

GAHC010009992024



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2026:GAU-AS:7734-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/392/2024

SMT. JOYANTA MAIBANGSA
W/O LATE SANTOSH HOJAI, R/O VILL- GAMADI HAWAR, P.O./P.S.-
HARANGAJAO, DIST- DIMA HASAO, ASSAM, PIN-788818

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-6

2:THE PRINCIPAL SECRETARY
HOME DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR GUWAHATI-6

3:NORTH CACHAR HILLS AUTONOMOUS COUNCIL
REPRESENTED BY ITS PRINCIPAL SECRETARY (N)
HAFLONG DIMA HASAO
ASSAM PIN-788819

4:THE DISTRICT COMMISSIONER
HAFLONG DIMA HASAO
ASSAM PIN-788819

5:THE SUPERINTENDENT OF POLICE
HAFLONG, DIMA HASAO ASSAM
PIN-788819

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. B. D. Das, Sr. Adv
Mr. D. Thaosen,
Ms. R. Dekka,
Mr. H. K. Sarma.

Advocate for the respondent(s): Mr. B. Goswami, Addl. A.G.,
Mr.R. Bora, Addl. Sr GA,
Mr. P. Sarmah, Addl. Sr GA

Date on which judgment was reserved : **23.04.2026**

Date of pronouncement of judgment : **03.06.2026**

Whether the pronouncement is of the :

operative part of the judgment? : **NA**

Whether the full judgment has been : **Yes**
pronounced?

JUDGMENT AND ORDER (CAV)

(Shamima Jahan, J.)

The extraordinary jurisdiction of this Court has been invoked by filing this application under Article 226 of the Constitution of India by which the petitioner has prayed for a writ of mandamus directing the respondent authorities for payment of compensation of Rs. 50,00,000/- (Rupees Fifty Lacs) only, to the petitioner for death of her husband, namely, Santosh Hojai, who died during the period he was detained in Police custody in connection with Harangajao Police Station Case No. 3 of 2020, along with interest @ 7.5% per annum, from the date of death till date. The petitioner has also prayed for an interim

compensation for an amount of Rs. 10,00,000/- (Rupees Ten Lacs) only, to which an amount of Rs. 5,00,000/- (Rupees Five Lacs) only, was already given to the petitioner in the instant case.

FACTS:

2. The case of the petitioner is that her husband was a business man by profession and he was the owner of 5 (five) numbers of vehicles, such as, Tata 1618 Tipper bearing registration No. AS-11/CC-5903, one Mahindra Tipper, bearing registration No. AS-11/DC-3122, one JCB bearing registration No. MZ-05/A-4314, 1 JCB Excavator and one Bolero bearing registration No. AS-11/R-6576 which he had purchased on loan from Indusland Bank on a monthly installment amount against the said vehicles at Rs. 3,59,590/- (Rupees Three Lacs Fifty-Nine Thousand Five Hundred and Ninety) only per month.

3. The petitioner states that while she along with her husband and her three minor children were living in their residence in village-Gamadi Hawar under Harangajau Police Station in the district of Dima Hasao, 5 (five) gunmen in civil dress, riding a White Bolero vehicle came to their residence on 24.04.2020, at around 6 pm and asked for the whereabouts of her husband expressing the reason that they need his help in lifting their Alto vehicle, which was stuck nearby and when her husband came out, the said personnel, who were later identified as Police personnel, forcefully picked him up and fled away in the said vehicle.

4. The petitioner, on seeing her husband being forcefully taken away, lodged an FIR before the Officer-In-Charge, Harangajao Police Station on 24.04.2020 itself, alleging that her husband was kidnapped and the said case

was registered as Harangajao Police Station Case No. 3/2020 under Section 365 IPC. However, it is stated that the Police did not initiate any action even after registration of the said case and further due to the ongoing COVID pandemic, the petitioner could not pursue the case nor could she find out her husband and as such, she submitted a letter on 28.04.2020, through e-mail, before the Hon'ble Chief Justice of Gauhati High Court, with a prayer that the State Government/Central Government be directed to produce her husband before a Judicial Magistrate, Dima Hasao, as she had information that he was detained by security forces.

5. This Hon'ble Court by considering the aforesaid letter, registered a Suo-moto case being WP(Crl.) (Suo-Moto) No. 1 of 2020. After hearing the said case, this Hon'ble Court, by order dated 30.04.2020, issued notices to the State respondents and also directed the Director General of Police, Assam, to constitute a team for tracing out the petitioner's husband with a further direction to file an affidavit, bringing into record, the information collected by a responsible officer, not below the rank of SP, on the next date fixed.

6. In the meantime, it is stated that the dead body of the petitioner's husband was recovered on the same day i.e. on 30.04.2020 at Lailing Village area in between Langting and Kalachand Village beside the National Highway, and it is also stated that body was found in a horrible condition with severe head injuries and half burnt. On getting the said knowledge, the petitioner, by yet another letter dated 02.05.2020, addressed to the Hon'ble Chief Justice, Gauhati High Court by e-mail, prayed for a direction to the State Government for conducting a high-level enquiry or a CBI enquiry, as in the said incident it was suspected that security forces from the Assam Police Force were involved.

This Hon'ble Court, after hearing the case, vide order dated 04.05.2020, on the submission of the Advocate General for the State of Assam that Special Investigation Team headed by Deputy Inspector General of Police, was already constituted, directed the said SIT to conduct the investigation into the alleged abduction and murder of the petitioner's husband. This Court, further directed the Head of the SIT to file a detail affidavit indicating steps taken in the investigation.

