

BIHAR STATE HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna 800015

Case No:-2215/4/26/2024-AD

Name of the Complainant : Suo-Motu

V/S

Name of Respondent : Senior Superintendent of Police, Patna, Bihar

Order Date : 20.06.2024

Coram : Justice A. M. Badar (R) Chairperson,
Bihar Human Rights Commission, Patna

REPORT-CUM-ORDER

1. Here is a case wherein in otherwise well governed State of Bihar, under the shield of uniform and authority few policemen from Phulwarisharif, Patna striked a blow at the Rule of Law bringing disrepute to the entire State of Bihar, in the evening hours of 31.03.2024. By inflicting custodial torture, a young man named Jitesh Kumar was done to death at the Office of the Sub Divisional Police Officer, Phulwarisharif in presence of the said officer, causing flag of humanity fly half mast in Bihar.

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

These are the observations of the Supreme Court in **Joginder Kumar Vs. State (1994) 4 Sec 260** which are aptly applicable to the case in hand which is showing custodial torture of extreme extent inflicted by the Police on



deceased, Jitesh Kumar within a short span of about $4\frac{1}{2}$ hours on 31.03.2024 at the officer of the Sub Divisional Police Officer, Phulwari Sharif, Patna, Bihar.

2. These proceedings were registered Suo-Moto on the basis of newspaper report dated 02.04.2024 of Daily Jagran. It is reported therein that a meritorious student by name Jitesh Kumar was done to death by police from Phulwarisharif Police Station of Patna by indulging in custodial violence.

3. On 03.04.2024 this Commission, in order to ascertain facts and to understand the stand of the Police Department, had issued notice calling report from the Senior Superintendent of Police, Patna as the subject custodial death took place within his jurisdiction. The complaint was posted on 20.06.2024 for considering say/report of the Senior Superintendent of Police, Patna. However, it appears that the Senior Superintendent of Police, Patna is not interested in putting forth the stand of the Police Department or to contest the matter. Hence this Commission chooses to inquire into the complaint on its own under Section 17 (i) (a) of the Protection of Human Rights Act, 1993.

4. This Commission had directed the Superintendent of Police, Bihar Human Rights Commission to conduct fact finding inquiry and to submit her report with evidence collected during inquiry. Accordingly the Superintendent of Police, Bihar Human Rights Commission has submitted a report dated 20.05.2024 along with



record by conducting fact finding inquiry by examining witnesses and by collecting documentary evidence.

5. In the meanwhile Shree Ram Singh – Father of deceased victim Jitesh Kumar has also submitted a complaint application alleging custodial death of his son Jitesh Kumar by police. He prayed for transferring the case for independent investigation to the appropriate authorities of the Police Department. That complaint application is also tagged with this proceedings.

6. None appeared for the Senior Superintendent of Police, Patna for assisting the Commission till passing this order. No request for adjournment of proceedings was even made by him.

7. As the Senior Superintendent of Police, Patna failed to respond or contest this case of custodial death and as this Commission has collected evidence in the form of report of the Superintendent of Police, Bihar Human Rights Commission prepared upon conducting the detailed fact finding inquiry, the Commission proceed to pass this recommendary report and order in the matter. I have examined the inquiry report and minutely perused all evidence including statement of witnesses recorded during the course of inquiry by the Superintendent of Police, Bihar Human Rights Commission. Events unfurled during fact finding inquiry points out extreme savagery and brutality of men in uniform and is leading to an inference that there is no rule of law so far as Phulwarisharif Sub-division of Patna Police is concerned. Complete lawlessness prevails there and Police operates with

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impunity leading to a sense of lawlessness and fear amongst general population. A young, well educate youth having no criminal anticidents is found to be done to death in extremely barbaric manner by Police Official 30.03.2024 during the course of interrogation of a case relating to a missing person only on the basis of suspicion by literally abducting him and stealthily detaining or unlawfully confining him in the office of the Sub Divisional Police Officer of Phulwarisharif. Offenders in uniform took only four hours to kill unfortunate Jitesh Kumar by not sparing even an inch of the area of his body from authoring wounds. Custodial torture inflicted on him was of such a degree that Jitesh Kumar had to vomit and defecate voluntarily being unable to bear it. Ultimately he lost his life within a short span of time.

8. As during inquiry of custodial death, Police Officials have feigned ignorance to the law of the land, as a prelude, it is opposite to quote the law on the subject for better understanding of the matter.
9. Violation of human rights or negligence in prevention or violation of human rights gives a cause of action for issuing direction to make payment of compensation or damages to the complainant or to the victim or members of family of the victim as per provision of Section 18 of the Protection of Human Rights Act, 1993. The term of "human rights" is defined by Section 2(d) of the Protection of Human Rights Act, 1993. It reads thus:-



“2(d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.”

Thus violence to the life, liberty, equality and dignity of persons guaranteed by the Constitution of India amounts to breach or violation of human rights of a person. This violation can also be by the law enforcement agency which is supposed to protect life and liberty of subject of the State.

10. “The terms “custodial violence” refers to the abuse which accused persons experiences while they are in the custody of the police. Custodial Violence is mostly done by the police to coerce the accused into making a confession. Recent years have seen a rise in the number of custodial murders and tortures and new forms of violence have also surfaced, challenging both existing laws and fundamental rights of the citizens. The brutal and cruel treatment by the law enforcement agency led not only to third-degree treatment but also to custodial deaths. Number of changes were made in the Criminal Procedure Code and Indian Evidence Act in response to the rise in number of incidents of custodial death committed while a person was in custody of police. Custodial violence is the worst way to execute someone by men in uniform by circumventing the due process of law. Custodial deaths caused by police abuse and brutality by men in



uniform are against the core principles of the Indian Constitution and breaches several fundamental rights of a person protected by the Constitution of India. Let us deal with few Constitutional provisions in this regard. Article 14 guarantees rights to equality i.e equality before the law meaning thereby everyone is equal in the eyes of the law and equal protection under the law. Article 20 of the Constitution prescribes that no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence nor he can be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of an offence. Article 20 mandates that no person accused of an offence shall be compelled to be a witness against himself. In other words, extraction of confession from an accused by using force is banned to eliminate custodial violence by Police. This fundamental right is breached with impunity by the Police in this case. The right to be free from torture is also protected under article 21 of the Constitution. The right to life encompasses more than just the ability to lead an animalistic existence [**Sec Bandhua Mukti Morcha Vs. Union of India(1997) 10 SCC 549 and Peoples Union for Democratic Right Vs. UDI AIR 1082 SC 1473**]. The expression "life or personal liberty" under Article 21 includes a guarantee against torture and assault, even by the



State and its officials, to a person who is taken into custody [See **D. K Basu Vs State of West Bengal AIR 1997 SC 610**]. Article 22 deals with protection against arrest and detention in certain cases. Four essential rights are set forth in Article 22 with regard to conviction. These include being notified of the reasons for the arrest, having the right to legal representation from a lawyer of his own choice, regulations governing preventive detention, and appearing before the closest magistrate within 24 hours after the arrest. These constitutional provisions therefore serves to protect people from ill treatment and custodial atrocities by police.

11. Other Statutory protections dealing with rights of the arrested person can be summarised thus:-

- For ensuring that a suspect is not subjected to custodial violence, adequate mandatory provisions are enacted in the Code of Criminal Procedure 1973. Provisions of Sec 41B, 41C, 41D, 46, 49, 50 and 50A which are relevant and deserves to be quoted here.
- **Sec. 41B. Procedure of arrest and duties of officer making arrest.**-Every police officer while making an arrest shall-
 - (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;
 - (b) prepare a memorandum of arrest which shall be-
 - (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;



(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

- **Sec. 41C. Control room at districts.**-(1) The State Government shall establish a police control room-

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

- **Sec. 41D. Right of arrested person to meet an advocate of his choice during interrogation.**- When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

- **Sec. 46. Arrest how made.**-(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

¹[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of



arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest .

