
(2009) 04 AHC CK 0775
In the Allahabad High Court

Ravindra Nath Awasthi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 22, 226
Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 357
Penal Code, 1860 (IPC) — Section 147, 149, 302, 341, 427

Citation : (2009) 85 AWC 2090 : (2009) 2 AWC 2090 : (2009) 2 UPLBEC 1569

Hon'ble Judges : Vineet Saran, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri T.P. Singh, senior advocate, assisted by Sri Siddharth Nandan for the petitioner and Sri M.C. Chaturvedi, learned Chief Standing Counsel appearing for the State-respondents No. 1 to 4.

2. Affidavits have been exchanged between the parties and with the consent of the learned Counsel for the parties, the writ petition is being finally decided.

3. Facts giving rise to this writ petition are : petitioner's son S.K. Awasthi, advocate was charged with criminal contempt by a Division Bench of this Court being Criminal Contempt No. 19 of 2007. The Division Bench vide order dated 21st November, 2008 charged S.K. Awasthi with criminal contempt and directed the contemner to be taken into custody. The Division Bench to which the criminal contempt was assigned by judgment and order dated 23rd November, 2007 punished the contemner with imprisonment for a period of one month. However, on the intervention of the members of the Bar that contemner would improve, the punishment was suspended to afford an opportunity to the contemner to improve his conduct, subject to the condition that in case he misbehaves in the Court again, mere issuance of show cause notice would suffice for the sentence being revived. Subsequently by judgment and order dated 22nd April, 2008 the

order of suspension of sentence was revoked and the Registrar General was directed to take S.K. Awasthi in custody and send him in Jail for serving out the sentence awarded by this Court vide judgment and order dated 23rd November, 2007. Two more charges were framed by the order dated 22nd April, 2008 and the case was directed to be listed again on 8th May, 2008.

4. S.K. Awasthi was taken into custody and was lodged in Central Jail, Naini on 22nd April, 2008 to serve the sentence. Initially S.K. Awasthi was kept in Barrack No 8-B of Circle No 4 of Central Jail, Naini from 22nd April, 2008 to 2nd May, 2008. On 2nd May, 2008 an order was passed by Senior Superintendent, Central Jail, Naini to keep him in separate Cell for one week and accordingly he was sent in Circle No 1. On 6th May, 2008 he was admitted in Jail Hospital in semi-unconscious state. The Jail Doctors noted several injuries on the person of S.K. Awasthi. On 8th May, 2008 S.K. Awasthi was brought on stretcher to the High Court for being produced but the Bench being not available, he could not be produced before the Court, his attendance was noted by Joint Registrar (Criminal) and he was sent back to Jail. On 10th May, 2008 S.K. Awasthi was admitted in S.R.N. Hospital, Allahabad under the reference made by Jail Doctor with the permission of the Chief Medical Officer. In the Jail his legs were tied up with iron chain. On 13th May, 2008 S.K. Awasthi died in the hospital.

5. On being pointed out by the Members of the Bar about the death of S.K. Awasthi, which was caused in mysterious circumstances, a Division Bench passed an order on 13th May, 2008 requesting the District Judge to hold an inquiry so as to find out as to under what circumstances the death of S.K. Awasthi had been caused. The District Judge was also directed to inquire as to whether S.K. Awasthi was manhandled or ill-treated either by the Jail authorities or by the Jail inmates, and what was the reason for shifting him to the hospital and keeping him chained during the medical treatment. The Chief Medical Officer, Allahabad was directed to constitute a team consisting of three doctors to conduct the post-mortem of S.K. Awasthi. On the same day, on an application presented by Sri Rajesh Rai, advocate informing about the death of S.K. Awasthi while in custody, another Division Bench presided over by Hon''ble the Chief Justice directed the application to be registered as Public Interest litigation and issued notice to the Jail Superintendent asking him to explain the circumstances under which S.K. Awasthi died while in custody. On the same day the Division Bench presided over by Hon''ble the Chief Justice passed another order noticing the order passed in Criminal Contempt No. 19 of 2007 as mentioned above, directing the criminal contempt to be withdrawn and placed before the Bench presided over by Hon''ble the Chief Justice on 16th May, 2008.

6. On the letter petition, Writ Petition (P.I.L.) No. 24611 of 2008, Rajesh Rai v. Jail Superintendent, Central Jail, Naini, was registered. The District Judge, Allahabad submitted an interim report dated 15th May, 2008 after recording the statements of various witnesses and prayed for further ten days'' time for submitting detail report. The writ petitioner (letter petition) was permitted to file

a comprehensive petition. The Division Bench allowed time to the parties to exchange affidavits. A request was made on behalf of the petitioner to provide for employment to the widow of the deceased and some amount for performing the last rites. The learned Advocate General accepted those suggestions and made a statement that a cheque of Rs. 1,00,000 will be handed over to the widow of the deceased and a separate cheque of Rs. 2,00,000 will be deposited in F.D.R. in the bank account of the wife of deceased, Smt. Neelama Awasthi.