7. The petitioner also states that on 04.05.2020, she had also lodged an additional FIR, stating *inter alia*, the recovery of her husband's dead body and involvement of Police officials in the incident. Pursuant thereto, the Investigating Officer of the case, by letter dated 24.07.2020, made a prayer before the learned Chief Judicial Magistrate, Dima Hasao, for addition of Section 302 IPC in the Harangajao Police Station Case No. 3 of 2020, and it is also stated that considering the gravity and seriousness of the crime, the case was entrusted to the CID, Assam. Thereafter the CID, Assam after a thorough investigation, submitted a charge sheet being Charge Sheet No. 6 of 2021, on 02.10.2021, against 8 (eight) accused persons, including one Superintendent of Police, one Deputy Superintendent of Police, four constables of Assam Battalion, one Sub-Inspector of Police, and one individual, namely, Sri GrecksonHojai @ AlvianHojai @ Elvin @ Chalgauri under Section 120 (B)/365/302/304 A/201/34 IPC, read with Section 98 (A)/99 (3)/99 (5) of Assam Police Act, 2007, and the said charge sheet was submitted before the Chief Judicial Magistrate, Dima Hasao.

8. On filing of the said charge sheet in connection with the aforesaid Police Station case, this Hon'ble Court, by an order dated 04.10.2021, closed the writ petition with an observation that law must take its own course.

9. The petitioner states that in the charge sheet dated 02.10.2021, it was clearly stated that the husband of the petitioner was picked up on 24.04.2020, at around 6 pm at a gunpoint by the said accused persons and, thereafter, the petitioner's husband was brought to Haflong and he was taken over by one of the accused person who was the Deputy Superintendent of Police then and that the victim's eyes and hands were tied and was taken to the office of the Superintendent of Police, Dima Hasao, where he was interrogated and tortured in a room called CDR Room. It was, thereafter, stated in the charge sheet that the petitioner's husband was brought to Jatinga and by making him get down from the Police vehicle on a newly constructed bridge, he was beaten up severely with lathi and on the direction of the then Superintendent of Police of Dima Hasao, the petitioner's husband was brought to the residence of the said Superintendent of Police from where he was again taken to the Police Guest House Haflong, where another accused person was staying and that on 11 pm on the same day, the victim was brought to the Sarkari Bagan Town Outpost, Haflong. It was further stated that the then Deputy Superintendent of Police, one of the accused persons, on the next date, i.e., on 25.04.2020, at about 10 am, brought out the victim from the lock up of Sarkari Bagan Town Outpost and by taking him in a Tata Sumo Vehicle, reached the place called Retzwal and on reaching the said place, the victim died in the Tata Sumo vehicle while he was in the custody of the said Police personnel.

10. It is, therefore, stated by the petitioner that her husband was killed by the charge sheeted Police officials while he was in custody on 25.04.2020. It was also stated in the charge sheet that after the petitioner died in the vehicle, the accused persons took the dead body to Langting by the same vehicle and by

deboarding the dead body from the said Tata Sumo vehicle, buried it in a jungle area and in the process, tried to destroy the evidence of the offence. It was also stated that the then Deputy Superintendent of Police, on the direction of the Superintendent of Police had torn the pages of General Diary Entries of Sarkari Bagan Outpost to destroy further evidence.

11. It is the further case of the petitioner that her husband was the only earning member of the entire family, which consists of her two minor daughters and one minor son. She also stated that her husband was a reputed businessman and that at the time of his death, he had a huge outstanding liability of Rs. 95,65,830/- (Rupees Ninety-Five Lacs Sixty-Five Thousand Eight Hundred and Thirty) only, standing as a loan amount to be disbursed to the Indusland Bank for purchase of vehicles. It was also stated that the monthly income of the petitioner's husband was around Rs.5,00,000/- (Rupees Five Lacs) only and after his death, the family is facing huge financial hardship, along with the outstanding loan amount. As such, the petitioner prays for an amount of Rs. 50,00,000/- (Rupees Fifty Lacs) only towards compensation for her husband's death.

12. To ventilate her grievance, the petitioner submitted a representation on 23.11.2023 before the respondent authority, with the request to grant her adequate compensation, but the same was not considered and finding no other alternative, the petitioner filed the present writ petition under Article 226 of the Constitution of India.

13. With regard to the delay in filing the writ petition or in submitting the representation, the petitioner stated that due to COVID pandemic as well as for

maintaining her children, her approach to the authorities got delayed. With these contentions and prayer, the petitioner has filed this present petition.

14. In the instant writ proceedings, Respondent No. 5, the Superintendent of Police of Dima Hasao, Assam, filed an affidavit-in-opposition, wherein it was stated that it is a fact that the body of the deceased person was recovered on 30.04.2020, at Lailing area near NH-27, by the Police. He further stated that there exists no provision for granting compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs) only, to the victim concerned on ground of custodial death.

SUBMISSIONS:

15. Mr. B. D. Das, learned Senior Counsel, assisted by Ms. R Deka, learned counsel appearing for the petitioner, submitted that the victim had two minor daughters and one minor son and that his monthly income was Rs. 5,00,000/- (Rupees Five Lacs) only and that the loan amount had also accumulated to Rs. 95,65,830/- (Rupees Ninety-Five Lacs Sixty-Five Thousand Eight Hundred and Thirty) only. He further submitted that the first information report lodged by the petitioner, was at first not registered and it was only due to the intervention by the Hon'ble High Court that the respondents became active in investigating the case and further that on the orders passed by this Court, charge sheet was submitted on 02.10.2021. He submits that in the instant case, Police officials are involved and on a conspiracy being entered into by them, the victim was picked up, tortured, which finally led to his death. He further stated that petitioner is entitled for compensation and that the said compensation to the petitioner or such similarly situated victims is required to be calculated on the basis of the calculations provided in ***Sarala Verma -vs Delhi Transport Corporation***; reported

in **(2009) 6 SCC 121**, decided by the Hon'ble Apex Court. To substantiate his argument, he placed reliance on the following judgments:

