
(2002) 02 BOM CK 0033
In the Bombay High Court
Case No : Criminal W.P. No. 478 of 1994

Shahnaz Begum

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Arms Act, 1959 — Section 25(1)(1), 25(4)
Constitution of India, 1950 — Article 21, 22, 22(1)
Criminal Procedure Code, 1973 (CrPC) — Section 174
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 5

Citation : (2003) 2 BomCR 215 : (2002) 4 MhLj 37

Hon'ble Judges : S.S. Parkar, J;D.S. Zoting, J

Bench : Division Bench

Advocate : S.S. Jadhav, for the Appellant; N.N. Jadhav, Assistant Public Prosecutor For respondent Nos. 1 to 3 and K.B. Choudhari, A.S.C., for the Respondent

Judgement

S.S. Parkar, J.—This is one more case of custodial death of an accused while in police custody. The petitioner, who is wife of the deceased aged 32 years and who died in police custody, has filed this writ petition seeking directions of this Court for thorough and detailed investigation by C.B.I, for the death during police custody and for payment of compensation to her and to her children which the deceased had left.

2. Deceased Syed Mushtaq was arrested on 30-10-1994 by the City Chowk Police, Aurangabad and found dead on the night between 8th and 9th November 1994 in the Kranti Chowk Police Station lock up in the city of Aurangabad. After his arrest, he was produced before the Magistrate on the following day i.e. 31-10-1994 and remand was obtained upto 14-11-1994. In the morning of 9th November 1994, it was noticed that the deceased was found tied to iron gate of the lock up cell by a shirt in standing position. During the course of 10 days when the deceased was in the police custody, he was taken to various places including his own parental house on 5-11-1994 as well as 8th of November 1994.

On 8-11-1994 he was taken to Osmanpura Police Station Chowki for interrogation and in the evening he was brought back to Kranti Chowk Police Station lock up. The police had registered it as an Accidental Death Case No. 57/94. The Sub-Divisional Magistrate comes on the scene at about 8 a.m. and draws inquest panchanama. As per the said inquest panchanama, the deceased was found tied with a shirt to the door of the cell in which he was imprisoned along with other 10 prisoners. The height of the deceased is shown to be 5 feet 6 inches while the height of the door is shown to be 5 feet 10 inches. The said panchanama also records that the head of the deceased was 6 inches above the height of the gate itself. In the inquest panchanama, it is mentioned that index finger and other fingers of the legs of the deceased were under bandage from which puss and blood was coming out. At the time of inquest panchanama, the clotting of blood was also noticed on the stomach and thigh of the deceased. The private part of the deceased also appeared to be swollen and stiff. The dead body was sent for post mortem examination to Government Medical College Hospital, Aurangabad. As per the post mortem report, following 5 external injuries were noticed as mentioned in column No. 17 :

1. Ligature mark over neck 28 cms. x 1 cm. to 1.5 cms. Over the upper part of thyroid cartilage arterially directed obliquely upwards and backwards at both sides of neck and incomplete posteriorly. It is just behind lobule of right ear, 7 cms. below chin and 8 cms. below left lobule of ear. Ligature mark abraded in front and left side of neck. Brownish in colour.

On dissection -- Skin parchment like at the ligature mark, subcutaneous tissue pal, glistening white beneath the ligature mark. No e/o haemorrhage in muscle/tissue of neck. Fracture of left superior horn of thyroid cartilage with hemorrhages at that side.

2. Two oblique brownish marks over right shoulder laterally 16 cms. x 1.50 cms. and, 16 cms. x 0.5 cms. Parallel to each other with 0.5 cms. Intervening normal area. On dissection no e/o haemorrhage in deeper tissue.

3. Brawnish mark over Rt. shoulder posteriorly of size 7 cms x 2 cms. oblique. On dissection no e/o haemorrhage in deeper issue.

4. Infected wound of 4 cms. diameter at lower 1/3rd of Rt. leg arterially. Oozing of blood and pus on pressure from its center.