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

²[(4) Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made].

- **Sec. 49. No unnecessary restraint.**-The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

- **Sec. 50. Person arrested to be informed of grounds of arrest and right to bail.**-(1)Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

- **Sec. ¹[50-A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.**-(1)Every police officer or other person making any arrest under this Code shall forthwith give the

information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

12. Further discussion and evidence collected by this commission would show that these mandatory provisions were breached with impunity by the Police Officials involved in custodial killing of Jitesh Kumar. Briefly stated, statements of policemen recorded by the Superintendent of Police, BHRC shows that after apprehending Jitesh Kumar, no arrest panchnama was prepared, he was not informed that he has a right to have a relative or a friend informed about his arrest, his arrest was not notified to the Control Room of Police, he was not apprised about his right to meet an advocate of his choice during interrogation, he was not informed about particulars of offence for which he was arrested. His relatives or friend were not informed about his arrest and about the place where he is kept.

- Section 163 of the Code of Criminal Procedure, 1973 forbids the Investigating office from using a threat or any other type of inducement to make the accused to confess a crime so that such confession can be used against him in Court. According to Section 164(4) of the Code of Criminal Procedure from 1973, confessions to be used in evidence must be properly recorded, signed, and endorsed by a Judicial Magistrate who is requested to attest that the confession is made is voluntary. This is done for avoiding custodial torture by police for extracting confession.



- The safety of the accused while in police custody is also taken care of under some provisions of the Indian Penal Code, 1860. Penal provision of Section 330 and 331 of the Indian Penal Code, 1860 provides safeguards to the accused from unwarranted custodial torture and attempts to coerce information against his will. A police officer is liable for to punishment prescribed by the sections if he misuse or abuse his authority for achieving this object.

- Let us now deal with the International laws relating with Human Rights. Abuse of human rights is a serious problem everywhere in the world, and every nation has a different strategy for combating it. There are several international covenants to protect the rights of the arrested persons when it comes to custodial fatalities.

Universal Declaration of Human Rights, 1948 (UDHR) prescribes that every person should be viewed as innocent until proven guilty. Articles 5 of UDHR deals with the issues of torture and cruelty. According to Article 5 of UDHR no person should be tortured or treated with cruelty, irrespective of the geographical location of the individual.

International Covenant on Civil and Political Rights, 1996 [ICCPR] in its Articles 6 states that every individual has the inherent right to life and no one should be arbitrarily deprived of his right to life. ICCPR prevents cruel,

degrading and inhuman treatment of prisoners. No individual shall be arbitrarily arrested or detained.

United Nations Standard Minimum Rules for the Treatment of Prisoners,

2015 also guarantees fair treatment to an accused in custody of Police. Discrimination against inmates on the basis of race, colour, sex language, religion, political opinion, national or social origin, property, birth, or any other status is prohibited under Section 6 of the Convention. According to Section 7 of the Convention, a register must be kept to record a prisoner's identification, motivations for his acts, and the dates on which he was brought into custody and released.

13. At this juncture it is necessary to quote directions given by the Hon'ble Supreme Court in the matter of **D. K BASU V STATE OF WEST BENGAL, (supra)** following are those direction given by the Supreme Court found in paragraph 36 of the judgment:-

(a) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.



(b) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(c) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable [that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(d) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.



(e) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(f) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(g) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(h) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(i) Copies of all the documents including the memo of arrest, referred to above, should be sent to the area Magistrate for his record.



(j) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(k) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

14. *After laying down these guidelines/requirements to be followed in all cases of arrest or detention, the Supreme Court gave further directions pointing out the consequences of breach of these directions. In para 37 to 40 of its judgment in the said **D.K Basu's case** following are the directions which assumes the force of law:-*

"37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

38. The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to strictly followed. These would apply with

equal force to the other governmental agencies also to which a reference has been made earlier.

39. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

40. The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

15. Grant of damages or compensation to the victim of violation of Human Right to life and liberty can be claimed under public law remedy also. In **NILABATI BEHERA Vs STATE OF ORISSA & ORS, AIR 1993 SC 1960**, Full Bench of the Supreme Court of India has observed that in the matter of custodial death the State did have public law liability to compensate victims in cases of violation of their Fundamental Rights by the State or its functionaries. The Supreme Court relied upon several judgments including **Rudul Shah v State of Bihar, AIR 1983 SC 1086** and Section 9(5) of the International Covenant on Civil and Political Rights, 1966, to assert the principle that a claim for compensation payable by the State could be made under public law based on strict liability of the State to compensate victims of contravention of Fundamental Rights, and the courts could award monetary compensation for such contraventions. Articles 32 and 226 are constitutional remedies available to victims to approach the Supreme Court or High Court, and the courts could award compensation to victims. This was over and above the private law remedy for damages resulting from the deprivation of fundamental rights. It also acknowledged that because a private law remedy was less likely to be accessed by those with limited financial means, the constitutional scheme of Articles 32 and 226 should be able to provide for compensation to such persons under public law. The



court also held that while the State could claim protection under the concept of sovereign immunity against a private law remedy, for a public law constitutional remedy like Article 32 or 226 Constitution, this protection was not available to the State.

16. In the instant case, the Protection of Human Rights Act, 1993 expressly confers jurisdiction on this Commission to award compensation to the victims, if it is revealed that because of acts of Commission, human rights of a person are violated and even in cases where because of negligence of the State or its officers, there is violation of human rights. Thus acts of omission also gives rise a liability to pay compensation by the State.

17. **At this juncture guidelines given by the National Human Rights Commission on 29th March, 1997 and revised guidelines needs reproduction. Following are the relevant guidelines on the subject matter.**

- (1) As soon as information about death being caused in a police encounter is received the officer in-charge of a police station must record it in the appropriate register.
- (2) It is desirable that the investigation should be handed over to an independent investigation agency such as the Criminal



Investigation Department [CID], if members of the encounter party belong to the same police station.

(3) Whenever a specific complaint is made against the police for committing a criminal act that amounts to culpable homicide, an FIR should be registered under appropriate sections of the Indian Penal Code and investigation should invariably be handed over to the CID.

(4) The question of compensation being given to the dependents of the dead person will depend on the facts and circumstances of each case.

(5) No out of turn promotion or instant gallantry rewards will be given to the concerned officers soon after the occurrence. It must be ensured [at all costs] that they are given only after the gallantry of the officer concerned is proven beyond doubt.

18. The National Human Rights Commission on 22nd November, 1999 has given guidelines on arrest and interrogation. Following are those guidelines.

Procedure to be followed prior to arrest

- i. Where the case involves a grave offence such as murder, dacoity, robbery, rape etc. and it is necessary to arrest the

suspect to prevent her/him from escaping or evading the process of law; and/or

- ii. Where the suspect is given to violent behaviour and likely to commit more offences; and/or
- iii. Where the suspect needs to be prevented from destroying evidence; interfering with witnesses; or warning other suspects who have not yet been arrested; and/or
- iv. The suspect is a habitual offender, who unless arrested is likely to commit similar or further offences. [3rd Report of the National Police Commission]

Procedure to be followed at the time of arrest

- As a rule, use of force should be avoided while making an arrest.
- Information regarding arrest and detention should be communicated without delay to the police control room and to the district and state headquarters. A round-the clock monitoring mechanism should be put in place in this regard

Procedure to be followed after arrest

- Constitutional and legal provisions requiring an arrested person to be informed about the grounds of arrest, her/his



right to be represented by a lawyer and to be promptly produced before a court must be strictly followed.

- Article 22(1) of the Constitution lays down that an arrested person must be informed as soon as possible about the grounds of arrest; s/he must not be denied the right to consult and be defended by legal counsel of her/his choice. Section 50(1) of the Cr PC requires a police officer to communicate to the arrested person, grounds of the arrest and full particulars of the offence under which s/he is being arrested.