- i) ***Hemant Gupta -vs- Rama Subramaniam***; reported in **2022 LiveLaw (SC) 368**; by which the Hon'ble Supreme Court, by relying on ***Upahaar Tragedy Victim Association case reported in (2011) 14 SCC 481***, had held that in so far as death cases are concerned, the principle of determining compensation is streamlined by several decisions of this Court. The first factor to be considered is the age of the deceased, second, the income of the deceased and the third, the number of dependents. It is further held that as far as the third factor is concerned, the same can be excluded by adopting a standard deduction of one-third towards personal expenses. As such, it was held that two factors are required to be ascertained to determine the compensation by adopting the principle laid down in ***Sarala Verma (supra)***. It was also held by the Hon'ble Supreme Court that claim for compensation in public law is for compensating the claimants for deprivation of life and liberty, which has nothing to do with a claim in private law in tort and in any ordinary civil Court.
- ii) A judgment delivered by Madras High Court in ***M. Jeya -Vs- Principal Secretary, Home Department and Others; [W.P.(MD) No. 5259 of 2021]*** on 18.08.2023, by which the said Court was faced with similar facts as in the instant case and awarded compensation by following the judgment of the Apex Court in ***Sarala Verma (supra)***.
- iii) A judgment delivered by Madras High Court in ***R.Senthil Kumar***

vs.- State of Tamil Nadu and Others, [WP(MD) No. 11610 of 2013, on 26.07.2023, by which the said Court had held that the High Courts can award compensation for the custodial death by invoking Article 226 of the Constitution of India and while quantifying the compensation, **Sarala Verma's case (supra)** was relied on.

- iv) **Nilabati Behera -vs State of Orissa and Others;** reported in **(1993) 2 SCC 746**, wherein the Supreme Court had held that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution of India, is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign unity does not apply and the same would be in addition to the remedy in private law for damages for the tort.
- v) **Khursheed Ahmad Chauhan vs. Union Territory of Jammu and Kashmir;** reported in **2025 INSC 876**, by which the Hon'ble Supreme Court accorded certain directions and finally, in order to provide solace to the victim and his family for the barbaric acts of custodial torture, an amount of Rs. 50 lacs as interim compensation was directed to be paid to the appellant by the Union Territory of J & K, which was again stated to be without prejudice to the appellant's right to pursue further remedies for additional compensation before appropriate forum.

- vi) A judgment delivered by Madras High Court in ***S.Vijaya Shankar -Vs- State of Tamil Nadu and Others ; [W.P. No. 9267 of 2017]*** on ***04.09.2019***, wherein it was held that even during the pendency of the trial against the accused persons and before the verdict against them, compensation can be granted to the victim or the family and as far as computing the amount of compensation is concerned, the principle followed in the case of accident victims, i.e., ***Sarala Verma's case (supra)*** has been relied on.

16. The learned counsel for the petitioner further submitted a chart showing the annual income of the victim as well as his monthly personal expenses, and annual personal expenses along with annual loss of dependency and the total amount computed is Rs. 4,80,00,000/- (Rupees Four Crores Eighty Lacs) only, which according to the learned counsel was by following ***Sarala Verma 's case (supra)***.

17. The learned counsel for the petitioner has also placed the statement of account of the victim wherein his loan liability is shown in respect of his five vehicles and the same were annexed as Annexure-11 (series) in the petition.

18. On the other hand, Mr. B Goswami, learned Additional Advocate General for the State of Assam, submitted that the fact of custodial death as submitted by the petitioner was not proved or established till date and that three criminal cases are pending before the learned trial Court, and as such, he submits that whether the victim died during his custody by the Police Officials, is not proved and due to the said reason compensation for the said alleged incident cannot

also be given, i.e., before the said criminal cases reaches its finality. He further submitted that Rs. 5,00,000/- (Rupees Five Lakhs) only, was already paid to the petitioner as an interim compensation, by virtue of this Court's order. The learned counsel placed a notification dated 18th of October, 2012, by which the Government of Assam in co-ordination with the Central Government, in exercise of its powers conferred by Section 357 of the Code of Criminal Procedure, 1973, formulated a scheme for providing funds for the purpose of compensation to the victim or the dependents who had suffered loss or injury as a result of the crime and who requires rehabilitation. The said scheme is called as Assam Victim Compensation Scheme, 2012, and under the said scheme, the learned counsel submits that in cases of death, the maximum limit of compensation provided for is Rs. 2,00,000/- (Rupees Two Lakhs) only. He further submitted that there were no other notifications except the one he placed for victim compensation. Further with regard to the merit of the present case, he placed reliance on the following two cases;

- i) ***Re- Inhuman conditions in 1382 prisons; reported in (2017) 10 SCC 658***; by which the Hon'ble Supreme Court had held that the next of kin to the prisoners who suffers unnatural death, is entitled to receive the compensation, although the prisoner was connected to some offence and further that victim compensation schemes are formulated by every State and the same should be put into effect.

- ii) ***D K Basu -vs- State of West Bengal; reported in (1997) 1 SCC 416***; by which the Hon'ble Supreme Court held that leaving the victim or the family to claim for compensation in private law for violation of the right under Article 21 of the Constitution of India, would not be proper and that the

victim or the family should be allowed to get relief under the public law from the Court exercising writ jurisdiction. However, it was further held that what would be the amount which has to be paid to the victim as compensation in his public law remedy, the Court has to evolve new tools.

19. The learned counsel for the State of Assam, further relied on a notification dated 15.11.2014, wherein a different set of amounts with regard to compensation were given in respect of deaths occurring due to the actions of the terrorists.

These are the submissions made by the learned counsels appearing for the parties.