5. Infected wound over right 2nd toe at its distal end of size 2 1/2 cms. x 1 1/2 cms. Nail not present.

As per column No. 13 of the post mortem report, neither there was dribbling of saliva (mark) seen nor anything was oozing through mouth, nostrils or ears. As per column No. 14 of the post mortem report there were two dried blood stains over right leg at lower 1/3rd rd. region medially, each of size 7 cms. x 0.5 cms. vertically downward from the injury No. 4 of column No. 17. Seminal stains were seen over left thigh medially. As per column No. 21 of the post mortem report

the cause of death is mentioned as follows :

"Post mortem findings are suggestive of asphyxial death due to hanging. Viscera preserved for chemical analysis."

The post mortem examination took place on 9-11-1994 between 2.30 p.m. to 5.00 p.m. Column 5 of the post mortem report shows that as per inquest by Sub-Divisional Magistrate, death had taken place in police custody due to hanging.

3. In support of the petition, number of affidavits have been filed of the persons from the locality including brother of the deceased who saw the deceased . being paraded in the streets of Aurangabad city by the police in handcuffed condition with his legs in iron chains. The Constables accompanying him were having hockey sticks and iron pipes in their hands which were used to assault him while he was being paraded. Some of the deponents of the affidavits also attributed words to the particular Constable by name Gokul who had said to the deceased during the course of the parade on the street "Mushtaq, you have become hero. How much public has come to see you." He is also alleged to have said to the deceased that "do not look here and there. Look straight while walking. You are walking like a hero." It is also stated in those affidavits that nails of few fingers of the feet of the deceased were removed and there was bleeding.

4. One deponent of such affidavits is Syed Aref, the brother of the deceased. According to him, on 7-11-1994 when he had gone to the Prison to obtain signature of one prisoner Sajju on Vakalatnama, one police constable told him that deceased was beaten mercilessly by the police and it was feared that he would die. In another affidavit, he has also stated that on 5-11-1994 at about 2 p.m. deceased Syed Mushtaq was taken through public garden at Shahganj when he was handcuffed and was under fetters. He further states in his affidavit that when deceased Syed Mushtaq was brought to their house for the purpose of search, police told his mother to see the deceased for the last time and thereafter, she will see his dead body only.

5. It was also mentioned in the petition that in the lock up room of Kranti Chowk police station where the deceased was imprisoned, some changes were carried out by re plastering and painting of the walls as well as door of the cell. Annexed with the petition at Exhibit F are the photographs of the dead body of the deceased showing the-injuries on various parts of the body. Exhibit E annexed to the petition is Xerox copy of the cutting of the newspaper showing photograph of the dead body of the deceased Syed Mushtaq tied to the door of the lock up, which had appeared that time in Marathi newspaper "Tarun Bharat".

6. When this petition was filed in this Court, Shri. M. S. Lohiya, then Asstt. Commissioner of Police (Administration), Aurangabad, filed affidavit dated 13-12-1994 stating therein that he was not filing affidavit on merits at that stage because the matter was under investigation of the State C.I.D. (Crime Branch). According to the said affidavit, investigation was handed over to State C.I.D. on 9-11-1994. As regards colouring of the police station, it is stated that the

proposal was sent for the colouring of Kranti Chowk Police Station building in the month of July 1994 and the walls of the lock-up were not plastered but only painted. It was also averred in the said affidavit that the matter is under investigation by the State C.I.D. and if the investigation changes its hand, it may create suspicion in the mind of the general public at large and the image of the police department will deteriorate in the mind of the public at large. Thereafter, the Rule was issued by this Court on January 11, 1995 with a direction to the Addl. Public Prosecutor to ensure that C.I.D. prepares necessary report on the basis of the investigation that is being carried out and the learned Additional Public Prosecutor, after obtaining instructions from the Inspector Mr. Gurjar, stated that the investigation would be completed within two weeks from that date. On the basis of that statement, the Addl. Public Prosecutor was directed to file the entire investigation papers along with the report within three weeks from 11th January 1995.