7. Writ Petition No. 33826 of 2008 (present writ petition) has been filed by father of late S.K. Awasthi on 14th July, 2008, which was directed by the Division Bench to be connected alongwith Writ Petition (P.I.L.) No. 24611 of 2008. The present writ petition was entertained by the Division Bench noticing three fold prayer. The Division Bench noticed the interim report submitted by the District Judge dated 15th May, 2008 and the final report dated 23rd June, 2008. The Division Bench passed an order on 25th July, 2008 granting time to State-respondents to file counter-affidavit. The Division Bench also took the view that before issuing notices to respondents No. 5 to 21, the Court must know as to whether the State is accepting the reports submitted by the District Judge, Allahabad dated 15th May, 2008 and 23rd June, 2008 in totality or in part. The Division Bench clearly took the view that depending upon the decision of the State, notices will be issued to respondents No. 5 to 21. The State was also directed to consider the prayer of the petitioner to provide employment to widow of the deceased.

8. A counter-affidavit sworn by Kedar Nath, Senior Jail Superintendent, Central Jail, Naini, Allahabad dated 5th September, 2008 has been filed to which a rejoinder-affidavit has also been filed. Five supplementary counter-affidavits have also been filed by Senior Jail Superintendent from time to time, last being dated 13th February, 2009. This writ petition was being heard alongwith Writ Petition (P.I.L.) No. 24611 of 2008. When the writ petition as well as the P.I.L. were heard on 27th February, 2009, learned Counsel appearing in the P.I.L. had contended that P.I.L. raises much larger issues than the issues raised in the present writ petition, i.e., writ petition filed by father of the deceased. It was stated by learned Counsel appearing in the P.I.L. that in the present writ petition the petitioner may be interested only for the compensation consequent to death of S.K. Awasthi, whereas the P.I.L. raises larger questions regarding human right protection, condition of prisoners in the jail and protection of fundamental rights guaranteed under Part-III of the Constitution. The petitioner in the present writ petition requested that present writ petition be delinked with P.I.L. and hearing of both the petitions be separately conducted. Considering the request made by learned Counsel for the petitioner, the present writ petition was delinked from Writ Petition (P.I.L.) No. 24611 of 2008 by an order passed on 27th February, 2009 passed in Writ Petition (P.I.L.) No. 24611 of 2008. This writ petition thereafter was heard and hearing was concluded on 3rd March, 2009.

9. The petitioner's case in the writ petition is that S.K. Awasthi was second son of the petitioner, who was practising as an advocate from the year 1999. The

petitioner is a retired teacher, who is receiving a paltry pension of Rs. 4,100 and is living with his wife. The wife of late S.K. Awasthi, although postgraduate but is not in any job. S.K. Awasthi has two daughters, namely, Km. Nidhi Awasthi, who has passed 1st year of B.Sc. from Agra College, Agra and another daughter Km. Bandana Awasthi, who is studying in Intermediate at Agra. Petitioner's case is that S.K. Awasthi was maintaining his family of his own and he also maintained two establishments one at Agra where his wife and daughters were living and one at Allahabad where he was living and practising. The petitioner has referred to and relied upon the inquiry report submitted by the District Judge, Allahabad. Petitioner's case is that it was only on account of protest made by S.K. Awasthi against providing of substandard food to the prisoners that his mouth was shut and life closed. The petitioner's case further is that there has been serious violation of constitutional rights guaranteed to S.K. Awasthi under Article 21 of the Constitution of India. The report of District Judge reveals that death of S.K. Awasthi was custodial death and Jail authorities have violated all statutory instructions contained in Jail Manual, norms of human rights and directions issued from time to time by various courts of law. The petitioner claims that Jail authorities deserve an exemplary punishment and compensation be awarded to the deceased family. In the writ petition following reliefs have been claimed:

- (i) Issue a writ order or direction in the nature of mandamus commanding the respondents' authority No. 1 to punish the erring Jail authorities, for being neglectful in their duties and violation of the provisions of Jail Manual, Police Regulation, Human Rights guaranteed under Constitution of India.
- (ii) Issue a writ order or direction in the nature of mandamus commanding the respondents authority to initiate appropriate departmental proceeding and to award deterrent punishment to the erring Jail and other administrative authorities to avoid recurrence of such incident.
- (iii) Issue a writ order or direction awarding exemplary compensation to the deceased-detenu's family for their survival and scheme for their rehabilitation.
- (iv) Issue a writ order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (v) To award the cost of the petition.

10. In the counter-affidavit filed on behalf of the State it has been stated that on the basis of the final report dated 23rd June, 2008 submitted by the District Judge, Allahabad a decision has been taken to institute departmental proceedings against the officers/employees named in the inquiry report. The details of the departmental inquiry initiated against certain Bandi Rakshaks including the suspension order of three Bandi Rakshaks were brought on the record. It has been stated in paragraph 10 of the counter-affidavit that an amount of Rs. 3,00,000 has been paid to dependent of deceased in terms of the order dated 19th May, 2008 issued by the Inspector General, Jail Administration and Reforms Services, U.P., Lucknow. It was further stated that regarding

