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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd September, 2021

Decided on: 8th September, 2021

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W.P.(CRL) 1558/2021

GEETA AND ORS

..... Petitioners

Represented by: Mr.Mehmood Pracha, Advocate with
Mr.Shariq Nisar, Mr.Sanawar
Choudhary, Mr.Yashovardhan Ojha
and Mr.Jatin Bhatt, Advocates.

Versus

STATE & ORS.

.... Respondents

Represented by: Mr.R.S.Kundu, Additional Standing
Counsel for State/Respondent Nos.1
and with Inspector Jeet Ram, P.S.Hari
Nagar.
Mr.Anil Soni, CGSC for Union of
India/Respondent No.3.
Mr. Rajesh Kumar, Special P.P. for
CBI/Respondent No.4

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Walls of prison, howsoever high they may be, the foundation of a prison is laid on the Rule of Law ensuring the rights to its inmates enshrined in the Constitution of India. It is the violation of these Constitutional rights of Ankit Gujjar, who lost his life to custodial violence in Tihar Jail, which has compelled the petitioners Geeta, Shivani and Ankul, the mother, sister and brother of deceased Ankit Gujjar to file the present writ petition. The petitioners have impleaded State, Government of NCT of Delhi, Delhi Police through its Commissioner, Union of India through its Home Secretary, Ministry of Home Affairs and Central Bureau of Investigation

(CBI) through its Director as respondent Nos.1 to 4 respectively inter alia seeking a writ of mandamus directing respondent No.4/CBI to take over the investigation of FIR No.451/2021 registered at PS Hari Nagar, Delhi from respondent No.2 and to provide adequate protection to the petitioners.

2. According to the petitioners, Ankit Gujar was lodged in Central Jail No.3, Tihar Prison Complex as an under trial prisoner who was brutally beaten by the officials of Tihar Prisons on the intervening night of 3rd/4th August, 2021 and despite repeated PCR calls and messages neither was any effort made to save Ankit nor complaint lodged nor FIR registered nor any evidence collected. Rather a counter affidavit was registered on the complaint of Jail officials against Ankit. FIR on the death of Ankit Gujar in Tihar Jail which was caused due to multiple blunt injuries was registered only on the intervention of the learned Metropolitan Magistrate under Section 156(3) Cr.P.C. According to the petitioners the deceased was long being harassed by the officials of the Tihar Jail as he was unable to meet the regularly increasing demands of money made by them. Though the FIR was registered on the complaint of the petitioners however, the proceedings noted along with the FIR clearly showed that despite repeated complaints when the deceased was alive no effort was made to save him, to provide him medical treatment and even after his death effort was made to support the FIR registered against the deceased. Even in the FIR registered pursuant to the directions of the learned Metropolitan Magistrate Sections 302/323/341/34 IPC have only been invoked despite ample material on record that there was a systematic destruction of evidence and extortion being carried out by the jail officials, hence the investigation be transferred to CBI at the earliest so that valuable evidence which can be collected is not

lost and the inmates of the prison who are the eye witness can depose in a fair and free manner.

3. When this petition came up before this Court on 18th August, 2021 this Court while issuing notice directed a status report to be filed under the signatures of the Director General, Prisons on behalf of respondent No.1 and under the signatures of the Joint Commissioner of Police concerned on behalf of respondent No.2. The Director General, Prisons was also directed to preserve all the CCTV footages which have a bearing on the incident, that is, prior to the incident, at the time of incident and thereafter. Status reports have been filed by the Director General, Prisons as also the Joint Commissioner of Police, Western Range, the senior and the supervisory officer of the investigation being conducted by PS Hari Nagar in the above-noted FIR.

4. As per the status report filed by the Director General, Prisons the deceased inmate Ankit @ Gujjar s/o Vikram Singh was initially admitted in Central Jail No.4 in the year 2015 in FIR No.190/2015 under Sections 302/307/356/394 IPC at PS Sonia Vihar and was released from Jail on 13th December, 2017 whereafter he was admitted in Central Jail No.2 on 18th August, 2020 from where he was shifted to Central Jail No.4 on 2nd September, 2020 and thereafter to Central Jail No.3 on 17th February, 2021. It is stated that the deceased was facing trial in as many as 13 cases registered at various police stations of Delhi, Haryana and Uttar Pradesh. As regards the incident dated 3rd August, 2021 is concerned, it is stated that Ankit @ Gujjar was lodged in Central Jail No.3, Ward No.5A, Cell No.16 along with two other inmates namely Gurjeet s/o Jarnail and Gurmeet s/o Jarnail. On 3rd August, 2021 a surprise search was conducted by jail staff at

