upon a decision on that question of fact under Article 226 of the Constitution of India but on the other hand, direct the petitioners to work out their rights in a civil court or criminal court by taking appropriate proceedings. We are unable to accept this contention.

18. The Supreme Court has on more than one occasion pointed out the distinction between the remedy available in public law and the enforcement of a right in private law. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, the court held that in the case of violation of fundamental rights the only practicable mode of enforcement is award of compensation, under Article 32 or 226 of the Constitution of India. Reference was made to the decision

of that court in Rudul Sah Vs. State of Bihar and Another, It will be advantageous to extract paras 19 to 22 of the judgment of Verma, J., in that case, which read as follows:

(19) This view finds support from the decisions of this Court in the Bhagalpur Blinding cases:

Khatri and Others Vs. State of Bihar and Others, and Khatri and Others Vs. State of Bihar and Others, wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., Misra, C.J. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future...there is no reason why we should hesitate to evolve such principle of liability...." To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., with regard to the court's power to grant relief.

(20) We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies were more appropriate.

(21) We may also refer to Article 9(5) of the International Covenant on Civil and

Political Rights 1966, which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

(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 Vs. State of Bihar and Another, 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 (supra) and others in that line have to be understood and Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, 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.

19. In the concurrent judgment of Dr. Justice Anand the following observations are found in paras 32 to 35:

(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 upto date machinery, by declarations, injunctions and actions for negligence.... This is not the task for 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.

(33) The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

(34) 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 citizens that they live under a legal system which aims to protect their interests and also 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 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.

(35) 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. The State, of

course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law?through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case is possible. The decisions of this Court in the line of cases starting with Rudul Sah Vs. State of Bihar and Another, , granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by brother Verma, J.

20. We may also at this stage refer to a recent decision of the Supreme Court in D.K. Basu Vs. State of West Bengal, In this case the Apex Court has dealt with formulating modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. In paras 16 to 19 Dr. Anand, J. said as under:

(16) The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to a very great extent.

(17) Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested

shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and the basic human rights of the citizens. Chapter V of the Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 of Criminal Procedure Code confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a magistrate. Section 46 provides the method and manner of arrest. Under this section no formality is necessary while arresting a person. u/s 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without a warrant to produce the arrested person before a magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the magistrate to hold an enquiry into the cause of death.

(18) However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in police custody has assumed such alarming proportions that it is affecting the credibility of the Rule

of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

(19) The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....

The recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

21. Further in paras 44, 45 and 46 the hon"ble Judge while dealing with the question of granting compensation for unconstitutional deprivation of fundamental right to life and liberty of the citizens 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 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.

(45) The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim?civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

22. In para 46 of the judgment, the court referred to its earlier ruling in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and extracted a passage therefrom. It was pointed out that in case of infraction or invasion of rights guaranteed under Article 21 of the Constitution of India, it was not enough to relegate the aggrieved party to the ordinary remedy of a civil suit. It was also pointed out that the powers of the executive should be properly used to lead to the welfare State and not abused to lead to a totalitarian State and that it is the duty of the courts to enforce the same.

23. It is no doubt true that the judicial proceeding pending before the Additional Chief Judicial Magistrate, Kullu, should be allowed to proceed in accordance with the law and in the said proceeding the question whether the accused therein were guilty of an offence u/s 224, Indian Penal Code will be decided, but that will not prevent this Court from considering the question whether the petitioners are entitled to get compensation under the public law on account of violation of fundamental rights by the respondents. Though to some extent, the evidence relevant for considering the two questions may overlap or coincide, our decision in the present case will not affect the proceedings pending before the Additional Chief Judicial Magistrate, Kullu.

24. As stated earlier, we are concerned with the alleged violations of the fundamental rights. We have already referred to the entire material placed before us and pointed out that the respondents have not satisfactorily explained the various discrepancies in the case put forward by them. We have also pointed out that the statements recorded by the Inquiry Officer give rise to very grave suspicion on the conduct of police officials after Bhinder Singh was arrested. We have to proceed on the basis of the admitted facts that Bhinder Singh was arrested on 5.6.1993 and remained in the custody of the police till at least 2 p.m. on 6.6.1993. If according to the respondents he escaped from their custody, thereafter, it is for them to make out their case by clear evidence before this Court. The respondents have not only failed to place sufficient materials before this Court to prove the said fact but also failed to explain the various discrepancies found in their case. It is not necessary for us to consider whether