ANALYSIS AND FINDINGS:

20. It is a settled position of law that compensation, by taking recourse to civil law remedy is in addition to the compensation under the public law remedy. In the instant case, it is noticed without any iota of doubt that the petitioner met his death during the custody of the Police personnel. Initially, it was not known, as to whether the personnel who came in civil dress to the house of the victim who was picked up on the same night, were Police personnel. The First Information Report lodged on 25.04.2020, also reflected that 5 (five) unidentified persons forcefully dragged the husband of the petitioner on the previous day at around 6 pm. It was only later that the petitioner came to know that those unidentified persons were security forces working under the Assam Police Force. Thereafter, on the intervention of the Hon'ble Gauhati High Court, the investigation was handed over to the SIT first and then to the CID and a charge sheet was submitted, by which responsibility was saddled on 7 (seven)

Police personnel and one private individual. The said charge sheet also made it clear that the victim died during his custody of the said accused persons.

21. It was stated in the charge sheet that the private individual, namely, GrecksonHojai, informed the then Superintendent of Police, Dima Hasao that one ex-cadre of an extremist organization, namely, Santosh Hojai, the victim was planning to sell six numbers of AK-47 Rifle to a member of another extremist organization. On receipt of further information from the said individual, the then Superintendent of Police, Dima Hasao, instructed for picking up the victim from his house and during the said exercise, all the accused persons had helped. It was further detected that on the said day, i.e., on 24.04.2020, in the morning hours, at about 09:30 am, the charge sheeted accused person mentioned above, namely, GrecksonHojai, was also picked up by a constable, who is also charge sheeted, in a Bolero Vehicle, which was without a number plate, provided from the Police Reserve and along with other accused persons, all of them reached Harangajao at about 12:30 pm. In the meantime, the victim was also picked up at around 6 pm and was taken towards Haflong and on reaching Haflong at around 08:30 pm, the victim was taken over by the then Deputy Superintendent of Police, and by further blind folding him and by tying up his hands, the Police team took him to the office of the Superintendent of Police , where the Police party interrogated and tortured him in the room of the office.

Thereafter, it was further stated that at around the same time, the Police team took the victim to Jatinga and at a newly constructed bridge, they stopped their vehicle and the Deputy Superintendent of Police asked the victim about the arms and ammunitions and had beaten him up with lathi and at that juncture,

the Superintendent of Police told the team to bring the victim to his residence and the victim was taken to the Police Guest House, where the Superintendent of Police was staying.

The said Superintendent of Police and the Deputy Superintendent of Police then interrogated the victim and again tortured him and later, at about 11 pm, the Deputy Superintendent of Police along with his staff, took the victim to Sarkari Bagan Town Outpost, and locked him up. It was also stated in the charge sheet that at that time, victim was unable to walk and blood was seen on his face and that on the next day, i.e., on 25.04.2020, the then Deputy Superintendent of Police arrived at the said outpost and by taking out the victim from the lock up, made him board a Tata Sumo Vehicle, which was found to be owned by some extremist organization and it was decided to take the victim to a place called Retzwal, and when they were enroute thereto, they found the victim dead inside the said vehicle. On finding out the same, the Deputy Superintendent of Police had a discussion with other members of the Police team and proceeded towards Langting.

22. It was also stated in the charge sheet that while they were proceeding, the fuel in the vehicle got exhausted and the then Deputy Superintendent of Police purchased fuel from a nearby energy station in a can and poured it into the vehicle and they proceeded to a different place and at that juncture two constables arrived with spade and axe in a different vehicle and on being directed by the then Superintendent of Police, they all proceeded towards Langting in their respective vehicles. After proceeding for some distance, the police team stopped the vehicles and took down the dead body of the victim, carried it downwards from the road and buried near the road side jungle in

order to destroy the evidence of their crime. Thereafter, the Deputy Superintendent of Police, Dima Hasao reached the town outpost and had torn off the pages of the general diary entries, entered in respect of the victim to further destroy the further evidence.

23. It was also stated that one Executive Magistrate on his way from Haflong to Langting on 30.04.2020 in the morning hours, stopped his vehicle to attend the call of nature and thereby saw a freshly dugged spot which raised his suspicion that something was hidden inside and he informed the same to a member of some committee and in pursuance to the said information, the dead body of the victim was disinterred and after holding the inquest, the said body was identified as of the victim's.

24. The investigation was conducted and the police officials namely Bikram Gogoi, the then Superintendent of Police, Suryakanta Morang, the then Deputy Superintendent of Police, Surajit Kathar, the then Sub-inspector of Police, Constable Bipul Laskar, C/N Shankar Bania, Constable LalkolienTuolor, C/N Projit Rajbonshi, were found involved in the kidnapping, torture and murder of the victim.

25. In the said charge sheet, it was also revealed that during April 2020, the aforesaid information was first given by said GrecksonHojai to the Superintendent of Police, Dima Hasao about sell of AK 47 rifles by one ex-member of the extremist organization i.e. husband of the petitioner to another member of another organization as stated above and the entire incident occurred. It is also stated that there was a conspiracy hatched to pick up the victim as well as to conceal the evidence as mentioned above. Furthermore, in

the register wherein entries were made in issuing arms and ammunition to the members of the police team was also erased on the direction of the then Superintendent of Police, thereby, further the evidences were concealed.

26. During the investigation, statements of number of witnesses were recorded both under Section 161 Crpc and under Section 164 CrPC, by which the entire gamut of the case was brought to light including the involvement of the police officials. During the said investigation, the register maintained for issuing of arms and ammunition (duplicate) as well as the general diary of the town outpost (duplicate) along with mobile phones with sim cards were seized and by examination of the call details report and other evidences, the complicity of the accused persons came to light.

27. In the said charge sheet, the individual role played by all the accused persons were highlighted and the same are as follows:-

(i) Bikram Gogoi, the then Superintendent of Police had started the entire incident, on the information given by accused person, GrecksonHojai.

(ii) Suryakant Morang, the then Deputy Superintendent of Police, took custody of the victim when he was taken to Haflong.