Procedure in respect of interrogation

- Methods of interrogation must be consistent with individual rights relating to life, liberty and dignity.
- Torture and degrading treatment of suspects is prohibited.
- Interrogation of an arrested person should be conducted in a clearly identifiable place, which has been notified for the purpose by the government. The place of interrogation must be accessible. Relatives of a friend of



the arrested person must be informed where s/he is being interrogated.

- An arrested person should be permitted to meet a lawyer at any time during the Interrogation.

19. In order to streamline the procedure of intimating the details of custodial deaths, the National Human Rights Commission has issued several guidelines to all State Governments. The National Human Rights Commission had issued general instructions way back in 1993 that within 24 hours of occurrence of any custodial death, the Commission must be given intimation about it. The National Human Rights Commission found that there was considerable delay in sending these reports, thereby delaying the processing of cases of custodial violence by the Commission. Hence, the National Human Rights Commission had repeated its instructions by informing concerned that reports including post-mortem, videograph and magisterial inquiry must be sent within two months of the incident. Accordingly a letter was addressed to the Home Secretary of all the States and all Directors General of prisons and all Directors General of Police by Shri N. Gopalaswami, Secretary General of the Commission, on 05th January, 2001. Even prior to that on 21st June, 1995 under signature of Shree R. V. Pillai, the Secretary General of the National Human Rights Commission, directions were given to the Chief Secretary of all



States to give suitable instructions of the District Magistrates/ Superintendent of Police to ensure prompt communication of incidents of custodial death/custodial violence. Even the Secretary of this Commission vide communication dated 22nd January, 2021 had informed all District Magistrates and all the Senior Superintendents of Police as well as all Police Superintendents of Bihar to report custodial death occurring in their jurisdiction to the State Commission within 24 hours of occurrence. Even e-mail address of the Commission and the fax number came be forwarded to all these officers by the Secretary of this Commission for forwarding such reports.

20. These are the provision of law as well as guidelines on the subject matter of the instant case and the record shows that almost all of them are breached with impunity by Patna Police in the case in hand, as would reveal from the following discussion and findings. Even responsible officer like the Senior Superintendent of Police, Patna has failed to report custodial death of Jitesh kumar to this Commission occurring on 30.03.2024 to this Commission till date and to crown this all he has not even bothered to send his response to this Commission in the instant Suo motu proceedings despite notice so as to demonstrate and establish that he was not negligent in discharging his duties and that the custodial death of Jitesh Kumar was not caused because



of his negligence and slack supervision of the police force under his control by him.

21. Police Officials who are examined by the Superintendent of Police, Bihar Human Rights Commission, Patna tried to explain that mandatory provisions regarding arrest or detention were not followed by them as Jitesh Kumar was not arrested. This explanation is totally misconceived as arrest was complete when Jitesh Kumar was taken in custody by policemen at about 6 P.M of 31.03.2024 from near the Bans Ghat area of Patna. When there is submission to the custody by either words or action, arrest is complete.

22. The facts established on conducting the fact finding inquiry through the Superintendent of Police, Bihar Human Rights Commission makes it clear that Jitesh Kumar along with two others namely Mukesh Kumar and Rahul Kumar were taken in custody and were brought to the office of Sub-Divisional police officer, Phulwarisharif for the purpose of investigation of Police Station, Phulwarisharif case No. 34/24 on 31.03.2024. This fact is establish from the statement of Investigating Officer Rohit Kumar Ranjan which shows that at about 6 P.M of 31.03.2024, Jitesh Kumar was brought to the Technical Wing of the office of Sub-Divisional Police Officer at Phulwarisharif. Statement of Police Personnels reflect that Jitesh Kumar (since deceased) was undoubtedly in the custody of police from this time till the time of his death occurring on 31.03.2024 itself. The inquiry conducted by the Superintendent of Police, Bihar Human Rights



Commission makes it clear that Investigating Officer Rohit Kumar has accepted that upon taking in custody, no Medical Examination of victim Jitesh Kumar was conducted by police. Police Witnesses concerned in this case are not disputing the fact that Jitesh Kumar died while in their custody on 31.03.2024. Statement of Police Station Officer Md. Sharif Alam and Sub-Inspector Rohit Ranjan are clear on this aspect.

23. I have minutely perused record of inquiry conducted by the Superintendent of Police, Bihar Human Rights Commission and the same is being considered as evidence in the instant case. Apart from the report of inquiry, record shows that Police Station Case No. 34/24 was registered at Phulwarisharif Police Station on the basis of the First Information Report lodged by one Surendra Singh. It was alleged in the said report that his son Sushil Kumar aged about 28 years has gone missing. First informant Surendra Singh suspected that his missing son Sushil Kumar might have been abducted by Jitesh Kumar (since deceased) as well as by other persons. That is how team of Police Officers comprising of Police Sub-Inspectors Firoz Alam and Rohit Ranjan as well as Police Constables Arjun Jha, Mukesh Kumar Rai, Md. Junaid Alam of Police Station, Phulwarisharif of Patna apprehended Jitesh Kumar at about 6 P.M of 31.03.2024 from near the Bans Ghat, Marine Drive, Patna, a place falling under the territorial jurisdiction of the Police Station, Buddha Colony, Patna. It is worthwhile to mention here that despite taking custody of Jitesh Kumar, all these Police Officials of Police Station Phulwarisharif

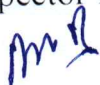


have not informed this fact to the territorial Police Station which is Police Station Buddha Colony. Statement of all these Police Officials recorded by the Superintendent of Police, Bihar Human Rights Commission unerringly points out that instead of taking Jitesh Kumar (since deceased) to concerned Police Station i.e Police Station Phulwarisharif, (where the crime No. 34/24 was registered) he was taken to the Technical Wing of the office of the Sub-Divisional Police Officer Phulwarisharif for the purpose of interrogation. Motive of the police team in choosing such mode of action establishes their malafides. They were certainly having a design to inflict custodial violence on Jitesh Kumar and wanted him to be kept away from the Public gaze at the Police Station which is a public place frequented and visited by the lot many persons including the victims coming there for lodging the F.I.R, persons visiting for inquiring the progress of investigation and where accused in other cases are also detained in the Lock Up. Thus Jitesh Kumar was taken to the isolated place to avoid the possibility of others witnessing the incident of custodial violence on him. Statement of all these Police Officers so also that of Sub-Divisional Police Officer Vikram Sihag and statement of Md. Sharif Alam, Police Station Officer of Police Station Phulwarisharif makes it clear that mandatory procedural formalities were not complied by any of them after apprehending Jitesh Kumar. All these Police Officials, though present at some point of time or other with Jitesh Kumar (since deceased) till his death had not taken care to inform the fact of his arrest to his relatives or to the police control



room. None of them had taken entry of arrest of Jitesh Kumar in the Station Diary of the Police Station Phulwarisharif. Though Police Station Officer Md. Sharif had received telephonic information about apprehending Jitesh Kumar at Bans Ghat by Police Officers subordinate to him, he had not directed them to bring Jitesh Kumar to the jurisdictional Police Station i.e Police Station Phulwarisharif. None of all these Police Officials had even attempted to prepare arrest Panchanama vouching arrest of Jitesh Kumar by police at about 6 P.M of 31.03.2024. None of them had taken care to get Jitesh Kumar examined by the Medical Officer soon after his arrest. Such lapses by the concerned Officials are numerous and gives an inferential finding that actions of the Police Official were well designed and calculated to inflict custodial violence on Jitesh Kumar may be for the purpose of extracting confession from him regarding missing person Sushil Kumar.