7. We are having papers of the investigation which was carried out by the C.I.D. After the said investigation, reply affidavit dated 13-11-1997 came to be filed by Madhav Gurjar. As per the said reply, deceased was arrested on 30-10-1994 at 15 hrs. in Harsool area by P.S.I. V. R. Saraf, Special Squad, Aurangabad. Thereafter, he was produced before the Magistrate on 31-10-1994 and police custody was obtained till 14-11-1994. Subsequently, alleged crime No. 11-90/94 was registered in City chowk police station, Aurangabad u/s 25(1){1}, (4) of the Indian Arms Act and u/s 5 of the T.A.D.A. Act. The investigation was handed over to M.S. Lohiya, Asstt. Commissioner of Police. In the early hours of 9-11-1994 between 3 and 6 a.m. it was found that the deceased had died due to hanging. The report was filed by head constable Jadhav as Accidental Death bearing No. 57/94 and registered at 7.15 hrs. u/s 174 of Criminal Procedure Code and immediately, investigation was started commencing with the inquest panchanama prepared by Sub Divisional Magistrate, Aurangabad. It is further stated by the deponent Madhav Gurjar in his affidavit that at that time he was working as Police Inspector in the State C.I.D. (Crime) and was directed to investigate into custodial death by Order dated 24-11-1994 issued by Addl. Director General, State C.I.D., M.S., Pune. He further stated that after holding inquiry, he had submitted a detailed report dated 16-5-1995 in the Office of the Sub-Divisional Magistrate for granting accidental summary which was pending before the learned Sub-Divisional Magistrate and the decision thereon was awaited even on 13-11-1997 when this affidavit was affirmed.

8. It is admitted that after obtaining the police remand, the deceased was kept in the lock-up of Kranti Chowk Police Station. It is mentioned that the deceased was involved in various cases. It is admitted in para 17 of the affidavit that the deceased was taken to his own residence on 5-11-1994 for taking search of his two absconding colleagues denying only that the petitioner was taken in procession and was assaulted on the way. There is no denial that the deceased was handcuffed or his feet were under fetters. In support of the stand of the police that the deceased had committed suicide, police inspector who held

inquiry, states in para 20 of his reply affidavit that stolen silver and gold articles were sold by him at Hyderabad to one Surajbhan and that he was known as Saleem Nawab at Hyderabad, and therefore, he requested the police not to take him to Hyderabad as his prestige would go down there and the deceased had committed suicide under the apprehension that he would be taken by the police authorities to Hyderabad. Trying to explain the injuries found on the fingers of the foot of the deceased, it is stated in para 21 of the reply affidavit that at the time of his arrest, deceased while running away fell down, for which immediate treatment was given to him in Government Medical College at Aurangabad and the injuries were old injuries. As regards non-obtaining of finger prints of the dead body, it is sought to be explained in para 26 of the affidavit that finger prints are taken when the dead body is not identified which is not the case here.

9. Similarly, as regards photographs annexed to the petition, it is stated in para 27 of the reply that they were taken after the post mortem examination and the injuries seen in the photographs of the dead body had occurred at the time of holding post mortem examination on the dead body. It is further stated that deceased was handcuffed as he was known Goonda and there was every possibility of his running away from the police custody.

10. We have heard both sides. Learned Advocate for the petitioner Mrs. Jadhav took us through the petition, it's annexures, reply affidavits and also the relevant statements recorded by the C.I.D. during the C.I.D. inquiry and also cited some judgments of this Court and the Supreme Court. She contended that this is a clear case of homicidal death of the deceased during his police custody and the same was tried to be hushed up by holding inquiry by the police department itself in which stereo-typed statements of various persons are recorded.

11. On the other hand, learned Addl. Public Prosecutor, appearing for the respondent Nos. 1 to 3, contended that this Court cannot draw inferences but has to go by the record in the form of the statements recorded by the C.I.D. and reply affidavit which show that this was a case of suicide which must be accented by the Court. He also relies on the post mortem report with regard to the cause of death only and says that cause of death is shown to be asphyxial death due to hanging and, therefore, this Court must hold that it was a case of suicide. He also relied on the affidavit of the Police Inspector and submitted that what is stated in the said affidavit should be accepted by this Court and dismiss the petition. Referring to the involvement of the deceased in previous cases, it was contended that petitioner's case should not be accepted.