(iii) Bipul Laskar, the Constable, along with other constables picked up the victim from his house.

(iv) Shankar Bania, the Constable, accompanied other constables in picking up the victim from his house.

(v) Prajit Rajbongshi, took arms and ammunitions from magazine of Dima Hasao Police Reserve and proceeded to the place of victim.

(vi) Lalkolien Tuolor, who was performing his duty at Dima Hasao, Police Reserve took arms and ammunition from the reserve and proceeded for the so-

called operation.

(vii) Surajit Kathar, who was working as the Sub-Inspector in the Sarkari Bagan Outpost had aided in the said incident and

(viii) the last was GrecksonHojai in whose information the entire incident took place.

Thereafter, all these accused persons were charged under the different sections of law and against the said eight accused persons charge sheet was submitted.

28. Therefore, on facts we do not find that there can be any doubt in the petitioner's claim that her husband was picked up from her house and was forcibly made to sit in a vehicle and was taken therefrom by some unidentified persons, who were later found out to be police personnel. It is also beyond doubt about the course of events done by the said police officers which finally led to the death of the victim as is revealed by the investigation and that it is thereby established that the victim was mercilessly beaten up who was thereafter kept in the lock up and was taken out from there and was beaten again as is revealed in the charge sheet and the concerned officials are accordingly charge sheeted for the offence of murder and other offences committed in the course of the said transaction, who would face trial as the next course. It is as such established that the said accused persons are involved in the offence of torture and custodial death although the trial is yet to start.

29. The Hon'ble Supreme Court while dealing with such cases in very strong words had deprecated the tendency on the part of the police personnel, relating to the matters of custodial death and expressed its concern by observing as under. In "**DK Basu Vs. State of West Bengal**"; reported in **(1997) 1 SCC 416**, the

Hon'ble Supreme Court has held as under:

"Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be deprived 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 persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in 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 a 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. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word torture today has become synonymous with the darker side of human civilisation. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward -- flag of humanity must on each such occasion fly half-mast. 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. The expression "life or personal liberty" in Article 21 includes the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. 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 'sheds 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 become lawbreakers, 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. 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 the nation, must take precedence over an individual's right to personal liberty. The Latin maxim *salus popule suprema lex* (the safety of the people is the supreme law) and *salus republican suprema lex* (safety of the State is the supreme law) co-exist 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 to sustained and scientific*

interrogation - determined in accordance 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 to 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 power 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 rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights 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. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

30. It is as such clear that use of third-degree methods or torturing the

accused persons, taken in custody in pursuit of reaching to the conclusion with regard to a crime, is highly deprecated. The interrogation should be as per the procedures provided in the Code of Criminal Procedure or other Laws in force and not beyond that. In the instant case, although the facts reveal that the victim was allegedly involved in some illegal activity, for which a full mechanism is in place to bring justice and punish the victim if he is so found involved. The duty of the Police is only to investigate into the alleged allegation, collect evidences, submit Charge-Sheet and leave it to the Courts of Law. In the instant case, it is reflected in the Charge Sheet that the accused persons had taken the victim to different places, even by taking vehicles belonging to the extremist organization, tortured him due to which the victim met his death, that too inside the vehicle used by the accused persons.

31. The preservation of the rule of law as well as recognition of human rights together with check on the abuse or misuse of power has been highlighted by a number of decisions by the Hon'ble Supreme Court as well as by the High Courts. In one of the early landmark judgments in "*Khatri (2) Vs. State of Bihar*;" reported in *(1981) 1 SCC 627*, arising out of the infamous Bhagalpur blinding case, the issue of grant of compensation for depriving life or personal liberty as guaranteed under Article 21 of the Constitution of India, was raised for the first time as can be seen from the following observations of the Hon'ble Supreme Court:

“The other question raised by Mrs. Hingorani on behalf of the blinded prisoners was whether the State was liable to pay compensation to the blinded prisoners for violation of their fundamental right under Article 21 of the Constitution. She contended that the blinded prisoners were deprived of their eyesight by the police officers who

were government servants acting on behalf of the State and since this constituted a violation of the constitutional right under Article 21, the State was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was, according to Mrs. Hingorani, implicit in Article 21. Mr. K.G. Bhagat on behalf of the State, however, contended that it was not yet established that the blinding of the prisoners was done by the police and that the investigation was in progress and he further urged that even if blinding was done by the police and there was violation of the constitutional right enshrined in Article 21, the State could not be held liable to pay compensation to the persons wronged. These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty. These were the issues raised before us on the contention of Mrs. Hingorani, and to our mind, they are issues of the gravest constitutional importance involving as they do, the exploration of a new dimension of the right to life and personal liberty. We, therefore, intimated to the counsel appearing on behalf of the parties that we would hear detailed arguments on these issues at the next hearing of the writ petition and proceed to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic

constitutional jurisprudence which we are evolving in this Court.”

32. In the subsequent proceeding of the same case, reported in “***Khatri (IV) Vs. State of Bihar***”; reported in ***(1981) 2 SCC 493***, the Hon’ble Supreme Court clearly indicated that compensation could be paid for violation of fundamental right as guaranteed under Article 21 of the Constitution of India, by not accepting the plea that the State would not be liable for the wrong committed by its agencies.

33. In due course, public law remedy for grant of compensation for violation of human rights and fundamental rights had been improvised by the constitutional courts in favour of the aggrieved person rather than leaving it to the vagaries of long drawn traditional litigation process in civil courts.

34. In Rudul Shah Vs. State of Bihar reported in (1983) 4 SCC 141, a three judges’ bench of the Hon’ble Supreme Court held that where a right to liberty has been grossly violated, the mandate of Article 29 of the Constitution of India, can be somewhat secured if its violators are directed to pay the monetary compensation. It was further held that payment of compensation would also act as a palliative for the unlawful acts of the instrumentalities of the state which of course would be in addition to the normal legal recourse of bringing a suit to recover appropriate damages from the State.