24. Thus Inquiry done by the Superintendent of Police, Bihar Human Rights Commission and statement of Police witnesses recorded therein makes it clear that deceased Jitesh Kumar was apprehended at about 6 pm of on 31.03.2024 by Sub-Inspector Firoz Ansari, Investigating Officer Rohit Ranjan son of Gopal Prasad and other Police Officials which were part of their team. Statement of Sub-Inspector Firoz Ansari recorded by the Superintendent of Police, Bihar Human Rights Commission makes it clear that there were no injuries on person of Jitesh Kumar (Since deceased), when he was taken in custody by the police team including Sub-Inspector Firoz Ansari. Sub-Inspector Firoz Ansari in his statement



has categorically accepted the fact that after apprehending Jitesh Kumar, information of his arrest was not given to his family members or local Police Officers. Statement of Sub-Inspector Firoz Ansari further makes it clear that when Jitesh Kumar was apprehended he was not having any health problem. Even statement of Investigating Officer Rohit Ranjan makes it clear that there were no external injuries on the person of Jitesh Kumar, when he was apprehended and was brought to the office of the Sub Divisional Police Officer, Phulwarisharif, Patna. Statement of the police officials recording during the inquiry gives a reason that as Jitesh Kumar had not requested for his medical examination, the same was not conducted. Statement of Investigating Officer Rohit Ranjan makes it clear that he had interrogated deceased Jitesh Kumar, Md. Sharif, Police Station Officer of Phulwarisharif Police Station was physically present when the deceased was kept at the office of the Sub-Divisional Police Officer as seen from his own statement as well as entry in the station diary of police station Phulwarisharif. This Police Station Officer had not informed about arrest of the deceased to the local Police Station of Buddha Colony, as seen from his statement. His statement as well as the statements of other Police Station Officers does not show that record of arrest of the deceased was made in any official documents of the Police Station nor relatives of the deceased were informed about his arrest. It is thus clear that stealthly Jitesh Kumar (Since deceased) was apprehended by police and instead of taking him to the Lock up of the concerned Police Station where the offence was registered, he



was taken to the office of the Sub-Divisional Police Station Officer for the purpose of interrogation and then he was killed at that office by indulging in custodial violence, by these police officials. This seems to have happened in presence of Senior Officer, Shri Vikram Sihag, Sub-Divisional Police Station Officer, who tried to feign ignorance about assault by stating that when he reached his office, a local compounder was giving treatment to Jitesh Kumar at his office. This Sub Divisional Officer Shri Vikram Sihag was not in a position to give any plausible explanation as to why the deceased was brought for the purpose of interrogation to the Technical Cell of his office instead of taking him to the concerned Phulwarisharif Police Station. His conduct is certainly showing his sharing of common intention in the episode of custodial killing of Jitesh Kumar, as this Sub-Divisional Police Officer had not even cared to lodge the FIR of the incident by himself becoming the First Informant particularly when he had seen mercilessly beaten accused Jitesh Kumar in the company of Sub Inspector Rohit Ranjan at his own office nor informed the incident of murderous assault to his official superiors. He has not even reported the incident custodial death of Jitesh Kumar occurring at his office to this Commission even as of now though mandatory directions operating as law in the field of custodial death required him to do so. He has not explained how the deceased suffered injuries of his own office where he was present.



25. Police Station Officer of Phulwarisharif Police Station namely Md. Sharif, during the course of inquiry by the Superintendent of Police, Bihar Human Rights Commission has stated that in the night hours of 31.03.2024, from the office of the Sub Divisional Police Officer, Phulwarisharif he took the Jitesh Kumar (since deceased) initially to the Primary Health Centre and then to the All India Institute of Medical Science, Patna where he was declared dead. Police Station Officer Md. Sharif Alam stated that then he took Jitesh Kumar to the Patna Medical College and Hospital, Patna where the concerned Medical Officer had declared Jitesh Kumar dead. Official records of the Primary Health Centre shows that the deceased was unconscious. Being the fact especially within his knowledge, Md. Sharif Alam was supposed to explain how the deceased was injured and become unconscious. However he was not in a position to explain to this aspect.

26. Though some of the police officials during fact finding inquiry have attempted to show that the deceased had suffered injuries because of his fall during the course of his arrest by police, this contention is devoid of merit as no Medical Examination of deceased victim Jitesh Kumar was conducted soon after his arrest to show that he suffered injuries prior to his arrest by police. Looking to the nature and number of anti mortem wounds found on person of deceased Jitesh Kumar while conducting the autopsy, it is impossible to infer that such wounds would occur during accidental fall of a person. Such contention coming on record during preliminary fact finding inquiry seems to be an attempt to save their skin by erring



Police Officers, who indulged in custodial violence on the deceased. The wound of the person of the deceased shows custodial violence on him by the Police Officers who were present at the office of the S.D.P.O, Phulwarisharif.

27. Thus the factual position crystallized with this discussion is to the effect that when apprehended by police, Jitesh Kumar (Since deceased) was not having any external injuries on his person. He was apprehended at about 6 P.M of 31.03.2024. After keeping him in the office of the Sub Divisional Police Officer, Phulwarisharif, he was taken to the hospital by police at about 10.30 P.M of 31.03.2024. During these four and half hours he continued to be in police custody. Report of his Post-mortem Examination shows large number of Anti-mortem wounds on person of deceased Jitesh Kumar. Bare perusal of description of those wounds reflected in the Post-mortem report makes it clear that those are attributable to the custodial violence inflicted by police officials during the course of interrogation in Phulwarisharif Police Station Case No. 34/24 in which he was apprehended. Apart from the voluminous oral evidence, available circumstantial evidence also unerringly points out custodial violence inflicted on the deceased by the police officials interrogating him. This chain of events narrated in the forgoing paras vis-à-vis the finding in the Post-mortem report makes the principal of Res Ipsa Loquitur applicable with full force to the case in hand. This principal operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions regarding tortuous liability. Applying this principal to the



case in hand, I have no hesitation to hold that team of Phulwarisharif, Police Station along with its superior officer such as the Sub-Divisional Police Officer have blatantly committed violation of human rights of deceased Jitesh Kumar and human rights of his next in kin by killing Jitesh Kumar in police custody. Police Officials Md. Sharif Alam, Rohit Ranjan, Firoz Ansari, Arjun Kumar Jha, Mukesh Kumar Rai, Md. Junaid Alam and the S.D.P.O. Vikram Sihag who were with deceased Jitesh Kumar from the time of the apprehension till his death, they being last seen of together with the deceased are at least responsible for antimortem wounds on the person of the deceased and his consequent death. Not it is for the Interrogation Officer to find out which other policemen are also involved in this custodial death apart from the Officials.

28. During the course of inquiry Shri Ram Singh who happens to be father of the deceased has categorically stated that on 07.01.2024 on the pretext of inquiry, Jitesh Kumar was initially taken to Phulwarisharif Police Station, for interrogation and was discharged thereafter. Subsequently on 31.03.2024, Police Officers from Phulwarisharif Police Station apprehended his Son Jitesh Kumar and had taken him to the office of the Sub-Divisional Police Officer, Phulwarisharif, where he was mercilessly beaten. He was also tendered written statement disclosing age and educational qualification etc. of his deceased son.

29. During the course of conducting fact finding inquiry, the Superintendent of Police, Bihar Human Rights Commission has recorded statement of Rahul Kumar



Rangila and Mukesh Kumar, who were also apprehended by police in the same police case near about the time when the deceased was taken in custody. Rahul Kumar has stated that he was beaten by police at the office of the Sub-Divisional Police Officer and then Jitesh Kumar (Since deceased) was also brought there at the office of the Sub-Divisional Police Officer, Phulwarisharif. Thereafter Rahul Kumar heard sound of cries of Jitesh Kumar. He also heard sound of beating and consequent cries of victim Jitesh Kumar while in police custody at the office of the S.D.P.O, Phulwarisharif. Witness Rahul Kumar Rangila also stated that then he was brought to the room where victim Jitesh Kumar was being beaten. Then he saw victim Jitesh Kumar in severely injured condition. Rahul Kumar further stated that in his presence police had further beaten victim Jitesh Kumar. Rahul Kumar then spoke in detail about subsequent happenings in that room. He stated that then the doctor was called and upon examining Jitesh, the doctor told to take him immediately to the hospital. The Superintendent of Police, Bihar Human Rights Commission has videographed the recording of this statement so also statement of Mukesh Kumar. Thus version of the eyewitnesses clearly establishes custodial culling of Jitesh Kumar by police at the office of the S.D.P.O, Phulwarisharif. Statement of this witness carries great value and he has no reason to tell a lie. Even otherwise it is impossible to infer that while in custody of police someone else who would caused wounds to the deceased.