providing employment to the dependent of deceased the matter has been referred to the State Government. By means of supplementary counter-affidavit the charge-sheets issued to the Jailer and the Deputy Jailers were brought on the record. A letter dated 22nd October, 2008 of the State Government has been brought on the record, which is addressed to the Inspector General Jail Administration and Reforms Service, U. P., Lucknow by which the State Government informed that since the deceased was not a Government employee the provisions of U. P. Recruitment of Dependents of Government Servants (Dying-in-Harness) Rules, 1974 are not applicable and the wife of deceased cannot be employed by the State. By means of second supplementary counter affidavit the order of the State Government dated 3rd December, 2008 has been brought on the record by which the State Government has decided to initiate disciplinary proceedings against S.K. Sharma the then Senior Superintendent, Central Jail, Naini. The detail of proceedings initiated against other employees were also brought on the record. By third supplementary counter affidavit the Superintendent, Central Jail, Naini has brought on the record the order dated 4th December, 2008 by which Surendra Kumar Patel, Bandi Rakshak has been awarded punishment of stopping five increments on proved charges. Another order of the same date has been brought on the record by which Subhash Chandra Maurya, Bandi Rakshak has been punished with the same punishment on proved charges. The order dated 10th December, 2008 punishing Chandra Shekhar, Bandi Rakshak by stopping seven increments with cumulative effect on proved charges has also been brought on the record. The details of inquiry with regard to other employees and officers of the Jail has also been brought on the record. By means of fourth supplementary counter affidavit the details of proceedings against the officers and employees of the Jail were brought on the record. It has also been stated in paragraph 7 of the fourth supplementary counter affidavit that investigation in Case Crime No. 285 of 2008 has been transferred to C.B. C.I.D. vide letter dated 12th January, 2009 issued by the Senior Superintendent of Police, Allahabad. By means of the fifth supplementary counter affidavit the said letter dated 12th January, 2009 has been brought on the record by which the investigation of Case Crime No. 285 of 2008, u/s 302 of I.P.C., Police Station Naini, Case Crime No. 82 of 2008 registered at Police Station Cantt. under Sections 147, 149, 427, 341 of I.P.C. and Section 7, Criminal Law Amendment Act, Case Crime Nos. 84 of 2008 and 85 of 2008 has been transferred to C.B. C.I.D. In Annexure SCA-1 to the fifth supplementary counter affidavit the detail of punishment given to one Jailer, three Deputy Jailers and six Bandi Rakshaks has been mentioned and with regard to seven employees disciplinary proceedings are stated to be pending.

11. Learned Counsel for the petitioner in support of the writ petition submitted that under the orders of this Court passed in the criminal contempt, the District Judge, Allahabad has inquired the entire matter and by a detail report dated 23rd June, 2008 the jail authorities have been found responsible for causing injury on the person of S.K. Awasthi, specially Injury No. 7 as noticed in the post-mortem

report, which has caused death of S.K. Awasthi. It is submitted that inhuman treatment upon S.K. Awasthi has been found proved by the District Judge. The fundamental rights of S.K. Awasthi as guaranteed under Article 21 of the Constitution of India has been proved to be violated, hence present is a case in which apart from award of adequate compensation to the heirs of deceased, the respondents are liable to be awarded exemplary punishment so that such inhuman acts are not repeated. It is submitted that the jail authorities have violated various provisions of the U.P. Jail Manual and the various judgments and directions issued by the Court from time to time. It is submitted that when jail authorities can act in such a manner with an advocate of this Court, it is easy to comprehend that in what manner they must be dealing with ordinary prisoners. It is further submitted that report of the District Judge has been fully accepted by the State Government as it has proceeded to take action on the basis of the report, drawn disciplinary proceedings and punished its officials and employees, which clearly proved the allegations in the report against the jail official and authorities. Learned Counsel for the petitioner submits that in spite of the statement made by the learned Advocate General that claim of providing employment to widow of deceased shall be considered, the State Government has not given any employment. Learned Counsel for the petitioner further submits that present is a case where the widow is also entitled for employment. He further submits that S.K. Awasthi having left behind two unmarried daughters, who are studying in B.Sc. and Intermediate respectively, the State Government has to provide for their education and sustenance, apart from making provision for them to live a dignified life.

12. Sri M. C. Chaturvedi, Chief Standing Counsel, appearing for the State-respondents contended that the State has accepted the report of the District Judge dated 23rd June, 2008 and has taken action accordingly. He, however, submitted that S.K. Awasthi quarrelled with the other prisoners. He further submitted that there was no injury till 8th May, 2008 and he was transferred to separate cell due to his own conduct. He submitted that behaviour of S.K. Awasthi was not normal and he died due to acute renal failure. He submitted that forehead injury was noted for the first time in S.R.N. Hospital. Learned Chief Standing Counsel took us to various paragraphs of the report of District Judge dated 23rd June, 2008. He contended that injury was sustained by S.K. Awasthi himself since he was not mentally balanced. No misbehaviour was shown by the jail authorities and S.K. Awasthi was chained in the hospital due to circumstances. For the first time injury on the forehead was detected on 12th May, 2008 and earlier there was no injury on forehead or any part of his head. Learned Counsel contended that head injury was received in S.R.N. Hospital which was noticed only on 12th May, 2008 for the first time. On 8th May, 2008 he had no apparent injury either on his forehead or on any other part of his head. No injury was noted when he was brought in the High Court on 8th May, 2008 to be produced before the Court. The criminal contempt court could not restrain itself from punishing S.K. Awasthi of criminal contempt due to his

behaviour.

