

**HIGH COURT OF JAMMU & KASHMIR**  
**AT SRINAGAR**

**HCP No.23/2012**

Date of Decision:**03.12.2014**

---

**Sajad Ahmad Dar**

Vs.

**State & ors.**

---

**Coram:-**

*Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge*

---

**Appearing counsel:-**

**For the Petitioner(s):** Mr. M. A. Qayoom.

**For the Respondent(s):** Mr. T. A. Lone, Dy. AG.

---

**1.** In pursuance of impugned order of detention No.53/DMB/PSA2011 dated 20.1.2012, passed by District Magistrate, Baramulla, detenue was detained under J&K Public Safety Act, 1978. Superintendent of Police, Sopore was under direction to get the detenue examined by the Government Medical practitioner of the respective jurisdiction at the time of execution of the warrant and to inform the legal heirs of the detenue about his detention. In pursuance to the said order, detenue had been lodged in District Jail, Kupwara. The detenue was also involved in the case FIR No.331/2011 P/S Sopore under Sections 420, 467 RPC and 10 ULA(P) Act. The detenue when fell ill was referred to SKIMS where he died on 22<sup>nd</sup> March, 2012 at 12.30 PM due to Cardio Pulmonary Arrest.

**2.** It was alleged that there has been negligence in not providing timely treatment to the deceased based on

which District Magistrate, Baramulla, vide his order No.490-DMK/Adm of 2011 dated 22.03.2012 had ordered Magisterial enquiry through Additional District Magistrate, Kupwara.

**3.** The instant petition was filed by the detainee through his father seeking quashment of the detention order No. 53/DMB/PSA2011 dated 20.1.2012. During pendency of the petition it was pointed out that the detainee died for want of medical treatment.

**4.** Vide order dated 3<sup>rd</sup> April, 2012, respondents No.2 and 4 were directed to file status report within one week as to how and under what circumstances the detainee died. The status report has been filed, perusal of which reveals that the detainee was sent to SDH, Kupwara for Ophthalmic check up on 20.03.2012, thereafter was again medically checked up by Dr. Mukhtar of SDH Kupwara in Jail Hospital on 21.03.2012 and the treatment prescribed by the visiting doctor was provided to him, the detainee on the intervening night of 21/22<sup>nd</sup> March, 2012 at 4 AM was sent to SDH Kupwara for treatment wherefrom he was referred to SKIMS under proper police escort, Pharmacist of District Jail, Kupwara accompanied him, the detainee remained admitted in SKIMS where he

breathed his last and thereafter post-mortem was conducted.

**5.** The enquiry officer as appointed by District Magistrate conducted detailed enquiry and submitted the report to the District Magistrate on 2.4.2012 wherein it is concluded as under:

□ The deceased was physically unfit having some acute problems and needed special treatment, was not provided sufficient treatment which led to his death.

□ The Jail Authorities, even though, they were advised by the concerned Doctors from time to time for hospitalization of the deceased prior to his death, did not take sufficient measures for his treatment resulting his death.

□ That none among the Medical/Paramedical staff members was present on duty at the date of incident, which shows the negligence and carelessness of the Jail authorities.

□ The post-mortem report shows the cause of death due to Cardio Pulmonary Arrest along with fire Arm injury on right side of the Head, Epileptics with Asp Pneumonia. The later ones could have been avoided had the timely treatment being given to the deceased.

□ The Jail Authorities did not care for the life of the deceased and preferred escort that too very late at 4:30 AM(22.3.2012) even though they were aware about the condition of the deceased since 09.00 PM (21.3.2012), they waited for the whole night and preferred escort in the morning and left the Jail at about 07.00 AM in the morning on 22.3.2012 delaying about 10(Ten) hours, if they would have taken the matter serious and shifted the deceased to hospital well in time a precious life could have been saved.

**6.** District Magistrate had submitted the enquiry report to Divisional Commissioner, Kashmir, who in turn submitted the same to the Chief Secretary J&K vide his

communication No.Divcom/RA-Enq/(18)/2012 dated 23.02.2012. As against the erring officials figuring in the enquiry report, action was recommended to be taken.