around 3.30 PM in the Cell of the deceased when one mobile phone, one charger/data cable and one hand made knife was recovered. Thus in terms of the Delhi Prisons Rules, 2018 punishment ticket qua inmate Ankit @ Gujjar, Gurjeet and Gurmeet was prepared and subsequently the on-duty Warder of Ward No.5A instructed the inmates to be shifted to Ward No.1 for segregation in pursuance to the orders of the Jail Superintendent conveyed by on-duty Deputy Superintendent. Around 7.30 PM the inmates Ankit, Gurjeet and Gurmeet refused to get transferred to other wards and protested which was informed by the on-duty Warder to the Deputy Superintendent Narender Meena. Narender Meena went to Cell No.16 of Ward-5A and told the inmates to obey the orders of the Superintendent on which Ankit, Gurjeet and Gurmeet started abusing Narender Meena and entered into a heated argument. Later Ankit started fisticuff with Narender Meena. Sensing the chaos, other jail officials rushed to the spot and intervened to control the situation. Another punishment ticket was prepared for commission of the attack on the Deputy Superintendent and Ankit was shifted to Cell No.9 of Ward No.1 and Gurjeet and Gurmeet were lodged in Cell No.19 of Ward No.1.

5. It is further noted in the status report that on the night of 3rd/4th August, 2021 at around 1.00 AM a call was made by jail staff to Casualty, Central Jail Hospital, Tihar as Ankit was complaining of body ache, upon which the duty doctor and nursing staff visited the ward for medical examination and gave him pain killer injection. Ankit refused for any further treatment/physical examination. At 6.25 AM again a call was made to the duty doctor and on visit in the ward of Ankit, on examination he was found lying supine, pupils were dilated and fixed, pulse was not recordable.

Ankit was shifted to isolation casualty and three cycles of CPR were done and was declared dead at 7.15 AM on 4th August, 2021 by the doctor on duty. Intimation in this regard was given to the learned CMM, local police station, NHRC and other authorities. The inquest proceedings under Section 176 Cr.P.C. were initiated by the learned Metropolitan Magistrate whose report is still awaited.

6. In relation to the CCTV cameras it is stated that 757 number of CCTV cameras have been newly installed in Central Jail No.3 and the commissioning thereof is at final stages. Due to the technical problem faced during the commissioning of CCTV cameras in Central Jail No.3, pursuant to the request of M/s Bharat Electronic Ltd., that is, the agency executing the work of commissioning of CCTV cameras, a shutdown of all cameras of Ward Nos.1, 2, 3, 4 and 5A was done on 3rd August, 2021 as a result of which the cameras of the said locations were off line. Hence the CCTV footages of the said cameras are not available. It is stated that the available CCTV footages of the remaining CCTV cameras of Central Jail No.3 have been preserved in a hard –drive and supplied to the Delhi Police with a certificate under Section 65B of the Evidence Act.

7. As per the status report filed by Director General, Prison, an internal inquiry was also initiated which has been completed by DIG, Prisons and Narender Meena, Deputy Superintendent; Deepak Dabas, Assistant Superintendent; Balraj, Assistant Superintendent and Shiva, Warder have been placed under suspension. Further eight more jail officials have been shifted from Central Jail No.3 till further orders. Further the Superintendent, Central Jail No.3 has also been transferred to Prison Headquarter.

8. A detailed status report on the investigation carried out till date in FIR

No.451/2021 under Sections 302/323/341/34 IPC registered at PS Hari Nagar, Delhi has been filed by the Joint Commissioner of Police, Western Range, Delhi Police. As per the status report number of PCR calls were received on the evening of 3rd August, 2021. One PCR call was received at 23.09 PM with regard to the MLC of Narender Meena, Deputy Superintendent, Tihar Jail recorded vide DD No.127A which was entrusted to SI Pooran Mal who reached the DDU Hospital where the injured Narender Meena refused to give the statement stating that an official complaint will be filed later. However, the MLC stated history of physical assault by inmate in Jail. Later on 4th August, 2021 at 1.10 AM a written complaint was received from the Jail Administration regarding assault on Narender Meena and other staff inmates on which FIR No.434/2021 under Sections 186/332/353/34 IPC was registered at PS Hari Nagar, Delhi.