13. Learned Counsel for both the parties have relied on various judgments of the Apex Court and other Courts, which shall be referred and discussed hereinafter while considering the submissions in detail.

14. As noticed above, this Court in its order dated 25th July, 2008 passed in this writ petition did not issue any notice to respondents No. 5 to 21 observing that issuance of notice is dependent on the response of the State as to whether the State is accepting the reports of the District Judge in totality or in part. In the counter-affidavit filed on behalf of the State, as noticed above, final report of the District Judge dated 23rd June, 2008 has not been challenged, rather the State has acted on the basis of the said report and initiated disciplinary proceedings against the employees and officers of the Central Jail, Naini. The report of the District Judge has been accepted and the jail authorities have proceeded against the private respondents, who have been arrayed in the writ petition. In view of the above, it was not necessary to issue notices to respondents No. 5 to 21 in this writ petition, hence this Court did not issue any notice to private respondents because of the fact that State has already proceeded departmentally against them and has taken certain action. We also notice that, first information reports have also been lodged in which, as stated in the supplementary counter affidavits, the investigation has been transferred to C.B. C.I.D., which is pending. The report of the District judge having not been challenged by the State-respondents and counsel for both the parties having relied on the same very report, we have proceeded to decide this writ petition on the basis of the report of the District Judge and the affidavits of the parties filed in this writ petition.

15. The District Judge has submitted a detail report dated 23rd June, 2008. The report itself noticed that the District Judge was to hold an inquiry to find out (a) as to under what circumstances the death of S.K. Awasthi has been caused, (b) whether S.K. Awasthi during his confinement in jail was manhandled or ill-treated either by the jail authorities or by the jail mates, and (c) what was the reason for shifting him to the hospital and keeping him chained during medical treatment. The learned District Judge recorded the statement of as many as 52 witnesses including the jail authorities, certain prisoners, doctors of S.R.N. Hospital and members of the medical board, who did the postmortem examination of the dead body of the deceased. After noticing all materials on record including the statement of 52 witnesses, documents filed before the District Judge, bed head ticket of the deceased, reports submitted by the doctors and other documents, findings have been recorded by the District Judge in sub heads, namely, cause of the death, assault and torture inside the Jail, lapse, if any, in providing treatment and Handcuffing and chaining in the hospital. It is relevant to note the final conclusion recorded by the District Judge in the report after considering all aspect of the matter, which is as follows:

Final Conclusions

(1) The cause of death of Sri S.K. Awasthi, advocate was due to Comma as a result of ante-mortem head injury No, 7, and Septicaemia which developed on account of presence of pus pockets in both the lungs due to infection. The head injury No. 7 was caused with some external force and not due to any disease.

(2) Sri S.K. Awasthi, advocate was assaulted and ill-treated on 2.5.2008 in Circle No. 4 of the Central Jail, Naini by Bandi Rakchhak Sri Chandra Shekher but he was not sent to the Jail Hospital either for treatment or for medico legal examination on 2.5.2008. Bandi Rakchhak Sri Chandra Shekhar concealed the incident of assault and torture in his report prepared on the History Ticket.

(3) Neither the Deputy Jailer Sri R.S. Yadav nor the Senior Superintendent, Central Jail, Naini, Sri S.K. Sharma, required physical production of Sri S.K. Awasthi, advocate on receiving the report of Bandi Rakchhak Chandra Shekhar. They did not even go to Circle No. 4 to know the viewpoints of Sri S.K. Awasthi advocate in regard to the reported incident and also to ascertain the truth.

(4) The Senior Superintendent, Central Jail, Naini did not provide any opportunity to Sri S.K. Awasthi advocate to place his view points before passing the order dated 2.5.2008 for his separate confinement and thus violated the concept of just and fair procedure enshrined in Article 21 of the Constitution of India.

(5) Sri S.K. Awasthi advocate was again subjected to assault and torture in Circle No. 1, Barrack No. 4, Cell No. 6, during the period of his separate confinement in the said cell, consequently, Sri Awasthi was inflicted ante mortem head injury No. 1 and the fatal ante-mortem head injury No. 7 on any day after 8th or 9th May, 2008 or any time within two or three days prior to his death. The jail authorities as also Jail doctors tried at their level best to conceal both the above head injuries.

(6) The Senior Superintendent, Central Jail, Naini, the Jailer, the Deputy Jailer Sri Shivji Singh Yadav, and other jail employees posted in Barrack No. 4 of Circle No. 1 on 8-9 May, 2008, are being held responsible for the assault and torture given to Sri Awasthi in that Circle and also for infliction of both the head injuries.

(7) Jail Doctor Sri Ram Gopal Verma prepared fake and fabricated injury report dated 6.5.2008 relating to the alleged injuries of Sri S.K. Awasthi advocate with the object of creating confusion and complication in the matter and also for giving undue protection to the erring jail authorities.