**7.** So far as then I/C Superintendent District Jail, Kupwara is concerned, Director General Prisons, J&K Srinagar, pursuant to letter dated 20.06.2012 sent to him by Home Department, was to take action. The Director General Prisons vide detailed order No.525 of 2012 dated 02.08.2012, after analysing all the aspects of the matter, has concluded as under:

1. The PSA detainee was suffering from a bullet injury on his head before his detention which was neither disclosed by him nor diagnosed by the doctors who had examined him from time to time.
2. The deceased detainee was provided necessary treatment during his detention and also referred to Sub District Hospital Kupwara earlier where the doctors did not consider his hospitalization necessary.
3. On the night of March 21, 2012 when the detainee fell sick, the para medical staff posted in the District Jail Kupwara were not present which shows carelessness and lapse on the part of the then I/C Superintendent in performance of his duties.
4. While Dr. Mukhtar Ahmad who attended the detenu the same night and prescribed medicines which were provided, leading to temporary recovery of the patient, he had also advised EEG to be done on the patient, which advice was taken non seriously by the delinquent.
5. The delinquent cannot be faulted for delay in police escort which he had tried best to get in time. Under the provisions of the Jail Manual he could not send the PSA detainee outside the jail without police escort. However, no medical attention was provided to the detainee during the early morning hours on March 22, 2012 inside the jail while waiting for the police escort, which amounts to negligence on the part of delinquent.

6. Neither the designated Prison Medical Officer Dr. Ashiq Hussain nor any doctor from Sub District Hospital Kupwara accompanied the patient during his travel to SKIMS, Soura Srinagar for which the delinquent cannot be faulted as it pertains to the Health Department.

7. The detainee was alive when he reached to SKIMS, Soura Srinagar and provided treatment there for a few hours until he died. The quality of treatment provided to him there was not within the ambit of the I/C Superintendent District Jail, Kupwara.

8. There is nothing on record to suggest that there was any intention on part of delinquent to cause death to the detainee who was in his custody.

9. There is nothing on record to suggest that the death of the detainee could have been avoided, had there been no delay or negligence on part of the delinquent.

As has been brought out above, while the acts of omission and / or commission on part of Shri Ghulam Qadir Padroo (Assistant Superintendent) then I/C Superintendent District Jail Kupwara cannot be attributed to have caused the death of PSA detainee Sajad Ahmad Dar, nevertheless, there has been a certain amount of carelessness, non seriousness and lapse on his part which deserves a major penalty. As such a punishment of withholding his annual increment and promotion for one year is hereby imposed upon him."

**8.** Vis-a-vis other delinquent officials as figure in the enquiry report, no action so far seem to have been taken.

**9.** Learned counsel for the petitioner would contend that a case was required to be registered for criminal negligence as exhibited by the delinquent officials. Furthermore, father of the detainee is entitled to compensation in view of the law laid down by the Hon'ble Apex Court.

**10.** The facts and circumstances as have been taken into view in detail by the enquiry officer, are fully supported by records and also in the status report. The action as taken against then I/C Superintendent District BY Director General of Prisons cannot be said to be inadequate whereas against rest of delinquent officials named in the enquiry report, the departmental action shall be taken within eight weeks and report of the same shall be submitted before Registrar Judicial of this Court.

**11.** The death has occurred due to omissions and commission, which include delay on the part of delinquent officials, therefore, father of the detenue is entitled to compensation. In this connection learned counsel for the petitioner has rightly placed reliance on the judgment D. K. Basu v. State of West Bengal reported in AIR 1997 SC 610. It shall be advantageous to quote Para 55:

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the

right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

**12.** Keeping in view the position of overall circumstances, the negligence cannot be termed as 'criminal' in absence of criminal intent, therefore, compensation amounting to Rs.5.00/ lacs (rupees five lacs) shall be apposite to be awarded in favour of the father of the deceased detinue to be paid by the respondents which after payment, they shall be at liberty to recover from the wrong doers who have

exhibited negligence while handling position of the detainee as pointed out by the enquiry officer.

**13.** Disposed of as above.

**14.** Record as produced be returned to the learned counsel for the respondents.

**(Mohammad Yaqoob Mir)**  
**Judge**

Srinagar  
**03.12.2014**  
**"Mohammad Altaf"**