30. Mukesh Kumar had also seen victim Jitesh in unconscious condition in the room of the office of the Sub-Divisional Police Officer, Phulwarisharif. As per his version victim Jitesh had vomited and Mukesh Kumar was then ask by police to clean the floor. This indicates custodial violence on deceased Jitesh by the Police.

30. It is thus clear that evidence on record coming from the mouth of two witnesses Rahul Kumar Rangila and Mukesh Kumar who are most natural witnesses to the incident of custodial death of victim Jitesh Kumar that because of custodial violence inflicted by Police Officers, Jitesh Kumar died in police custody at the office of Sub-Divisional Police Officer, Phulwarisharif.

31. During the course of preliminary fact finding, the Superintendent of Police, Bihar Human Rights Commission has also collected report of post-mortem examination of Jitesh Kumar son of Shri Ram Singh. That report shows several anti-mortem injuries on person of deceased Jitesh Kumar which are clearly attributed to the beating given to him by the police after his arrest. The autopsy surgeon opined that Jitesh Kumar died because of blunt force and **Cranio Cerebral** injuries with shock and **Haemorrhage** and its complications. The autopsy surgeons have further opined that injuries over the dead body of Jitesh Kumar are as a result of beating and all those injuries were anti-mortem in nature.

It is appropriate to reproduce relevant portions of the P.M. Report prepared by members of the Medical Board conducting autopsy. Those reads thus –

"Body was received at 10.30 AM on 01.04.2024 and PM commenced that 11.40 AM on 01.04.2024 District-Patna, PS- Pirbahor,



Inquest paper Dearing No. IPD 05257 but no complete treatment records and brief facts detailing history of case and no death Summary till death enclosed in inquest.

Name-Jitesh Kumar S/O Shri Ram Singh, Add- Nepali Nagar, Patna

Body brought from PMCH Emergency ward on 01.04.2024 03.30 AM. Boody brought and identified by BHG/111225 SHIV KUMAR YADAV.

- I. **External Appearance-** *Average Built swelling and blackening of both eyes. Right eye closed with sub conjunctival haemorrhage, left eye partial open mouth lips apart with anterior set of teeth seen.I.V. CANNULA Right wrist RIGOR MORTIS PRESENT ALL OVER THE BODY, FAECAL SOILING ANAL AREA.*
- II. **Cranial and Spinal Canal-** *SUB Scalp Extravasations of Blood both frontal, left temporal, left occipital and Mid occipital with dark reddish blood on insicion with corresponding contusions of brain matter and over both parietal convexity and base of frontal lobe with conductional haemorrhage. Brain matter edematous.*
- III. **Thorax-** *Both Lungs congested with dark frothy blood on cut section. Heart empty. All Coronaries patent. Musculature and valve-nothing at normally detected.*
- IV. **Abdomen-** *Stomach-Cream colour fluid 20 ml. mucosa congested patchy in an area 15x10 cm. with reddening and petechials. All Abdominal viscera congested. Bladder empty. faecal soiling.*

Following Antemortem Injuries Mentioned Below:-

- I. *Swelling with bruising reddish blue to bluish in coloration multiple of varying size, several parts all over the body mentioned below:-*



- a. Swelling with bruising both ears and pre auricular and Post auricular area with extravasated dark reddish blood on incision. There was blood and blood clots in external auditory canal.
- b. Swelling with bruising of Soles of both foot, right sole of foot size 15 * 10 cm. and left sole of foot size 16 * 11 cm with extravasated dark reddish blood on incision.
- c. Swelling with bruising back of hip both gluteal aspect and posterior aspect both upper thigh in an area of size 54*44 cm. With extravasated dark reddish blood on incision.
- d. Swelling with bruising right popliteal area 8*4 cm and left popliteal area 6*2 cm. With extravasated dark reddish blood on incision.
- e. Swelling with bruising antero postero lateral aspect both shoulder part of back of upper chest and scapular region left side of size 28×15 cm and right side of size 26×16 cm with extravasated dark reddish blood on incision.
- f. Swelling with bruising left distal forearm, wrist, dorsum of hand of size 22×9 cm and posterior aspect of left hand adjacent thumb of size 10×5 cm and right forearm wrist and dorsum of hand of 34×10 cm and palmer aspect right hand adjacent thumb of size 12×6 cm with extravasated dark reddish blood on incision.
- g. Swelling with bruising right elbow posterior aspect of size 10×8 cm and left elbow posterior aspect of size 9×6 cm. With extravasated dark reddish blood on incision.
- h. Swelling and bruising both front of knee and adjoining lower thigh and below knee of size right side 20×16 cm and left side 25×15 cm with extravasated dark reddish blood on incision.



- i. Swelling and bruising both distal leg, ankle, dorsum of foot right side 22×17 cm and left side 23×15 cm with extravasated dark reddish blood on incision.
- j. Swelling with bruising lumbosacral region in an area of size with 20×10 cm with extravasated dark reddish blood on incision.
- k. Parallel bruising over
 - I. Left arm posterior aspect.
 - II. Left elbow posterior aspect
 - III. Back of lower abdomen lateral aspect right side.
 - IV. Right side back of chest 12.5 cm from midline oblique. Of varying length 11×14 cm with intervening space of 2 cm. with extravasated blood clot on incision.

II. Abrasion brownish black in colour of varying size situated over

- a. Right side cheek of face of size $1 \text{ cm} \times 0.5 \text{ cm}$ and $0.75 \text{ cm} \times 7.5 \text{ cm}$ intervening distance of 3 cm.
- b. Left Shoulder outer aspect adjacent tip of size $2 \text{ cm} \times 0.5 \text{ cm}$ and $1 \times 0.25 \text{ cm}$ with intervening distance of 2.5 cm.
- c. Back of right knee of size $1.5 \text{ cm} \times 0.5 \text{ cm}$ and $1 \times 1.5 \text{ cm}$. with intervening distance of 2 cm.
- d. Left elbow posterior aspect of size $2 \times 1 \text{ cm}$, Right elbow lateral aspect $1.5 \times 1 \text{ cm}$.
- e. Left distal forearm of Lateral aspect of size of $1.5 \times 1 \text{ cm}$.
- f. Front of left knee of size $2 \times 1 \text{ cm}$ and over left shin of tibia mid aspect front of size $3 \times 1 \text{ cm}$.

OPINION:-

mi

1. Cause of death with closed blunt force cranio cerebral injuries with shock and haemorrhage and its complications from cumulative effect of all contusional injuries over the body as a result of BEATING.

2. All injuries are Antemortem in nature sufficient to cause delayed death due to BEATING.

3. Time Since death 12 Hours to 24 hours approx prior to Postmortem examination.

Sd- Illegible

1. Dr. Anil Shandil, Professor, FMT, PMCH, PATNA

Sd- Illegible

2. Dr. Ritika Gupta, Tutor, Department of Pathology, PMCH, PATNA

Sd- Illegible

3. Dr. Madhu Kumari, Tutor, Department of Anatomy, PMCH, PATNA

32. Perusal of the autopsy report shows that the Police Personnels having custody of Jitesh Kumar had shown cruelty of extreme level while assaulting him. This Commission does not endorse the oft quoted view of the critics that Police are murderers in uniform. However it appears that such case gives instigation to the critics to give bad name to this law enforcement agency. Bare perusal of antimortem wounds on dead body of Jitesh Kumar shows that the assailants inflicted those with full knowledge that their act would cause death and their

intention in causing those wounds makes it clear that the assailants were desiring the result of eliminating Jitesh Kumar.