35. In the said case, Rudul Shah was acquitted by the Sessions Court on 03.06.1968 but he overstayed in prison for over 14 years and was released on 16.10.1982. On an application filed by Rudul Shah, the State of Bihar was directed to pay Rs. 35,000/- to Rudul Shah. The Hon’ble Supreme Court held as

follows:

***“The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to make its violators pay monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.*”**

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty-thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah.”

36. In pursuance to the said judgment another landmark decision was passed by the Hon'ble Supreme Court in Sebastian M. Hongray Vs. Union of India reported in (1984) 3 SCC 82, wherein a direction was given to the Union of India not only to register an First Information Report but also to pay Rs. 1,00,000/- (Rupees One Lakh) each to the wives of the missing persons as a measure of exemplary costs by returning the following findings:

“Now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhuala, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M.

Hongray, we direct that as a measure of exemplary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs. 1 lac to each of the aforementioned two women within a period of four weeks from today.”

37. Thereafter, another three judges’ bench of the Hon’ble Supreme Court in a landmark judgment of Nilabati Behera Vs. State of Orissa reported in (1993) 2 SCC 746, by relying on the decision of Rudul Shah and after discussing the earlier cases in which the Hon’ble Supreme Court had awarded compensation for violation of fundamental rights, clearly explained the jurisprudential basis for such judicial intervention. It was held as follows:

“The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

25. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs. 1200 to Rs. 1500. This is the finding

based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs. 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) Cr.P.C. and Section 141(3) of the Motor Vehicles Act, 1988. 26".

38. It is as such made clear that compensation should be granted in public law remedy and the computation should be based on the income of the deceased and other factors concerned. It was also decided that the amount of compensation so allowed should be adjusted to the amount recoverable in tort later. However in the aforesaid case, it was not held that payment of compensation in public law remedy should be palliative in nature although it was stated that the same should be adjusted with compensation obtained by the victim or the representatives by approaching the Civil Court. It be also stated here that strength of the Bench in the aforesaid case i.e. NilabatiBehra is three Judge's Bench like in case of Rudul Shah (Supra).

39. Thereafter, the Hon'ble Supreme Court in "***Subey Singh Vs. State of Haryana***" reported in **(2006) 3 SCC 178**, further held the same that compensation by way of public law remedy will be in addition to the compensation granted by the civil court. It was held as follows:

"It is now well settled that the award of compensation against the

State is an appropriate and effective remedy for redressal 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 the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 CrPC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades."

40. It is therefore clear that compensation can be awarded by way of public remedy but the same need not be only a nominal palliative amount but something more. It can be by way of making monetary adjustments for the wrong done or by way of exemplary damages exclusive of any amount recoverable in a civil action based on tortious liability.

41. In the present case, it is further seen that the trial is yet to start against the charge sheeted accused persons but compensation in public law remedy can be granted and the same is no longer res integra. In a number of cases both before the Hon'ble Supreme Court as well as the High Court, compensation was directed to be paid to the victim or the family even during pendency of the case. In Extra Judicial Execution Victim Families case, reported in AIR 2016 SC 3400, the Hon'ble Apex Court had upheld the payment of such compensation. The relevant paragraph is quoted here-in-below: -

"174. Unfortunately, we have not been given accurate and complete information about each of the 1528 cases that the petitioners have complained about.

Therefore, there is a need to obtain and collate this information before any final directions can be given. Learned Amicus has told us that there are 15 cases out of 62 in which it has been held by the Justice Hegde Commission or by judicial inquiries conducted at the instance of the Gauhati High Court that the encounters were faked. On the other hand, the NHRC has informed us that there are 31 cases out of 62 in which it has been concluded that the encounters were not genuine and compensation awarded to the next of kin of the victims or the award of compensation is pending.”

42. Therefore, in the considered view of this Court, the stand taken by the respondent State that the case is pending trial cannot be a reason to deny the compensation to the widow and children of the deceased. It is also for the simple reason that firstly it is not the case of the respondent State that the deceased was arrested as an accused, in connection with a case registered beforehand and secondly, the claim of the petitioner that her husband was wrongfully detained and tortured in police custody so as to coerce any information, was not challenged by filing any affidavit in the matter. According to this Court, it is not necessary to wait till the conclusion of the criminal trial, to reach to the conclusion that the Police officers were in fact responsible for the custodial death of the deceased and then pay compensation, as is contended by the respondent State. The Hon'ble Division Bench of Bombay High Court in its decision passed in "***Sheela S. Yerpude Vs. Home Department and Ors***"; (Crl. Wrt. Pet. No. 328 of 2002) decided on 27.01.2025 had held that compensation can be granted to the accused persons before conclusion of the trial. The relevant portion is quoted below: -

“Therefore, according to us, it is not necessary for this Court to wait for the result of the criminal trial, which is pending against the police

officers found responsible for causing custodial death of deceased, as is contended on behalf of the respondent-State in the affidavit filed by Shri P.T. Goud, Joint Secretary to the Government of Maharashtra, Home Department, in this Court on 7th January, 2005."

43. As such in view of the same, compensation can be granted before initiation of the trial or during the pendency of the trial and in the instant case, it is before commencement of the trial and there is no bar to it.