(8) Sri S.K. Awasthi advocate was falsely shown to have been admitted in the jail hospital on 6.5.2008 at about 6.30 p.m. and Dr. Ram Gopal Verma prepared a false and fictitious Bed Head Ticket and other medical papers to show that Sri Awasthi had been admitted in the jail hospital on 6.5.2008. He did so in connivance with the erring jail authorities to give them undue protection.

(9) The jail doctors as well as the Senior Superintendent, Central Jail, Naini and the Jailer did not promptly refer Sri S.K. Awasthi, advocate to S.R.N. Hospital for expert opinion and treatment and delayed the matter of his reference for about

two days without any justification.

(10) Sri S.K. Awasthi advocate was sent to the S.R.N. Hospital in the chained condition, and his hands had been tied to the bed with a rope and also his legs had been tied to the bed with a chain throughout the period he remained hospitalised in the S.R.N. Hospital, which was in violation of para 798 (b) of the U. P. Jail Manual, Article 21 of the Constitution of India and various decisions of the Hon"ble Supreme Court. The Senior Superintendent, Central Jail, Naini, the Jailer Sri Shobh Nath Yadav, Deputy Jailers Suresh Kumar Maurya, Shivji Singh Yadav and Ravi Kant and Bandi Rakchhaks Subhash Chandra Maurya, Vijai Singh, Surendra Pratap, Krishna Bihari, Akhilesh Dwivedi, Ram Naresh Yadav, Suresh Chandra Tiwari, Dev Nath and Surendra Kumar Patel are responsible for such handcuffing and chaining.

(11) Sri S.K. Awasthi advocate was neither handcuffed nor chained nor fettered in any way at the time of his production before the Joint Registrar (Criminal) of the Hon"ble High Court on 8.5.2008 and was also not escorted in the handcuffed and chained condition from the Central Jail, Naini to the Hon"ble High Court and also from the Hon"ble High Court back to the Central Jail, Naini.

(12) Sri S.K. Awasthi advocate had no external injury on his head or forehead, and was also not found, by the Doctors of the Hon"ble High Court dispensary, clinically abnormal or unfit at the time of his production before the Joint Registrar (Criminal) of the Hon"ble High Court on 8.5.2008.

16. The findings recorded by the District Judge in his report prove beyond any doubt that S.K. Awasthi received injuries during the period when he was detained in the Jail, specially injury No. 7 as noted in the post-mortem report, which was one of the causes of death of S.K. Awasthi.

17. Learned Chief Standing Counsel sought to contend that S.K. Awasthi did not receive any injury till he was in jail and he received injury only in S.R.N. Hospital when for the first time injury of forehead was noticed. Learned Chief Standing Counsel has while referring to paragraph 47 of the report of the District Judge, contended that one injury on the left eyebrow of S.K. Awasthi was noticed by the doctor when he was admitted in the S.R.N. Hospital on 12th May, 2008. He further submitted that on 8th May, 2008 when Sri S.K. Awasthi was brought in the High Court in ambulance, he was examined and no injury was noticed in the report, which was recorded in the order-sheet of the case. Referring to paragraph 60 of the report, it has been contended that on 8th May, 2008 he had no injury on his forehead or any other part of his head and the contention that he received injury during his solitary confinement on 8th or 9th May, 2008 is absolutely incorrect.

18. We have examined the above submission of learned Chief Standing Counsel and has perused the entire report of the District Judge. The District Judge has considered the entire evidence and with regard to injury No. 7, which was head injury, finding has been recorded that the said ante-mortem injury was caused

on any day after 8th or 9th May, 2008. The post-mortem, which was conducted by a team of three experienced doctors has been relied by the learned District Judge. The cause of death as opined by the team of the doctors has been taken into consideration by the District Judge. The learned District Judge in paragraph 64 of the report has stated as follows:

64. I, therefore, hold that the cause of death of the deceased Sri S.K. Awasthi was due to coma as a result of ante mortem head injury (injury No. 7) coupled with the septicaemia, which occurred on account of presence of pus pockets in both the lungs of the deceased due to infection. The head injury No. 7 was caused with some external force and not due to any disease. The symptoms of, altered sensorium, unconsciousness, fever and renal failure could be due to septicaemia, which developed on account of infection and presence of pus pockets in both the lungs.

19. The District Judge has discussed under the sub-head "assault and torture inside the jail". A categorical finding has been recorded that S.K. Awasthi was assaulted inside Central Jail, Naini during the period of his confinement from 22nd April, 2008 to 10th May, 2008. The Senior Superintendent, Central Jail, S.K. Sharma, in his statement also admitted that S.K. Awasthi has been inflicted injuries during the period of his confinement. After considering the statement of witnesses, following was held in paragraph 65 of the report:

65. ...It may also be mentioned, that in the Bed Head Ticket prepared in the I.C.U. ward of S.R.N. Hospital at the time of admission of Sri S.K. Awasthi from jail one injury on left eyebrow had been noted. When the deceased Sri S.K. Awasthi had no external injuries on his body at the time of his entry in the Central Jail, Naini on 22nd April, 2008 and he did not sustain any injury in the S.R.N. hospital on or after 10th May, 2008, it can be easily inferred that all the ante mortem injuries on the dead body of the deceased Sri S.K. Awasthi including the fatal injury No. 7 were caused inside the Central Jail, Naini during the period of his confinement in the Central Jail, Naini from 22.4.2008 to 10.5.2008. It may also be mentioned that the Senior Superintendent, Central Jail, Naini, Sri S.K. Sharma has very clearly admitted that Sri S.K. Awasthi, advocate had been inflicted injuries during the period of his confinement, in the Central Jail, Naini, and all efforts were made at the level of Circle Officer to conceal this fact, and when the condition of the prisoner became serious, then and then alone, he was sent to the jail hospital....