33. The theory of last seen together applies with full force to the case in hand to conclude that Jitesh Kumar was done to death by Police. When he was apprehended at Bans ghat, there were no injuries on his person and he was a hale and hearty youth. Within four hours thereafter his entire body was found having wounds caused by murderous assault. During all this period of about four hours, he was in company of Police officials Firoz Ansari, Rohit Ranjan, Md Sharif, Vikram Sihag, Rajesh Kumar Jha, Mukesh Kumar Rai and Md. Junaid Alam amongst others. Obviously these Police officials who were lastly found together with deceased Jitesh Kumar are responsible for inflicting wounds which were sufficient in the ordinary cause of nature to cause death of Jitesh Kumar making their employer i.e the State of Bihar liable for payment of compensation to the dependants of Jitesh Kumar apart from prosecution of all concerned for the offences committed by them while donning uniform of Police for achieving the ends of justice. Bare perusal of nature of antimortem wounds found on the dead body of Jitesh Kumar corroborates the version of Rahul Kumar Rangila and Mukesh Kumar which is to the effect that Jitesh Kumar was murderously assaulted by the Police at the office of the Sub Divisional Police Officer, Phulwarisharif."

34. What is fate of trial of a case relating to custodial death is succinctly described by the Supreme Court in the matter of **D. K Basu(Supra)**.

Relevant portion from paragraph 24 thereof, needs reproduction and reads thus:-

" 24. Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without



recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometimes resulted into his death. Death in custody is not generally shown in the records of the lock-up and every effort is made out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co-prisoners who are highly reluctant to appear as prosecution witnesses due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policeman responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal.”



35. It is said always said that a witness may lie but the documents and circumstances cannot. The Supreme Court in para 24 further considered the case of **State of Madhya Pradesh V. Shyamsunder Trivedi, 1995(3) Scale 343 :(1995 AIR SCW 2793)** and held that in such cases circumstantial evidence assumes great importance. In the case hand circumstantial evidence in the form of entries in the Station Diary of Police Station, Phulwarisharif are very relevant and material. These entries are taken in ordinary course of business and are relevant as per provisions of Section 35 the Indian Evidence Act. Ultimately it is an entry in the public record made in performance of a public duty in the regular course of business, in discharge of official duty. Contemporaneous entries in the Station Diary of the Police Station, Phulwarisharif reflects the following position. At about 10:20 P. M of 31-03-2024, an entry has been taken in the Station Diary to the effect that PSO Md. Shafi Aalam had informed telephonically that during interrogation of Jitesh Kumar, his health condition deteriorated and therefore, Md. Shafi Aalam is taking him to the hospital. There is entry in the Station Diary that in the morning hours 01-04-2024 Police Station Officer Md. Shafi Aalam reached at the Police Station and made an entry in the Station Diary that Jitesh Kumar, who was being interrogated at the Technical Wing of the office of the Sub-divisional Police Officer, Phulwarisharif became ill and he was



initially treated as Primary Health Centre, Phulwarisharif from where he was referred to the PMCH, Patna at 10:45 PM. That entry shows that at 11:00 PM, PSO Md Shafi Aalam took Jitesh Kumar to All India Institute of Medical Sciences (AIIMES), Patna where Medical Attended informed that pulse of Jitesh Kumar is not recordable. Entry further shows that PSO Md. Shafi Aalam reached P.M.C.H, Patna at 12:30 AM where the doctor has declared Jitesh Kumar as brought dead. If interpreted in proper perspective this Station Diary entries shows that PSO Md. Shafi Aalam was interrogating deceased Jitesh Kumar and as health of Jitesh kumar deteriorated , Md Shafi Aalam took him to various hospitals where declaration of death of Jitesh Kumar was made. Thus Md. Shafi Aalam cannot escape liability of custodial torture to deceased Jitesh Kumar.

36. After custodial death of his son Jitesh Kumar, his father Shri Ram Singh resident of Nepali Nagar, Police Station, Rajiv Nagar, District, Patna had lodged a report under Section 154 of the Cr.P.C. alleging death of Jitesh Kumar due to custodial violence by police. On the basis of this report, on 01.04.2024, an offence punishable under Section 302 and 120(B) of the Indian Penal Code is registered at Police Station, Phulwarisharif. As Senior Superintendent of Police, Patna failed to respond this complaint, this Commission is not having an advantage of knowing the stage of investigation of this Crime. However, lodgment of the F.I.R alleging custodial death of Jitesh is one additional evidence in the matter establishing



custodial death of Jitesh Kumar by Police. Thus it is establish on record that because of assault by policemen while in police custody, Jitesh Kumar son of Shri Ram Singh died on or about 31.03.2024. Thus human rights of deceased Jitesh Kumar so also human rights of all his family members are blatantly violated by this shameful and beastly act by Police Officers working under the Senior Superintendent of Police, Patna.

37. At this stage it needs to mention that police atrocities and custodial violence cannot be countenanced at any cost. Law always frown upon such high handed in human actions of police authorities. In **D.K. Basu (Supra)** it has been observed by the Hon'ble Supreme Court thus:-

"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 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 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 issue are fundamental. "

38. Evidence on record reflected from the inquiry conducted by the Superintendent of Police, Bihar Human Rights Commission shows that deceased Jitesh Kumar was apprehended at the Bans Ghat by Sub-Inspectors Rohit Ranjan and Firoz Ansari as well as police constables Rajesh Kumar Jha, Mukesh Kumar Rai and Md. Junaid Alam. He was brought alive, hale and hearty at the office of the S.D.P.O. by them. These Police Officials were with deceased Jitesh Kumar at the Technical Wing of the office of the Sub-Divisional Police Officer, Phulwarisharif where Jitesh Kumar was murderously assaulted and killed by them. Similarly Police Officer of Phulwarisharif Police Station namely Md. Sharif Alam was also present at the Technical Wing of the office of the Sub-Divisional Police Officer during the period when deceased Jitesh Kumar was kept there. The Sub-Divisional Police Officer Vikram Sihag was also present at his office where deceased Jitesh Kumar was done to death. His own statement shows that he has seen the deceased at his office. Police Station Officer Md. Sharif Alam had then taken deceased Jitesh Kumar in unconscious conditions from the office of the S.D.P.O, Phulwarisharif to initially Primary Health Centre ultimately to Patna Medical College and Hospital, Patna where Jitesh was official declared dead. Contemporaneous official documents of the hospital are evincing the fact. His dead body was having innumerable antimortem wounds. The ocular circumstantial



evidence therefore do indicate that all these above named Police Officials were actively involved in custodial killing of victim Jitesh Kumar by their acts commission and omission. They are employees of the State of Bihar and the State is as such vicariously liable for their acts so far as tortuous liability is concerned. An offence punishable under Section 302 IPC is already registered and custodial death of Jitesh Kumar is under investigation. In the ensuing trial if any, as per mandate of Section 106 of the Evidence Act, the burden of proving as to how Jitesh Kumar suffered so many injuries while in custody and died homicidal death will certainly lie on all accused Police Officials who were with Jitesh Kumar from 6 P.M of 31.03.2024 till his death occurring at about 10.30 P.M of 31.03.2024. These facts are certainly in their exclusive knowledge and on this backdrop not taking Jitesh Kumar to regular Police Lockup at the Police Station of Phuarisharif, not preparing documents showing his arrest, not informing his arrest to his relatives would assume great significance. All these factors establishes custodial murder of deceased Jitesh Kumar by policemen.