9. On 3rd August, 2021 two more PCR calls were received at PS Hari Nagar, one at 22.55 PM recorded vide DD No.129A and the second at 23.11 PM recorded vide DD No.133A. In the first PCR call, the lady caller informed that her brother Ankit Gujjar was in jail and he has been assaulted by the Deputy Superintendent for money, due to which the caller's brother has received multiple injuries and the jail people were not giving him treatment. The caller gave the mobile number as 9311951721. This call was entrusted to ASI Ram Avtar who reached the Central Jail No.3 however, he was not allowed to enter the jail by the jail staff. Vinay Thakur, Deputy Superintendent on duty informed that a mobile phone, a data cable and knife were recovered from the cell of Ankit Gujjar whereafter a scuffle took place between Ankit Gujjar and jail staff in which jail staff and Ankit Gujjar sustained injuries and treatment has been provided to Ankit Gujjar.

ASI Ram Avtar was asked to come late in the day to record the statement of the under trial prisoner. On the caller being contacted telephonically she stated that she was in her village at Bagpat and hence her statement could also not be recorded.

10. In the second PCR call recorded vide DD No.133A at 23.11 PM on 3rd August, 2021 the caller informed about an incident at Jail No.3, Tihar which noted as under:

“TIHAR JAIL NO 3 INCIDENT, CALLER BOL RHA HAI KI MERA BHAII TIHAR JAIL NO 3 MEN BAND HAI JISKA QUARREL POLICE WALO SE HO GAYA THA2ND CALL, CALLER KAH RHA HAI KI JAIL ME POLICE WALO SE QUARREL EK ANKIT GUJJAR NAAM KE BHAII SE HUA THA AUR AB POLICE WALE SABHI KO MAARNE KI KAH RHE HAI AUR CALLER 13/265, DAKSHINPURI EXTENSION SE BOL RHA HAI NEED POLICE MOB 956036388”

11. This call was also entrusted to ASI Ram Avtar. The mother and brother of Ankit came to the Police Station Hari Nagar at 4.30 AM on 4th August, 2021 however, they stated that they will give their statements later on and that one under trial prisoner namely Gaurav was released from the Tihar Jail in the evening of 3rd August, 2021 who informed them about the incident of beating of Ankit. On 4th August, 2021 another PCR call was received at 9.08 hours recorded vide DD No.32A wherein the caller stated that his brother who was lodged in Tihar Jail No.3 was assaulted by Narender Meena, Deputy Superintendent along with three-four staff yesterday night due to which he has expired and now Narender Meena is forcing other inmates to take accountability of this murder. It is stated that in all total 16 PCR calls were made by the relatives of the deceased/injured in respect of the incident.

12. While the inquest proceedings were going on by the learned Metropolitan Magistrate, on an application filed by the petitioner No.1 under Section 156(3) Cr.P.C., vide order dated 7th August, 2021 SHO, PS Hari Nagar was directed to register FIR and accordingly on 9th August, 2021 above-noted FIR was registered on the written complaint of the mother of the deceased. According to the status report filed by the Joint Commissioner of Police, statements of 28 witnesses have been recorded under Section 161 Cr.P.C. including injured eye witnesses Gurjeet and Gurmeet. According to the two of them Ankit had gone for a hearing at Jhajjar Court and came back at 6.00 PM on 3rd August, 2021. Since in the search of the cell taken at 4.00 PM a cell phone, knife and a data cable was recovered, at about 7.00 PM Narender Meena, Deputy Superintendent along with the jail staff came and directed them to shift to Ward No.1. Since Ankit refused to shift to Ward No.1 a scuffle took place. In the meantime, other staff also came and they started beating Ankit. Thereafter Narender Meena, Vinod Meena, Dinesh Chhikara, Harphool Meena, Naveen, Deepak Dabas, Ram Avtar Meena and other staff took them near the control room, gave them beatings due to which Ankit expired, which they came to know on the morning of 4th August, 2021. Even other under trial prisoners stated about having seen injuries on Ankit, Gurjeet and Gurmeet.

13. Statement of petitioner No.3, the brother of deceased Ankit namely Ankul was also recorded who stated that on 1st August, 2021 at about 2.00 PM Ankit called him from mobile No.8826205882 and told him that Narender Meena and his associates are troubling him and demanding ₹1 lakh out of which ₹50,000/- had already been given to him. He further stated that on 3rd August, 2021 at 22.41 hours his brother Prabhati called and

informed that Narender Meena and other staff had beaten Ankit due to which he is in a serious condition. He sent a mail from the mail ID of his niece to the mail ID of Jail Superintendent.

14. Grievance of the petitioners is that despite the fact that from the first PCR call itself the petitioners family is stating that Ankit was beaten because he failed to comply with the demands of money of the Deputy Superintendent Narender Meena and in this relation they have also provided the numbers to which the amounts were transferred however, the entire investigation as is evident from the proceedings noted in the FIR as also the status report filed is aimed to show that since there was recovery of a mobile phone, charger and knife from the cell of the deceased, he was being transferred and when he refused to be transferred a scuffle took place, ignoring the genesis of the occurrence that there was demand of money from Narender Meena which was not fulfilled due to which Ankit was mercilessly beaten.