12. From the facts which are narrated above and the circumstances which have been brought on record before us, it is quite clear and obvious that the death of the deceased could not have been the result of suicide allegedly committed by the deceased as contended by the respondents. The way the dead body was tied to the door as appearing in photograph at Exhibit "E" as well as the contents of the inquest panchanama on which reliance is placed by the respondents,

completely and absolutely negative the theory of suicidal death put up by the police. The height of the door to which the deceased was tied was 5' 10" as stated in the spot and inquest panchanama which was prepared by the Sub-Divisional Magistrate who had come on the scene of offence at the instance of the police. That panchanama further shows that the height of the deceased was 5' 6" and the body was hanging in such a way, that his head was according to the said panchanama, 6 inches above the top portion of the door of the lock-up. It is impossible to visualize the situation that the deceased or any other person in his place could ever have been able to hang or tie himself to the said door. To appreciate this, one has only to see the photograph of deceased tied to the door, annexed at Exhibit E to this petition, consider the height of the door and the deceased and the situation of the dead body mentioned in inquest panchanama drawn by the Sub-Divisional Magistrate and the injuries which were found on the dead body as per the post mortem report. As per the post mortem report, there are enough signs of torture to which deceased was put to in previous 10 days during which deceased was admittedly in the police custody. Even the inquest panchanama is obviously not prepared correctly or honestly, which makes mention only of few injuries on the dead body and not all the injuries mentioned in the post mortem notes and are clearly visible in photographs at Exhibit "F" to the petition. Admittedly, upper portion of the body of the deceased was naked when he was found tied to the door of the lock-up when the Sub Divisional Magistrate went there for drawing inquest and spot panchanama. Two injuries on the right shoulder measuring 16 cms. x 1.5 cms. and 16 cm. x 0.5 cms. were not mentioned in the inquest panchanama drawn by Sub-Divisional Magistrate. He was obviously hand in glove with the police and was trying to protect the police. Though as per the inquest panchanama the clothes on the dead body were removed with a view to check the injuries on the dead body, it is only injury on the fingers of the foot of the deceased which was sought to be explained in the affidavit of the Police Inspector Gurjar. From the height and the situation of the door and the height of the deceased and the way the dead body was tied to the door, it is obvious that, an attempt was made by the police, to use the words of the Supreme Court in the case of Ajab Singh and Another Vs. State of Uttar Pradesh and Others, , "... .. to pull the wool over the eyes of the Court". From photograph Exhibit "E" no honest person can ever say that the deceased was in hanging position. He was simply tied to the door by person other than the deceased himself. It is impossible for a person to tie oneself to the door the way it appears in exhibit "E" and commit suicide. It is clearly a handiwork of other persons. The ligature marks on the neck of the deceased are undoubtedly indicative of throttling and not of suicide. Surprisingly, even the name of the Sub-Divisional Magistrate who had drawn inquest panchanama is not mentioned either in the said panchanama or in the affidavit of Police Inspector Gurjar who held the C.I.D. inquiry in the matter. It is unfortunate that even Sub Divisional Magistrate did not act honestly in drawing inquest panchanama.