39. Now comes the role of an important Police Officer – The Senior Superintendent of Police, Patna in this custodial killing of Jitesh Kumar on 31.03.2024 within his jurisdiction. Though law of the land mandates him to report the custodial death occurring in his jurisdiction to the State as well as the National Human Rights Commission, this Officer as of date has failed to inform custodial death of Jitesh Kumar occurring on 31.03.2024 to this Commission. The reason

seems to be obvious. What is desired is suppression of this incident from the Commission. The Senior Superintendent of Police, wields significant powers and authority in the district for maintaining law and order and for ensuring public safety within his jurisdiction. The Senior Superintendent of Police is duty bound to oversee, supervise and inspect all Police Stations within his district. He is the leader of the police force in his district. He is duty bound to motivate the Police Personnel under him to follow the rule of law for ensuing efficient law enforcement. The Senior Superintendent of Police has to exert control over the entire police force in the district for maintaining rule of law and public peace. He has to sensitize the police force to follow directions of law while dealing with the suspects and persons accused of commission of crime. In the case in hand I am constrained to record that the Senior Superintendent of Police, Patna has utterly failed in discharge of his duties of maintaining rule of law even in police force under his jurisdiction. The Senior Superintendent of Police, Patna has failed to place on record of this Commission contemporaneous record of his visits to the Police Stations under his jurisdiction. Similarly the Senior Superintendent of Police has failed to put on the record the steps taken by him for implementing the mandatory guidelines dealing with the issue of prevention of custodial violence found in catena judgments of the Honourable Supreme Court including those found in the decision of **D.K. Basu (supra)**. This leads to inviting adverse inference under Section 114 of the Indian Evidence Act against him. The

directions given therein are the law of the land and it is clear that the Senior Superintendent of Police has failed to get that law implemented in its true letter and spirit by exercising control over the police force of his district. Infact he has wilfully disobeyed those directions in the instant case. Thus the Senior Superintendent of Police, Patna has not taken due and reasonable care in implementing directions of law found in the judgment of the Supreme Court on the subject and has not even bothered to get the directions issued by the National Human Rights Commission implemented in this district. It is seen that he has failed to act as an officer of ordinary prudence for taking care of compliance of basic formalities for protecting the life of persons accused of an offence. It seems to me that he has deliberately suppressed the incident of custodial death of Jitesh Kumar caused by his police staff by not reporting it to this Commission for showing that everything is going on well in his jurisdiction and also to avoid/circumvent provisions of the Protection of the Human Rights Act, 1988. Administrative lapses and irregularities committed by him by not following the due process of law and directions of law are writ large on record. Hence it is seen that the Senior Superintendent of Police, Patna is grossly negligent in discharging his duties and in controlling the police force making him liable for necessary departmental action by the State of Bihar for gross negligence in discharge of duties of the post held by him. Similarly he has also made himself liable for action under the provisions of Contempt of Court Act as prescribed by observations in

Am

para No. 37 of the judgment of the Supreme Court in the matter of **D.K. Basu (supra)** for violating directions contained paragraph 36 thereof.

40. Victim of violation of human rights is entitled of compensation and violators of human rights is liable for action not only for commission of overt act but also for showing negligent attitude in preventing violation of human rights. (Refer section 18 (a) of the protection of Human Rights Act, 1993) Had the Senior Superintendent Police, Patna taken due care and showed attention in effective control of the policemen in his jurisdiction, precious human life would not have lost and image of the State of Bihar would not have maligned. This reminds me of the Rome Statute of the International Criminal Court and by this treaty International Criminal Court was established. No doubt India is not the signatory to that treaty but it depicts the doctrine of Superior responsibility as a form of omission liability. To sum up, the doctrine of Superior or command responsibility could be defined as follows. A superior, whether de jure or de facto, may be held criminally responsible under that doctrine in relation to crimes committed by subordinate where, at the time relevant to the charges, he was in a relationship of superior-subordinate with the perpetrators, knew or had reason to know (or, in the case of military superiors at the IC, "should have know") that these crimes had been committed or were about to be committed and, with and despite that knowledge, willfully and culpably failed to prevent or punish these crimes. However is India, unless the Statute expressly provides, there is not vicarious



liability for criminal offence. However, in our set up, under the doctrine of strict liability, a Superior Officer is always liable for the acts of his negligence giving cause for claiming damages. Superior Officer cannot claim immunity from service liabilities like departmental action in case he is found to be indulged in gross negligence in discharge of his official duties by showing want of care and due attention.

41. Now comes the question as to what should be the compensation payable on account of custodial death of Jitesh Kumar. It is not possible to quantify the amount of money for loss of human life caused by high handed action of the Police Authorities. However compensation so assessed needs to be fair and reasonable. Assessment of compensation on account of death of human being depends on several factors including age of the deceased, age of his dependence, earning capacity of the deceased, loss of dependency, loss of estate and several other factors.

42. In the case in hand, deceased Jitesh Kumar was an able bodied person having potential for earning to feed his family. He was aged about 30 years. As such he could have earned for maintaining his family for a period of about 30 more years. His dependents are deprived of loss of estate/dependency for all these years because of heinous act by Police Authorities in killing him. While assessing compensation for loss of human life, some guesswork is essential. The pecuniary loss needs to be reimbursed to his dependence fully apart from awarding damages

towards funeral expenses, loss of consortium, love and care as well as damages for police atrocities. Whenever any amount is to be determined as compensation for death, the object is to compensate so far as money can compensate because money cannot bring back lost soul. Money cannot be equated with human sufferings and deprivation suffered by family members on account of custodial death of their loved one. It is well settled that the term compensation signifies that which is given to recompense an equivalent rendered. Therefore, the compensation must be equal in value though not alike in kind.

43. One of the recognised more for assessing death compensation is a method followed for determination of compensation on account of death of a person in a claim under the Motor Vehicles Act, 1988. This method is a time tested method even approved by the Honourable Apex Court in catena of judgments including decisions reported in Magma General Insurance Company Limited Vs. Nanu Ram Alias Ram and others, (2018) 18 SCC 130 and Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121. Even Aurangabad Bench of Bombay High Court while deciding Criminal writ petition No. 1646 of 2019 Sunita Kute Vs. the State of Maharashtra and others decided on 18th January 2023 has adopted the same procedure for determining compensation on account of death of Pradeep Kute in custodial violence by Maharashtra Police. In that case by adopting multiplier of 18 as per verdict in Sarla Verma's case death compensation was determined at Rs. 15,29,600. Hence,

this Commission also chooses to adopt the procedure prescribed for assessing compensation in claim petitions under the Motor Vehicles Act, 1988 for determining compensation payable by the State in this case.

44. In the case in hand deceased Jitesh Kumar was aged about 30 years as stated by his father during inquiry. In the Inquest Report police recorded his age as 28 years. Even after custodial death of Jitesh Kumar, torture to his family members by police continued. This is reflected from written statement of his father Shri Ram Singh tendered by him during the course of the inquiry to the Superintendent of Police, Bihar Human Rights Commission on 02.05.2024. Statement of Shri Ram Singh shows that after custodial death of his son Jitesh Kumar, police from Phulwarisharif Police Station raided his house and had taken all documents showing educational qualification and the employment of his deceased son. He apprehended that those documents must have been destroyed by the police. He has however annexed few Photo Copies of the documents showing educational qualifications of his deceased son Jitesh Kumar to his statement. Shri Ram Singh has stated in the said statement that deceased Jitesh Kumar was graduate, had passed Diploma in Computer Application apart from passing examination of Fitter Trade and had acquired National Trade Certificate. In support of this claim, Shri Ram Singh has placed on record photo copies of provisional degree certificate issued by Magadh University showing that Jitesh Kumar had passed degree of examination of Bachelor of Arts in the year 2015. A certificate dated 05.05.2008