15. Learned counsel for the petitioners contends that as stated by the Director General, Prisons and as also noted in the status report filed by the Joint Commissioner of Police CCTV footages of the 3rd and 4th August, 2021 of Ward Nos.1, 2, 3, 4 & 5A of Tihar Jail No.5 are not available as it was not operational, it is necessary that statements of the witnesses are recorded in a free and fair manner so as to unearth the truth.

16. As per the post-mortem report of the deceased, he received the following injuries and cause of death was opined to be due to haemorrhage consequent upon only cumulative effect of multiple blunt force injuries sustained to the body:

(1.) Stellate shaped lacerated wound with reddish comused margins is present over occipital protuberance, across midline measuring 2.8 cm x 0.4 cm, scalp deep, horizontally placed, situated 11 cm above nape of neck. Lacerated wound measuring 0.8 cm x 0.3 cm x 0.2 cm. is present over the left occipital region, 2.5 cm outer to the above mentioned injury. Associated extravasation of blood is present in scalp over bilateral occipito-temporal regions. Underlying skull is intact Patchy sub-arachnoid haemorrhage is present at places over cerebral hemispheres of brain.

(2.) Lacerated wound measuring 2.5 cm x 0.5 cm x 0.5 cm, obliquely present over outer aspect of right eyebrow with surrounding bluish dermal contusion over 3 cm x 2 cm inner upper end 3.5 cm away from midline. Two reddish blue contusions are present over each frontal eminence measuring 3 cm x 2.5 cm on right side and 3 cm x 1.5 cm on left side. Extravasation of blood is present in bilateral frontal areas. Underlying skull is intact.

(3.) Reddish blue dermal contusion measuring 7 cm x 2 cm present at the right sub mental region, starting from midline.

(4.) Multiple reddish blue tram track contusions with intervening pale area of width ranging from 0.7 cm to 1.2 cm running in different directions, merging with each other, are present over an area 60 cm x 50 cm over back of chest and abdomen. Thirty (30) tram track contusions are counted where the shortest one measures 10 cm x 2 cm and the longest one measures 53 cm x 2 cm. Multiple reddish abrasions are interspersed in between, sizes ranging from 1 cm x 1 cm to 7 cm x 2 cm. Diffuse extravasation of blood is present in the muscular planes underlying the injuries.

(5.) Multiple reddish blue contusions merging with each other, present over an area 20 cm x 16 cm and 20 cm x 15 cm over right and left buttock regions respectively. Multiple tram track contusions are interspersed in the area, the shortest one measures 5 cm x 2 cm and the longest one measures 20 cm x 2 cm. Diffuse extravasation of blood is present in the muscular planes underlying the injury.

(6.) Right upper limb including right arm, right forearm and right hand shows multiple reddish blue contusions, merging with each other, extending from shoulder region to distal end of dorsum of hand, over an area 63 cm x 19 cm. all around the limb. Multiple tram track contusions are interspersed over outer and front aspects of arm and forearm. The intervening pale area of tram track

contusions measure 0.7 cm in width. Multiple reddish abrasions are interspersed in between, sizes ranging from 1 cm x 1 cm to 16 cm x 3 cm. Diffuse extravasation of blood is present in the muscular planes underlying the injuries.

(7.) Left upper limb including left arm, left forearm and left hand shows multiple reddish blue contusions, merging with each other, extending from shoulder region to distal end of dorsum of hand, over an area 57 cm x 18 cm, all around the limb. Multiple tram track contusions are interspersed over outer and front aspects of arm and forearm. The intervening pale area of tram track contusions measure 0.7 cm in width. Multiple reddish abrasions are interspersed in between contusions: sizes ranging from 1 cm x 1.5 cm to 14 cm x 2 cm. Diffuse extravasation of blood is present in the muscular planes underlying the injuries.

(8.) Reddish abrasion, obliquely placed, measuring 3 cm x 1 cm. over inner aspect of right collarbone area, 2 cm away from midline.

(9.) Multiple reddish contused abrasions measuring 0.5 cm x 0.5 cm to 3 cm x 0.8 cm, over an area 18 cm x 16 cm, are present affront and outer aspect of right side of abdomen, lower end is at the level of anterior superior iliac spine. Extravasation of blood is present in the muscular planes underlying the injuries.