he actually committed suicide. Suffice it for us to take note of the circumstance that Bhinder Singh was taken into custody by the police and the concerned officials, whoever may be actually responsible have been negligent in not protecting him properly. The respondents have not established before us that Bhinder Singh escaped from the custody of the police on 6.6.1993 before the expiry of 24 hours from the time of his arrest. Under Article 22(2) of the Constitution of India, it is the fundamental right of every person arrested and detained in custody to be produced before the nearest Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. If the detention is to be continued beyond such period, authority of concerned Magistrate is required therefor. Inasmuch as the respondents have failed to establish before us that Bhinder Singh escaped from the custody of the police before the expiry of 24 hours and inasmuch as it is admitted by the respondents that said Bhinder Singh was not produced before any magistrate within 24 hours after the arrest; there is no difficulty for us in holding that the fundamental right guaranteed under Article 22(2) of the Constitution of India has been clearly violated.

25. It has been laid down in Supreme Court Legal Aid Committee Vs. State of Bihar and Others, that it is the obligation of the police particularly after taking a person in custody to ensure appropriate protection of the person taken into custody including the medical care if such person needs it. There is no doubt whatever that the respondents have failed to establish before us that such protection as contemplated by the Supreme Court in the aforesaid decision was not given to Bhinder Singh.

26. There is also a discrepancy in the evidence as to what happened exactly on 6.6.1993. According to the statement of one of the persons, information was available to the police even on 6.6.1993 that a person got drowned in the river Beas. The respondents have not placed before us any material to show that any attempt was made on the part of the police to search for a person, who was alleged to have drowned in the river. For about 15 days, they did not seem to have taken any action. At any rate nothing is placed before us to prove that any action was taken in that regard. This unexplained silence on the part of the respondents is also a vital circumstance, which would stand in the way of their defence in this petition being accepted by us. Taking that circumstance along with the fact that on 21.6.1993, the Deputy Commissioner, Mandi sent a copy of his letter to Tape Ram, father of the deceased even before the identification of the body in the river as that of Bhinder Singh will lead to a plausible inference that the concerned police officials have violated not only Article 22(2) but also Article 21 of the Constitution. At any rate we can hold that the respondents have not dislodged the presumption that Bhinder Singh continued to be in the custody of the police officials even after 6.6.1993 in view of the fact that they have failed to prove the escape from such custody on 6.6.1993 as contended by them. There can be no doubt whatever that the police officials were negligent and failed to perform their duties enjoined on them by law.

27. The question now is about the quantum of compensation. The deceased Bhinder Singh was aged about 22 years and had an income of over Rs. 1,000/- per month as stated by the petitioners in para 2 of the writ petition. There is no reason to disbelieve the correctness of this statement made in the petition. The respondents have only stated that the deceased Bhinder Singh was not having any source of income and his elder brother Jeet Ram used to look after the family and agriculture work. There is no evidence in support of such a case. The widow of the deceased is about 23 years of age and her three daughters are aged about 8 years, 6 years and 4 years, respectively who are under the care, custody and guardianship of their mother Dev Kala. The mother of the deceased Uttami Devi is aged about 62 years. In our opinion, an amount of Rs. 1,00,000/- (one lakh) would be appropriate compensation as an interim measure to be awarded to the petitioners Dev Kala, Usha, Dodi, Kolti and Uttami in the present case.

28. Accordingly, we direct respondent State of Himachal Pradesh to pay a sum of Rs. 1,00,000/- (one lakh) to the petitioner Nos. 1 to 5. The said amount shall be deposited in the Registry of this Court within a period of four weeks from the date of this judgment. On deposit, a sum of Rs. 25,000/- shall be paid to Dev Kala, widow of the deceased Bhinder Singh, Rs. 15,000/- to Uttami, the mother and the balance amount of Rs. 60,000/- shall be invested in a fixed deposit in a scheduled bank in the names of the three minor daughters initially for a period of five years. Dev Kala, the mother and natural guardian of the minor daughters shall be entitled to get quarterly interest on the said amount and spend the same for their maintenance and education.

29. We make it clear that any observation made by us in justification of this order shall not have any bearing on any investigation, prosecution, trial especially criminal case No. 77-1/1994 titled State v. Shashi Kapoor pending in the trial court against the police officials in connection with the charge u/s 223 of the Indian Penal Code. We also add that the award of compensation in these proceedings should be taken into account for adjustment in the event of a suit being filed by the claimants/legal heirs of the deceased Bhinder Singh for compensation in a competent court of jurisdiction against the respondents or any other person and those proceedings shall be decided on merits by such court in accordance with law.

30. The writ petition is allowed in these terms. However, in the facts and circumstances of the case, the parties are left to bear their own costs.