20. The fact of handcuffing and chaining in the hospital has also been dealt with in detail by the learned District Judge. The learned District Judge has opined that in chaining, handcuffing and putting fetter on a patient, who was admitted in the hospital is clear violation of Para 798 (b) of the U.P. Jail Manual. The findings of the District Judge are in paragraph 81 of the report, which are to the following effect:

81. In view of the aforesaid reasons, it is fully established that Sri S.K. Awasthi

was brought from the Central Jail, Naini to S.R.N. Hospital on 10.5.2008 in the chained condition and was got admitted in the I.C.U. Ward of the said hospital in that condition. His hand had been tied to the bed with help of a rope and his legs had been tied to the bed with the help of a chain during the period he remained in the I.C.U. Ward of the S.R.N. Hospital. There was no justification at all to use rope and chain for tying hands and legs of Sri Awasthi in the aforesaid manner. This act was contrary to the provisions of Para 798 (b) of the U.P. Jail Manual, which provides neither handcuff nor fetter shall be imposed on a bed ridden prisoner whether in the Jail hospital or in Civil hospital, except with the direction of the Medical Officer incharge of the hospital for reasons to be recorded in writing. In view of this total prohibition of use of fetter and handcuff in Jail hospital and Civil hospital, use of chain and rope for tying the hands and the legs of the deceased S.K. Awasthi in the S.R.N. Hospital was not only contrary" to law but also a serious restriction on the personal liberty of the concerned prisoner and was even against the human dignity. The act of handcuffing and chaining of the concerned prisoner cannot be said to be in the interest of security and safety, especially when the prisoner was seriously ill and had been bed ridden.

21. The submission of learned Chief Standing Counsel that S.K. Awasthi did not receive injury while he was confined to Central Jail, Naini till 10th May, 2008 cannot be accepted. Categorical findings have been recorded by the District Judge based on the materials on record including the oral statement that S.K. Awasthi received injuries including injury No. 7, which ultimately proved to be fatal. The U.P. Jail Manual in detail provides for rules and regulations for the procedure and manner in which a convict is to be kept in jail. Ample protection with regard to every aspect of a convict has been elaborately dealt with in the U.P. Jail Manual and no reason of grievance can arise if the provisions of the U.P. Jail Manual are faithfully followed by the jail "authorities. The present is a case where the jail authorities have failed to protect S.K. Awasthi while being in jail. A person in custody of jail authorities is in their care and protection and in the manner S.K. Awasthi was dealt, as has been found by the District Judge in his report, deserve stern deprecation and condemnation. An advocate who is supposed to uphold dignity of law has been dealt in such a manner, what may be the manner in which common persons are dealt with, is easy to comprehend. The submission of learned Chief Standing Counsel that S.K. Awasthi was not in a fit mental condition and was not behaving normally during his stay in Jail does not in any manner help the respondents. No report was submitted by the jail authorities to Chief Judicial Magistrate or to this Court regarding mental illness, if any, of S.K. Awasthi nor any treatment in that regard was given. Chapter 20 of the U. P. Jail Manual contains detail provisions with regard to mental patients. Paragraph 488 of the U. P. Jail Manual clearly provides that mental patients have to be kept separate from other prisoners. None of the procedure and provisions as required in the U. P. Jail Manual has been followed and it is not open for the respondents to shirk from their responsibilities to protect the life of S.K. Awasthi and take an uncertified plea that S.K. Awasthi was not normal in his behaviour.

22. The petitioner in this writ petition has claimed mainly three reliefs first relief being for a direction commanding respondent No. 1 to punish the erring jail authorities for being neglectful in their duties and violation of the provisions of Jail Manual, Police Regulation, Human Rights guaranteed under the Constitution of India, second for a direction to the respondents to initiate appropriate departmental proceeding and to award deterrent punishment to the erring jail and other administrative authorities and the third relief is for awarding exemplary compensation to the deceased-detenu's family for their survival and scheme for their rehabilitation.

23. Insofar as Relief Nos. 1 and 2 are concerned, in the counter affidavit and the supplementary counter affidavit details of disciplinary proceedings initiated against the jail employees and officers have been brought on the record, It has been noticed above that five Bandi Rakshaks, one Jailer, three Deputy Jailers have already been punished in the disciplinary inquiry after having been found guilty and with regard to certain other employees and officers departmental proceedings are still pending. The State-respondents having already proceeded with the jail employees and officers and having awarded punishment to certain employees and officers, it is not necessary in this writ petition to Issue any direction in that regard. Moreso, the punishment awarded to the Jail employees and officers or any of the proceedings initiated against those officers and employees are not subject-matter of consideration in this writ petition. We, however, only observe that the State having proceeded against the employees and officers, all proceedings may be brought to its logical end at the earliest possible so that punishment to the erring officers may be a lesson for others and any lapse on the part of the Jail Officers and authorities may not go unnoticed and whosoever transgress the rights of an individual guaranteed under Part-III of the Constitution of India be punished accordingly.