13. It is pointed out in the petition that at the time of arrest of the deceased, he

was wearing white shirt while the shirt which was tied to his neck was different shirt. It is sought to be explained in paragraph 23 of the reply affidavit that the shirt must have been subsequently changed by the deceased. It is pointed to us that the deceased was wearing half "T" shirt at the time of arrest, while the shirt with which he was tied to the door of the lock up was a full shirt. It is surprising that none of the co-prisoners who were 10 in number nor the Constable or Sentry-guard noticed the deceased hanging himself. In the morning, it was first noticed by co-prisoners and thereafter, attention of the Constable on duty was drawn, who, according to inquiry, was sleeping during 3 a.m. to 6 a.m. and was thereafter, suspended and again reinstated. That was the only action which was taken by police authorities, if action it can be called. It was in fact a show of action. The injuries on the body of the deceased including the missing nails of his foot fingers speak loudly and clearly of the torture to which the deceased must have been put before his death. Even the clotting of the blood and semen on the thigh of the deceased as well as the injuries on the soles of both the feet of the deceased are indicative of the torture which the deceased must have been put to before his death. As per inquest panchanama as well as the injury in column No. 15 of the post mortem notes shows that private part or the genital of the deceased was also put to torture. The absence of oozing through mouth, nostrils and ears of the deceased as per the post mortem report column No. 13 is also indicative of the fact that the death must have occurred before the alleged hanging and the dead body was tied to the door of the cell to camouflage hanging of the deceased probably because there was no facility to tie the deceased to the ceiling of the lock-up in which he was imprisoned on that night. It is impossible for a person to commit suicide by hanging himself to the door, description of which is given in the spot and inquest panchanama and demonstrated in the photograph Exhibit E to this petition. Even as per the post mortem report, the injuries on the person of the deceased were ante mortem. It is pertinent to note that according to the police, the hanging was with the help of shirt but the ligature marks on the neck of the deceased are so pronounced which cannot be the result of hanging by tying the shirt around the neck but only if the hanging or tying was with the help of a rough rope.

14. As per the reply affidavit itself, the deceased was first arrested and thereafter the crime was registered against him under the provisions of the Arms Act and the T.A.D.A. Act and in preceding 10 days, he was taken from place to place for the purpose of interrogation and recovery of the weapons from him.

15. It was contended by the learned Addl. Public Prosecutor that if the deceased had been tortured or murdered by the police, co-prisoners would have noticed. It cannot be forgotten that all the co-prisoners had to continue in the custody of the police. None of them was expected to dare to utter a word against the police. The alleged C.I.D. inquiry about the death of the deceased was nothing but Police policing the police. It was absolutely sham and an attempt to pull wool over the eyes of the public. Statements of the co-prisoners are stereotyped and do not inspire confidence when they plead ignorance about the death of the their

co-prisoner.

16. Significantly, none of the prisoners has stated that the deceased was nervous or had expressed anguish that night or on the earlier day or any time before that which would drive the deceased to commit the suicide, as sought to be projected by the Police authorities. In fact, one of the co-prisoners Babu Jadhav states in his statement before the C.I.D. that, that night deceased did not take his food, as according to the deceased, vegetable of Brinjal was served in the dinner and the deceased did not eat because according to the deceased, eating of brinjal would have aggravated the wounds on his body. Said Babu Roidas Jadhav admittedly was co-prisoner or inmate of the same cell in which the deceased was confined. This statement of the co-prisoner completely negatives argument advanced by learned Addl. Public Prosecutor that the deceased was nervous as he was to be taken to Hyderabad by the Police for the recovery of stolen articles sold by him where he was called Saleem Nawab and, therefore, he committed suicide. According to the police, the deceased was involved in several offences and was carrying weapons with him and had been arrested under T.A.D.A. It is incredible and unbelievable or at least it does not stand to our reason, in the absence of any other circumstance brought on record, that the deceased was a person of nervous type who would commit suicide due to the fear of lowering his prestige, because he was to be taken to Hyderabad where he was allegedly called Saleem Nawab. In fact, there is no statement of any co-prisoner stating that the deceased was afraid of going to Hyderabad.

17. This is a case where police had tried to hush up their own sins but failed miserably in the face of the aforesaid circumstances which speak loudly about the hand of the police in the death of the deceased. If at all the death was caused by asphyxia, that asphyxia must have been caused due to throttling by the Police by tying him with the shirt or rope from behind to the iron bars of the door of the lock-up and it is not at all a case of hanging.

18. The above facts and circumstances do not leave us in any doubt that the case put up in the respondents' affidavit is nothing but a concocted story. The affidavits as well as the inquiry held by the C.I.D. are, in our opinion, desperate attempts to hide the guilt of the Police.