44. The Supreme Court in yet another decision of "***Ajab Singh & Ors Vs. State of UP & Ors***"; reported in ***(2000) 3 SCC 531***; while awarding compensation before the trial even started had directed 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. It is appropriate, therefore, that the cause of Rishipal's death should be investigated by the Central Bureau of Investigation. The C.B.I, shall register a case and conduct an investigation into the circumstances of Rishipal's death. The C.B.I, shall forthwith appoint an officer to receive from the respondents all records relating to Rishipal and the respondents shall immediately hand over such records to such officer. The investigation shall be completed expeditiously and a copy of the investigation report shall be filed in this Court. The Registry shall forward a copy of this judgment and order to the Director, C.B.I. 9. The State of Uttar Pradesh is responsible in public law for the death of Rishipal and must pay compensation to the petitioners for the same. We think that it is appropriate, in the circumstances, to order the State of Uttar Pradesh to pay to the petitioners compensation for the death of Rishipal in the

sum of Rupees five lakhs within three months. The sum shall be invested by the petitioners and the income thereof shall be so distributed that at least half is utilised for the benefit of Rishipal's children during the period of their minority.”

45. It is also a settled position of law that under the public law remedy, compensation is allowed for victims even if they are prisoners, undertrials or individuals with criminal history. It has been held by the Hon'ble Apex Court in a catena of Judgments that convicts, prisoners etc. are not bereft of their fundamental rights. They have to be dealt according to law. Their movement have to be restricted only as per provisions of law. Dr. A.S.Anand J., (as he was then) in his concurring Judgment in Nilabati Behera vs. State of Orissa (supra) had held as follows:-

“It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.”

46. Further, the Hon'ble Apex Court in **Re – Inhuman Conditions in 1382 Prison's case**

(supra), had also enunciated on the aforesaid aspect and held as follows:-

“Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims-sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is Accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

47. Law thus is now firmly established that compensation can be awarded for violation of human rights under the public law remedy and the same can be awarded even before the initiation of trial against the accused persons. As regards the quantum of the compensation to be awarded, the Supreme Court examined the scope in **MCD Vs. Uphaar Tragedy Victims Association reported in (2011) 14 SCC 481** and has held as follows:

“Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will

carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively."

48. In a decision rendered prior to the said Uphaar (supra) decision, it was observed by the Hon'ble Supreme Court that Judicial precedents undoubtedly have relevance with regard to the principles of law but the quantum of assessment depends on the facts and circumstances brought before the court than the judicial precedents. It was further observed that each case has to be dealt in its own peculiar facts. The amount of compensation is to be assessed on the basis of the said facts although the principles laid down in other cases may act like a guide. A victim's placement in the society, his financial status would differ from other victims and as such, assessments will also differ and the whole issue has to be based on facts and circumstances of the case and not on mathematical nicety. The said observation was made in the case of "***M.S Grawal Vs. Deep Chand Sood***"; reported in (2001) 8 SCC 151. Further in Sube Sing's Case (supra), compensation was again directed to be paid on the facts and circumstances of each case.

49. Keeping the aforesaid observations in mind it would be appropriate to make a brief survey of the quantum of compensation awarded by the Hon'ble Supreme Court as well as the Gauhati High Court, in few cases on account of violation of Fundamental Rights under the public law remedy:

- (i) In the decision of Bhagalpur Blinding mentioned above, the Hon'ble Supreme Court directed the State of Bihar to pay a sum of Rs. 500/- (Rupees Five Hundred) to each of the blinded person to enable

them to bring relatives to attend them in Delhi during their treatment and Rs. 300/- per month for staying in Delhi, with the further direction to the State of Bihar to arrange the necessary treatment for all the blinded person.

- (ii) In Rudul Shah's case mentioned above, the Hon'ble Supreme Court awarded compensation to the tune of Rs. 1,00,000/- (Rupees One lakh) each to the wives of the missing persons.
- (iii) The Hon'ble Supreme Court in "***The State of Maharashtra Vs. Ravi Kanta S. Patil***"; reported in **(1991) 2SCC 373** had upheld that the decision of the Bombay High Court in directing the Inspector of police to pay an amount of Rs. 10,000/- (Rupees Ten Thousand) to an under-trial prisoner.
- (iv) In Nilabati Behera (supra), the Hon'ble Supreme Court directed for payment of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only to the petitioner for the death of his son.
- (v) "***In Inder Sing Vs. State of Punjab***", reported in **(1995) 3 SCC 702**, the Apex Court directed the State of Punjab to pay Rs. 1.50 lakhs to the representatives of each of the missing persons.
- (vi) In "***Amol Vitthalrao Kadu Vs. State of Maharashtra***"; reported in **(2019) 13 SCC 595**; the Apex Court had upheld the Bombay High Court's direction to pay compensation for an amount of Rs. 7,00,000/- (Rupees Seven Lacs) to the parents of a victim who died in police custody.

(vii) In a case before the Gauhati High Court, where a large number of children fell ill and many of them died after administration of vitamin A dose, this court on the basis of an enquiry report awarded exemplary damages of Rs. 20,000/- (Rupees Twenty Thousand) each to the families of the children who died in the said incident and the said amount was in addition to Rs. 5,000/- (Rupees Five Thousand) each already paid by State Government. The said case was "***Bijan Kumar Mahajan Vs. State of Assam***", reported in **2004 (1) GLT 239**.

(viii) In yet another decision rendered by Gauhati High Court in "***Shilpi Acharjee Vs. Union of India***";, reported in **2014 (4) GLT 12**; this court on the facts of the case that the husband of the petitioner died within one day from his release from the custody of Army, ordered the State to pay an amount of Rs. 10,00,000/- (Rupees Ten Lacs) to the wife.

50. It is as such noticed that the quantum of compensation differs from case to case and it has been invoked primarily to uphold the right to life where the Constitutional Courts find the violation of rights, very shocking. The acts of omission or commission which are blatantly illegal or the same is in total disregard of the laws and rules or norms as well as dignity of the individual, the courts have heavily come down upon the same and have awarded compensation on the basis thereof.