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showing that he had successfully cleared examination of the trade Typist is also placed on record by his father. Similarly copy of the National Trade Certificate in Fitter Trade of July 2012 of Jitesh Kumar is also on record. As seen from the certificate of December 2012, Jitesh Kumar had successfully completed training at the B.K. Institute of Technology. These documents and version of his father Shri Ram Singh shows that deceased Jitesh Kumar was able bodied person having skills to works at least as skilled worker i.e Typist or Fitter. Even if we adopt modest way, monthly income of such skilled person can be assessed at Rs. 12,000 per month and yearly income of such person comes to Rs. 1,44,000/-. In normal course, the deceased would have earned for about 30 more years. In the matter of **Rajesh and others Vs. Rajbir Singh reported in 2013 ACJ 1403**. Honourable Apex Court has held that in case of deceased victim having age of 40 years or less, there must be an addition of 50% to his annual income in order to compensate the dependents for loss of future prospects. However in this case let us take addition of only 30% to the yearly income (i.e. Rs. 43,200/- per annum) towards loss of future prospects. Thus total yearly income of the deceased can be estimated at Rs. 1,87,200/-. Deceased Jitesh Kumar was unmarried. Normally in case of unmarried person deduction on account of his personal expenses is given @30% to 40%. However in this case the Commission chooses to give deduction of 50% towards personal expenses from assessed annual income of deceased Jitesh Kumar. Therefore deducting Rs. 93,600 from annual income of Rs. 1,87,200/- loss of

estate or loss of dependency of parents and family members of deceased Jitesh Kumar is estimated at Rs. 93,600/- per annum. In the matter of Sarla Verma's and others multiplier of 18 is prescribed in such cases for capitalizing lost dependency or estate. Here also the Commission chooses to adopt a modest multiplier by assessing it at 14 only. Hence lost of future income/dependency/estate of parents of the deceased would be Rs. 13,10,400 (Rs. 93,600 per annum \times 14). In addition to this amount, parents of deceased Jitesh Kumar are entitled for an amount of Rs. 50,000 towards loss of love and affection. On account of funeral expenses of deceased Jitesh Kumar, awarded of compensation of Rs. 15,000 would be just and proper. In addition to this, it would be appropriate to award compensation of Rs. 2,00,000/- towards the custodial violence and torture amounting to violation of human rights. Thus the Commission award modest total amount of Rs. 15,75,4000/- (Rs. 15 lakhs 75 thousand 400) to the next inkin i.e father of deceased Jitesh Kumar, on account of custodial death.

45. This Commission has noted that all mandatory legal formalities directed to be complied in cases of custodial violence are breached with impunity by Patna Police even after causing custodial death of Jitesh Kumar. I have already reproduce paragraphs 37 to 40 from judgment in the matter of D.K. Basu which constitutes binding direction to this Commission. This Commission would be failing in its duties if in adherence to those directions, suitable order/recommendation is not made to make a reference to Hon'ble Patna High Court for initiating proceedings



for Contempt of Court for causing willful disobedience to the directions of law found in the judgment of the Hon'ble Supreme Court in the matter of D.K. Basu by Police Officials including the Senior Superintendent of Police, Patna holding that office as on 31.03.2024.

46. Section 18(e) of the Protection of Human Rights Act, 1993 deals with forwarding a copy of the report with its recommendations by this Commission to the State Government and its Officers with a further direction to forward comments and the Action Taken Report. Reading this provision with sub-Section(a) of the said Section, one may argue that this order/report of the Commission is merely a recommendation made to the State Government or its authorities. However, this is not so. There are several authoritative pronouncements of various High Courts to the effect that the such recommendations of this Commission are mandatory in nature requiring strict compliance thereof by the State. Para 16 from the judgment of the Hon'ble Division Bench of Allahabad High Court in **State of Uttar Pradesh and to others Vs. National Human Rights Commission decided on 01st February, 2019** clinches the issue. Para 16 thereof reads thus:-

“This basic question is whether the use of the expression “recommend” in Section 18(a) can be treated by the State Government or by an authority as merely an opinion or a suggestion which can be ignored with

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impunity. In our view, to place such a construction on the expression “recommend” would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority

or a government which is aggrieved by the order of the Commission is entitled to challenge the order. Since no appeal is provided by the Act against an order of the Commission, the power of judicial review is available when an order of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under Article 14 and of the basic principles of equality, it would not be possible to accept the construction that the State Government can ignore the recommendations of the Commission under Section 18 at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have not sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writes as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional

order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified

or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the Constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected”.

47. It is thus clear that the State of Bihar and its authorities are duty bound to comply the recommendation made in this order passed by the State Commission. Mandate of law require the State Government to comply the recommendations of this Commission. Similar view is also expressed by many other High Courts including Madras High Court and Chhatisgarh High Court. Therefore the order :-

ORDER

- I. The State of Bihar through its Chief Secretary and the Senior Superintendent of Police, Bihar, do hereby jointly and severally pay amount of Rs. 15,75,400/- (Rs. Fifteen lacs Seventy Five thousand four hundred only) towards compensation on account of custodial death of Jitesh Kumar son of Shri Ram Singh resident of Nepali Nagar, Police Station, Rajiv Nagar, Patna within 30 days from the date of receipt of this order failing which amount of awarded compensation shall carry an interest @12% per annum till its full realization. The amount of compensation shall be paid to next of kin i.e father Shri Ram Singh, resident of Neapli Nagar, Patna.
- II. The State of Bihar and the Senior Superintendent of Police, Patna shall be free to recover the amount of compensation paid to Shri Ram Singh from all police officials causing custodial death of Jitesh Kumar and found to be involved in act of commission and omission in this case.
- III. The Additional Director General of Police, CID, Bihar shall personally monitor the investigation of F.I.R No. 5117060240487 dated



01.04.2024 lodged by Shri Ram Singh with Phulwarisharif Police Station regarding custodial death of his son Jitesh Kumar and shall take it to the logical end as early as possible. The Investigation shall be conducted by the State C.I.D. Bihar. Monthly progress of investigation should be reported in this Commission in order to ~~prevent~~ ^{prevent} further breach of human rights of family members of the deceased.

IV. The State of Bihar through its Chief Secretary or other competent officer shall initiate departmental inquiry against the incumbent of the post of the Senior Superintendent of Police, Patna as of 31.03.2024 for his administrative lapses, irregularities and gross negligence in discharge of official duty resulting in custodial death thereby brining down reputation of the State of Bihar as indicated in forgoing paras by following due process of law as well as relevant Rules including All India Services (Discipline and Appeal) Rules, 1969 within a period of 30 days from the receipt of this order.

V. The Registrar, Bihar Human Rights Commission, Patna shall take necessary steps for initiating proceeding under the Contempt of Courts Act against the incumbent of the post of the Senior Superintendent of Police, Patna as of 31.03.2024 and all Police Officials indicated in this order. Copy of this report and order of this Commission therefore be forwarded to the Learned Registrar General of Hon'ble Patna High



Court, Patna for necessary action under the Contempt of Court Act as per the direction of the Hon'ble Supreme Court in the matter of **D.K. Basu (supra)** by placing the same before the Hon'ble Chief Justice, Patna High Court, Patna.

VI. The office of the Registrar attached to this Commission shall forward copies of this order along with the report of the Superintendent of Police, Bihar Human Rights Commission including statement of witnesses, the Post-mortem report, the Inquest notes etc immediately to the Chief Secretary, State of Bihar, Additional Chief Secretary, Home Department, State of Bihar, the Senior Superintendent of Police, Patna, the Learned Registrar General of Hon'ble Patna High Court, Patna and the Additional Director General of Police (CID) Patna, Bihar as well as to victim Shri Ram Singh son of Janki Singh resident of Nepali Nagar, Patna, Bihar.

VII. The report of fact finding inquiry conducted by the Superintendent of Police, Bihar Human Rights, Patna and all documents and statements recorded during that fact finding inquiry shall form the part and parcel of this Suo-motu complaint case bearing No. 2215/4/26/2024-AD. The said filed be attached to this proceedings.

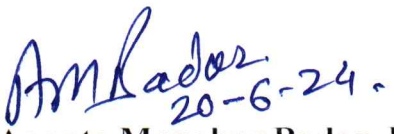


VIII. All concerned to ensure proper compliance of this recommendation within prescribed time by following due process of law as prescribes by Section 18(e) of the Protection of Human Rights Act, 1993.

IX. Put up for perusal of Action taken Report of all concerned on 05.08.2024.

Patna

Dated 20.06.2024


(Justice Ananta Manohar Badar, Retd.)
Chairperson
Bihar Human Rights Commission, Patna