24. Now remains the relief of compensation to the heirs of deceased S.K. Awasthi on account of custodial death. Before we proceed to consider the above prayer of the petitioner, it is necessary to refer to various decisions cited by the learned Counsel for the parties in this regard.

25. Learned Counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, State of Madhya Pradesh v. Syamsunder Trivedi and Ors. JT 1995 (5) SC 445 ; Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, D.K. Basu v. State of West Bengal AIR 1992 SC 610; Sube Singh v. State of Haryana and Ors. LVI 2006 ACC 873: 2006 (1) ACR 703 (SC) and Bandhua Mukti Morcha Vs. Union of India (UOI) and Others,

26. Learned Chief Standing Counsel has referred to the judgments of the Apex Court in Priti Thapar Vs. State of Punjab and Others, Inder Singh Vs. State of Punjab and others, Arvinder Singh Bagga Vs. State of U.P. and Others, Vinesh Pundir v. State of U.P. and Ors. (2002) 9 SCC 500 : 2000 (3) AWC 2499 (SC); Pratul Kumar Sinha v. State of Bihar and Anr. 1994 Supp. (32) SCC 100 and

State of Maharashtra Vs. Christian Community Welfare Council of India and Another,

27. Learned Counsel for both the parties have referred to and relied upon the judgment of the Apex Court in Nilabati Behera's case (supra). Nilabati Behera's case (supra) was also a case of custodial death. The son of Nilabati Behera was taken in police custody on 1.12.1987 at 8 a.m. and his dead body was found near railway track on the next date at 2 p.m. A letter was written by Nilabati Behera, the mother of the deceased, which was treated as a writ petition under Article 32 of the Constitution of India. The Apex Court considered the issue of claim of monetary compensation in proceedings under Article 32 or Article 226 of the Constitution of India and its various aspects. The Apex Court observed that although the remedy for, appropriate compensation can be availed as a private law remedy but the Court can grant compensation for deprivation of fundamental rights in proceedings under Article 32 or Article 226 of the Constitution. After considering the earlier judgments, following was laid down in paragraphs 16 and 18 of the said judgment:

16. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to the remedy of private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah Vs. State of Bihar and Another, and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. 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 Bhopal Gas case, with regard to the Court's power to grant relief.

28. Dr. Justice Anand while giving concurring judgment made following observations in paragraphs 31 and 33, which are as under:

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

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery by declarations, injunctions and actions for negligence. This is not the task 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 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 citizen that they live under a legal system which aims to protect then interests and preserve then 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 panalising 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.

29. Another judgment relied by learned Counsel for the parties is in Arvinder Singh Bagga's case (supra). The Apex Court in the said case reiterated the same proposition as laid down in Nilabati Behera's case (supra) In the said case the police atrocities committed were held to be violative of rights guaranteed under Article 21 of the Constitution of India. While directing the State to pay compensation, it was further left open to the State to recover the amount personally from the concerned police officers. Paragraph 8 of the said judgment is quoted below:

8. On a perusal of all the above, we are really pained to note that such things should happen in a country which is still governed by the rule of law. We cannot but express our strong displeasure and disapproval of the conduct of the concerned police officers. Therefore, we issue the following directions:

1. The State of Uttar Pradesh will take immediate steps to launch prosecution against all the police officers involved in this sordid affair.
2. The State shall pay a compensation of As. 10,000 to Nidhi, Rs. 10,000 to Charanjit Singh Bagga and Rs. 5,000 to each of the other persons who were illegally detained and humiliated for no fault of theirs. Time for making payment will be three months from the date of this Judgment. Upon such payment it will be open to the State to recover personally the amount of compensation from the concerned police officers.

30. The judgment relied by the learned Chief Standing Counsel in Vinesh Pundir's case (supra) was a case where in petition under Article 32 of the Constitution of India report was called by the Supreme Court from the District

Judge on police atrocities. The District Judge in his report opined that there was a possibility that Sub-Inspector alongwith constables might have visited the village and they have assaulted the husband of the petitioner. In facts of the said case, the Apex Court permitted initiation of criminal action. The said case was on its own facts as the report of the District Judge had not categorically recorded findings whereas in the present case there is categorical findings of the District Judge considering all aspect of the matter.

31. In the case of *State of Maharashtra v. Christian Community Welfare Council of India* (supra), the Apex Court again observed that compensation directed to be paid by the State can be recovered from the erring officers. In *D.K. Basu's* case (supra) the Apex Court had occasion to consider torture, cruel and inhuman degrading treatment of the arrestee. Custodial violation was also elaborately considered and following was held by the Apex Court in paragraphs 22 and 44 of the said judgment:

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot whisk away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws.

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 wrong doer 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.