(10.) Multiple reddish abrasions measuring 0.5 cm x 0.5 cm to 2.5 cm x 1.5 cm, over an area 21 cm x 12 cm, are present at outer aspect of left side of abdomen, lower end is at the level of anterior superior iliac spine. Extravasations of blood are present in the muscular planes underlying the injuries.

(11.) Right lower limb including right thigh, right knee and right leg shows multiple reddish blue contusions extending from upper thigh region to lower calf region including front of knee, merging with each other, over an area 80 cm x 25 cm. over anterior, lateral and posterior aspects. Multiple tram track contusions interspersed in between over back, lateral and outer aspects of thigh and leg. The intervening pale area of tram track contusions 0.7 cm in width. Multiple reddish abrasions are interspersed in between; sizes ranging from 0.5 cm x 2 cm to 4 cm x 2 cm. Diffuse extravasation of blood is present in the muscular planes underlying the injuries.

(12.) Left lower limb including left thigh, left knee and left leg shows multiple reddish blue contusions extending from upper thigh region to lower calf region, merging with each other, over an area

75 cm x 23 cm. over anterior, lateral and posterior aspects. Multiple tram track contusions are interspersed over back, lateral and outer aspects of thigh and leg. The intervening pale area of tram track contusions measure 0.7 cm in width. Multiple reddish abrasions are seen interspersed; sizes ranging from 1 cm x 0.5 cm to 3 cm x 2 cm. Diffuse extravasations of blood are present in the muscular planes underlying the injuries."

17. A perusal of the post-mortem report of the deceased Ankit belies the version of the Deputy Superintendent, Narender Meena and other staff that a scuffle took place in which both Narender Meena and Ankit received injuries. From injuries noted above, it is evident that deceased was brutally beaten and left unattended as the case of Jail administration itself is that at around 1.00 AM on the intervening night of 3rd/4th August, 2021 Ankit complained of body ache upon which the duty doctor and nursing staff gave him pain killer injection and he refused any further treatment. Not only did Narender Meena and others assaulted the deceased mercilessly, the Jail doctor on duty also failed to perform his duty when he examined Ankit at 1.00 AM in night and administered the injection, as he neither informed the senior officers of the condition of Ankit nor referred Ankit to the Hospital. It is unfathomable that when the Jail doctor on duty visited at the midnight, he did not see the multiple injuries on Ankit.

18. As per the status report filed by the Director General of Prisons an in-house inquiry was conducted by the DIG which found the complicity of one Deputy Superintendent, two Assistant Superintendents and a Warder who have been suspended. The DIG Prisons failed to notice the connivance/laxity of Deputy Superintendent Vinay Thakur who did not permit ASI Ram Avtar from PS Hari Nagar who had gone to inquire into the PCR call, to go

inside the Jail to record the statement of Ankit.

19. Along with the present petition, petitioners have also placed on record Annexure-P7 which is the bank statement of petitioner No.3 from where money has been transferred to various accounts, which according to the petitioners are associates/known persons of Narender Meena. Though SHO, PS Hari Nagar states that CAF details of the phone numbers to which the money had been transferred have been obtained and are being examined, it is evident that in case the allegations made by the petitioners are correct, it is a very serious offence which requires in depth investigation to unearth the manner in which alleged extortion is carried out in the prison.

20. Consequently, this Court deems it fit to transfer the investigation of case FIR No.451/2021 under Sections 302/323/341/34 IPC registered at PS Hari Nagar, Delhi to CBI. The case file be transferred to CBI immediately by the concerned police station. A status report will be filed by the concerned SP, CBI after carrying out investigation before this Court well before the next date of hearing.

21. Further, even when Ankit got injured and was alive, in case proper medical treatment was provided to him, his life could have been saved and thus an investigation not only as to who all committed the offence of brutally beating the deceased Ankit resulting in his death has to be carried out, but the role of jail doctors in not providing proper treatment at the right time is also required to be ascertained by a proper inquiry. Moreover, necessary rules and regulations so that the police is not denied entry in the jail to conduct an enquiry/investigation into the commission of a cognizable offence are also required to be made. This case also calls for immediate remedial actions by the State and Director General, Prison so that

unscrupulous officers at the Jail do not take advantage of knowledge of the non-working of the CCTVs so that they can get away by doing any illegal act/offences. A status report will be filed by the Director General(Prisons) indicating the measures taken to streamline the system as regards the CCTV cameras at the Jail and when the same are not working what alternative measures can be taken in the meantime, accountability of the Jail officers and Jail doctors and the mechanism by which immediate entry is provided to the police to the Jail on receipt of an information of a cognizable offence and the remedial steps taken thereon.

22. List this petition on 28th October, 2021.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 08, 2021
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