51. In every case of death, various circumstances engulf which is very gross and very unfortunate and any preventable death caused due to negligence without regard to the safety and life of individual, is totally uncalled for and for the said reason constitutional courts have evolved public law remedy to award compensation. The quantum of compensation as could be seen from various

decisions referred to above is not guided by any set of formulas or criteria. It has been observed in the D. K. Basu's case (supra) that there can be no straightjacket formula in arriving at the quantum of compensation and that it must be left to the wisdom of the court to take into account various circumstances like the age of victim, loss of earning, mental and physical suffering etc.

52. In Uphaar Tragedy Case (supra), it is stated by the Hon'ble Supreme Court that three factors should be counted for determining the quantum of compensation, first the age of the deceased, second the income of the deceased and the third the number of dependents, as has been stated earlier. It is further held therein, that principle stated in Sarla Verma's Case would furnish the methodology.

53. However, it has been held by the Hon'ble Apex Court as well as by the High courts that if the court intends to award substantial amount as compensation, the offence of custodial death or otherwise, should be of such a grave nature that shocks the judicial conscience and that there was wilful and wanton disregard for safety requirement and also that there is direct nexus between the wrongdoer's conduct and the victim's injury.

54. In the instant case, it is noticed that on an information given by one of the accused person, the other accused persons picked up the petitioner's husband by hiding their identity and on a pretext of mending a vehicle, took him out of his house and forcibly made him to sit in the vehicle and took away there from. He was thereafter, taken to Halflong where he was taken over by the then Deputy Superintendent of Police and was taken to Jatinga, where he was beaten up and was then taken to the office of the Superintendent of Police, where he

was again tortured and from there to another place and thereafter he was kept in a lock-up for the night during which time, the petitioner was already severely injured and then in the morning, he was again taken out from the said lock-up and on the way to some other place called Retzwal, he was again beaten up which led to his death inside the vehicle. Even after that the accused persons did not stop at that but to conceal the evidence, they had buried the dead body which was however found out later as mentioned above.

In the instant case, the entire ghastly incident started with an information, which was to the effect that the petitioner's husband was going to sell arms and ammunitions to an extremist and on the said information, a conspiracy was entered into and the petitioner's husband was picked up, to coerce further information from him and in the process, i.e. due to the torture committed by the accused persons upon the petitioner's husband, the victim died. It is also noticed that during the course of action, the accused persons had used vehicles of extremist party. It is also seen that accused persons had buried the dead body, so that the incident does not come to light. The accused persons had also torn of the pages of the General Diary, wherein, entries were made regarding the victim's detention in the lockup. Further the accused persons had also erased the entries made in the register maintained in the police reserve showing their taking of official arms and ammunitions. These actions show the barbaric nature of activities committed by the accused persons, which has the effect of shaking the judicial conscience.

55. In the present case, it is further to be taken into account that, when the incident took place, i.e. in the year 2020, the petitioner is stated to have two minor daughters and one minor son. Although, 6 years have elapsed but the

petitioner would still require enough means to educate her children and to bring them up. Further, the petitioner had stated that her husband had an outstanding loan amount to be paid to the Indus Land Bank to the tune of Rs. 95,65,830/- (Rupees Ninety Five Lacs Sixty Five Thousand Eight Hundred Thirty) only for purchase of vehicles as stated above. It is placed by the petitioner that for the vehicle namely, Mahindra Bolero, the instalment per month was calculated at Rs. 34,300/- (Rupees Thirty Four Thousand Three Hundred), for the JCB, the per month instalment was 63,150/- (Rupees Sixty Three Thousand One Hundred Fifty), for Tata Tipper, the per month instalment was 56,150/- (Rupees Fifty Six Thousand One Hundred Fifty), for Mahindra Tipper, the per month instalment was 67,990/- (Sixty Seven Thousand Nine Hundred Ninety) and for the JCB Excavator the per month instalment was 1,38,003/- (Rupees One Lakh Thirty Eight Thousand Three only). These are the liability of the petitioner in the instant case.

56. In this case, the Police personnel had kidnapped the victim, and taken to custody without complying with the mandate of law as prescribed in Section 50 and 50-A of the Code of Criminal Procedure, 1973, and thereby violating the provisions of Articles 22(1) and 22(5) of the Constitution of India. The victim was killed and the concerned Police personnel, purportedly under the supervision/direction of the Superintendent of Police, also disposed of the dead body by burying it. It is only by chance that the dead body could be recovered.

57. Thus, keeping in mind the aforesaid facts as well as the various facets of law relating to grant of compensation for violation of Fundamental Rights and also keeping in mind that the present proceeding is not for complete

compensation for the loss caused but primarily as a palliative to make right to life meaningful, which can be again somewhat higher, depending on the facts of the case, this court is of the view that a sum of Rs. 20,00,000/- (Rupees Twenty Lacs) only be awarded to the petitioner, which is in addition to the sum of Rs. 5,00,000/- (Rupees Five Lakhs) only, that was already granted to the petitioner as an interim measure during the pendency of the present case. This award is palliative in nature.

58. It is further observed that as this compensation amount awarded is palliative, in the event any claim for damages for compensation which the petitioner can make under the private law remedy by filing an appropriate application before the Civil Court, this award would be adjusted only if the award under the private law remedy is higher. The Hon'ble Supreme Court in *Subey Singh (supra)* as well as in other decisions has held that award of compensation by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation in the Civil Court nor in the way of the Criminal Court ordering compensation under Section 357, of the CrPC.

59. The State will be at liberty to recover the palliative award of Rs. 25,00,000/- [Rs. 5,00,000/- plus Rs. 20,00,000/-] (Rupees Twenty Five Lacs) only from those erring officials who are found guilty of the offence.

60. It is also made clear that, under the Assam Victim Compensation Scheme, 2012, framed by the State, under the aforesaid provision i.e. Section 357 of Code of Criminal Procedure, allowing compensation for the offences including

death of a person in the State, the petitioner or her children will be entitled to such compensation in addition to the amount awarded by this court.

61. With the above observation, the present petition is allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant

LawChakra.in