32. Sube Singh's case (supra) was a case of illegal detention and custodial torture. The Apex Court in the said case reiterated that in violation of rights guaranteed under Article 21 of the Constitution of India the Court may award compensation in proceedings under Article 32 or 226 of the Constitution of India. The Apex Court in the said judgment also considered the relevant questions, which the Court has to pose to itself while awarding compensation. Following was laid down in paragraphs 38, 45 and 46:

38. It is thus now well-settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation u/s 357 of Code of Criminal Procedure.

45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human right violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. Courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable Police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether, the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his

own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

33. We have examined the facts, pleadings and other materials of the present case in the light of the propositions as laid down by the Apex Court. In view of the proposition laid down by the Apex Court, as noticed above, in proceedings under Article 226 of the Constitution when rights guaranteed under Article 21 of the Constitution of India are violated to the extent, as in the present case, the Court is fully justified to award monetary compensation against the State.

34. Looking this matter in the light of the factors as laid down in paragraph 46 of the judgment in Sube Singh's case (supra), we come to the conclusion that there has been a gross violation of fundamental rights of the deceased and custodial injuries suffered by S.K. Awasthi resulted in his death, which is proved from the medical report submitted by the team of the doctors conducting the postmortem. In the report of the District Judge injuries suffered during custody are fully supported by the medical reports, the visible marks of injury as noticed in the post-mortem report and injuries as recorded in the Bed Head Ticket of S.K. Awasthi while he was admitted in Central Jail, Naini as well as in the S.R.N. Hospital. Apart from inflicting injuries during custody S.K. Awasthi was also inhumanly treated by tying him with iron chain while he was admitted in the hospital, which is found proved in the report. Apart from violation of paragraph 798 of the U.P. Jail Manual, the said acts of the respondents are also in contravention of the directions issued by the Apex Court in different cases. The grant of compensation is not only with the object of compensating the heirs of deceased, who have lost the sole bread earner, rather grant of compensation is also with the object of giving a message to public authorities, who are entrusted to protect the life and liberty of prisoners that the lapses on their part shall be dealt sternly. This Court has to come forward to vindicate the most precious of the precious fundamental rights that is life and personal liberty. The nature and object of this petition is altogether different from that of a criminal action, which may be taken against a particular police officer/jail authority. We are fully satisfied that in the present case the violation of fundamental rights guaranteed under Article 21 of the Constitution of India are fully proved and the State is liable to compensate the heirs of S.K. Awasthi. We are also of the view that compensation to be awarded in the present case has to be exemplary to remind the State of its obligations and duties with regard to every citizen of the country.

35. The submission of learned Counsel for the petitioner is that direction be issued to the State Government to give employment to the widow of the deceased. He submits that Advocate General of the State has initially stated before the Court that the claim of the petitioner for providing compassionate

appointment shall be considered. As noticed above, the State Government has issued letter dated 22nd October, 2008 addressed to the Inspector General, Jail Administration and Reforms Service, U.P., Lucknow informing that since the deceased was not a Government servant the provisions of U.P. Recruitment of Dependents of Government Servants (Dying-in-Harness) Rules, 1974 are not applicable and the wife of the deceased cannot be employed by the State. The State Government thus has come with categorical case that deceased being not a Government servant compassionate appointment cannot be given. The rules applicable for providing employment by the State on compassionate ground is 1974 Rules and the deceased being not an employee of the State, Rules are clearly not applicable. All post in the State are public posts, which are required to be filled up in accordance with the recruitment rules, any deviation or violation in the procedure of recruitment shall be violation of rights under Articles 14 and 16 of the Constitution of India. Learned Counsel for the petitioner has not been able to place any precedent in which by way of compensation a direction has been issued by this Court in exercise of jurisdiction under Article 226 of the Constitution providing for employment to heir of the deceased. The Apex Court in its judgment, referred to above, even in cases of custodial death, has awarded monetary compensation to the heirs of deceased. We are of the view that State having issued a letter clearly rejecting the claim for giving compassionate appointment to the wife of deceased, no direction can be issued to the State to provide for an employment to the wife of deceased. In case of custodial death, the heirs have been compensated by awarding monetary compensation, the same principle is to be followed in the present case also. For the reasons, as noticed above, present is a case where the State has to pay an exemplary compensation looking to the facts and circumstances of the case. The State is duty bound to protect - the fundamental rights of every person including a person lodged in prison, any violation of fundamental rules as has been done in the present case has to be severely dealt with.

36. In the result, the writ petition is allowed with the following directions:

(i) The respondent No. 1 is directed to pay compensation of Rs. 5,00,000 to the wife and two daughters of S.K. Awasthi. The State shall deposit the amount of Rs. 5,00,000 within one month from today in the account of wife of the deceased. This shall be in addition to the interim compensation awarded in Writ Petition (PIL) No. 24611 of 2008.

(ii) The respondents No. 1 to 4 are directed to conclude the disciplinary proceedings against the employees and officers of Central Jail, Naini expeditiously, preferably within a period of four months from today, and file a copy of the action taken report with the Registrar General of this Court within three weeks thereafter.

(iii) It shall be open for the State to recover the amount of compensation from the erring employees and officials of the Central Jail, Naini.