19. Yet another significant circumstance which is pointed out to us by the petitioner's Counsel is that as per the inquest panchanama, white colour was noticed on the elbows of the deceased which would show that the cell must have been coloured recently before the incident in question. Since, the proposal, as per the respondents' affidavit, was moved for the colouring of the police station in the month of previous July repainting might have been done subsequently to conceal the blood-stains that must have been visible on the walls and door of the lock up. No satisfactory evidence has been brought on record by the respondents to show as to on what date that particular cell was painted. The finding of the blood on the body of the deceased as per the inquest panchanama as well as the medical report would certainly have left some blood stains on the wall or on the

door of the lock-up. Significantly, remand report dated 31-10-1994 has also not been produced nor medical certificate of the hospital for treating the injuries of the deceased on the fingers of his feet allegedly received by him as he tried to run away when the police wanted to arrest him on 30-10-1994, is produced by the respondents.

20. The falsity of the defence put up by the police itself militates against police and speaks volumes about the hand of the police in the death of the deceased Mushtaq. It may not be out of place here to refer to the decision of the Supreme Court wherein the false defence raised by the accused was considered to be a circumstance operating against the accused.

Firstly, in the case of *Geetha Vs. State of Karnataka*, , the accused had denied that the dead body and the articles belonging to the deceased were found from her house. The said denial was found to be false in the facts and circumstances of the case, and, therefore, the Supreme Court held that the false denial of the accused assumed importance and supplied a missing link in the chain of circumstances. Secondly, in the case of *Birbal vs. State of M.P.*, (2000) 10 SCC 212 , there was evidence that the accused and the deceased had gone towards Jungle together and in the evening accused came back alone from the jungle and when asked by the witness, he falsely stated that the deceased would come later on. The dead body was discovered at the instance of the accused. At the trial, in his statement u/s 313 of Criminal Procedure Code, accused stated that he had never gone to the jungle with the deceased and, therefore, was not aware about the whereabouts of the deceased. It was held that the false denial by the accused was an additional link to the chain of circumstances against the accused.

21. If the death of the deceased had occurred admittedly in the police custody which has not at all been satisfactorily explained by the police and if the theory of alleged suicide committed by the deceased obviously is a story falsely concocted by police to save their skin or to avoid their responsibility for their acts committed while the deceased was in their custody, undoubtedly, the State is liable to pay compensation to the petitioner who is the widow and to her four children. What has been observed by the Supreme Court in the case of *Ajab Singh and Another Vs. State of Uttar Pradesh and Others*, about the death of the persons in judicial custody applies more aptly to the instant case where the deceased died in the police custody. It was observed by the Apex Court in para 8 of the judgment as follows:

"We do not appreciate the death of persons in judicial custody. When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody."

22. Learned Advocate appearing for the petitioner relied on a recent decision of the Division Bench of this Court at Nagpur Bench in *Fattuji Dajiba Gedam v. Superintendent of Police, Akola and others* 2002 (1) M.L.J. 273. That was a case

where the death had taken place in the police lock-up and the cause of death was syncope due to sudden cardiac arrest because of multiple injuries. The State authorities had failed to prove how those injuries were suffered by the deceased while the deceased was in police custody. Division Bench of this Court directed the State to pay compensation to the heirs of the deceased and also directed investigation to be held by officer of the rank of D.I.G. Police or above against all those police officers who were on duty at the police station from the period when the deceased was arrested till his death, She also brought to our notice the decision of the Supreme Court in the case of State of Maharashtra and Others Vs. Ravikant S. Patil, where the order of this Court awarding compensation of Rs. 10,000/- for handcuffing the accused was upheld by the Apex Court and directed that the State should pay that compensation to the accused.

23. Custodial violence resorted to by the police and the deaths occurring in the custody due to the police torture was deprecated by the Apex Court time and again. Yet, like the saying "old habits die hard", the cases of custodial death due to Police torture is becoming a frequent phenomenon in our country. In the case of D.K. Basu Vs. State of West Bengal, , it was observed by the Supreme Court as follows :

"Custodial violence, including torture and death in lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by the persons who are supposed to be the protectors of the citizens. It is committed under the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in free society. These petitions raise important issues concerning police powers including whether monetary compensation should be awarded for established infringement of the fundamental rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental."

It was further observed in the said judgment as follows :

"Custodial death is perhaps one of the worst crimes in a civilized 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. The expression "life or personal liberty" in Article 21 includes the right to life with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. The precious right guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. It cannot be said that a citizen "shed off his fundamental right to life the moment a policeman arrests him. Nor can it be said that the right to life of a citizen can be put in "abeyance" on his arrest. Any form of torture or cruel, inhuman or degrading treatment would fall

within the inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government 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 civilized nation can permit that to happen. The Supreme Court as the custodian and protector of the fundamental and the basic human rights of the citizens cannot wish away the problem. The right to interrogate the detenus, culprits or arrestees in the interest of nation, must take precedence over an individual's right to personal liberty. The latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be "right nor just nor fair" and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated-indeed subjected with the provisions of law. He cannot however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons, etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human right of innocent citizens may render him liable to punishment but it cannot justify the violation of his human right except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge."

24. Considering above circumstances and the fact that cases of this kind are on the increase, the number of which is too large to make a mention of the cases of this kind, and if we are to be governed by rule of law, such crimes by those who are supposed to be the protectors of human rights and the rule of law have to be dealt with sternly. The Police cannot be allowed to take the law in their hands. In this case, no doubt, the theory of alleged suicide put up by the police is obviously and palpably false and it would send wrong signals if such cases are not properly investigated and the guilty are not booked only because the incident is of the year 1994 and this Court took so many years to hear this petition, as argued by learned Addl. Public Prosecutor. This is especially so when we are not in doubt that from the facts and circumstances of the case and the false story attempted to be put up by the police, the police alone are responsible for the death of the

deceased while he was in their custody. Such cases cannot be allowed to do uninvestigated and the guilty unpunished. The so called inquiry held by the State C.I.D. does not at all inspire confidence. On the contrary, C.I.D. inquiry has tried to disguise the sins committed by the police while the deceased was in their custody. It is quite appropriate, therefore, that those who are guilty of death of Syed Mushtaq should be booked and prosecuted by the C.B.I, as prayed. The C.B.I. shall register the case and conduct an investigation into the circumstances of Syed Mushtaq's death in police custody on the night between 8th and 9th November 1994 and prosecute those who were responsible for his custodial death.

25. The Central Bureau of Investigation (C.B.I) shall, forthwith appoint an high ranking officer to receive from the respondents all records relating to the arrest and death of Syed Mushtaq. Respondents shall immediately handover such records to such officer. Investigation shall be completed expeditiously and the copy of the investigation report shall be filed in this Court. The Additional Registrar (Judicial) shall forward copy of this judgment and order to the Director, C.B.I

26. As held in several decisions of the Apex Court, the State of Maharashtra is responsible in public law for the death of Syed Mushtaq and, therefore, must pay compensation to the petitioner and children of the deceased Syed Mushtaq as held in the case of D.K. Basu v. State of West Bengal and others (supra). In the facts and circumstances of the case, we feel that it would be appropriate to order State of Maharashtra to pay to the petitioner compensation of Rs. 2 lacs for the death of Syed Mushtaq. The said amount shall be deposited by the State in this Court within six weeks from today. Out of the said amount, a sum of Rs. 50,000/- shall be paid, in cash, by the Additional Registrar of this Court to the petitioner and the balance amount of Rs. 1,50,000/- shall be invested in the fixed deposit in a nationalized bank in the name of the petitioner for the benefit of the children of the deceased during the period of their minority. This direction to pay the compensation is without prejudice to the rights of the legal representatives to claim compensation in private law proceedings, if so entitled in law, against those found responsible for his death.

27. We think it appropriate to direct the State of Maharashtra to take disciplinary proceedings against those who are responsible for the death of Syed Mushtaq and order accordingly.

28. Rule is made absolute in the aforesaid terms. The State of Maharashtra shall pay to the petitioners the cost of this writ petition quantified at Rs. 5,000/-.

We do appreciate the valuable assistance rendered to us so competently by Mrs. Sadhana S. Jadhav, the Counsel for the petitioner.