

Court No. - 44

Case :- CRIMINAL MISC. WRIT PETITION No. - 2490 of 2021

Petitioner :- Suresh Devi And Another

Respondent :- State Of U.P. And 13 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Anand Swaroop Gautam, Ashutosh Kumar Tiwari, Dharmendra Singh

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Rajnish Kumar, J.

Following orders were passed in the matter on 7.1.2022:-

"This petition has been filed invoking jurisdiction of this Court under Article 226 of the Constitution of India with the allegation that petitioner's son has been murdered in police custody in the night intervening 11/12th December, 2020 while he was in police custody in Case Crime No.1181 of 2020, under Section 366 I.P.C., Police Station Khurja Nagar, District Bulandshahar. A prayer has also been made to protect the life and liberty of the petitioners as their son was subjected to torture and murder as he had contracted inter caste marriage out of his own free will. It is contended that the authorities have been most unfair in dealing with the grievance raised by the petitioners.

Attention of the Court has been invited to the provision contained in Section 176 Cr.P.C., sub Section (1)A whereof contemplates holding of a judicial enquiry where death is caused in the custody of the police. It is also stated that neither any post mortem has been carried out nor the body has been buried and instead the police personnels have cremated the body contrary to all settled norms.

Learned AGA does not dispute the fact that a judicial enquiry was initiated with a request made to District Judge on 06.01.2021 and states that a report is still awaited.

In matters, where the allegation is with regard to custodial death, judicial enquiry under Section 176 (1)A cannot be allowed to drag for so long. These are instances which have to be viewed with greatest sensitivity and concern.

We, therefore, direct the Registry to enquire from the District Judge, Bulandshahar as to when the enquiry report has been submitted in the matter and, in the event, such a report is not submitted, the explanation of the Judicial Officer in that regard shall be placed before us by the next date fixed as a period of more than one year has expired.

We hasten to add that in the event, such enquiry has not been concluded so far, the same shall be concluded most expeditiously by following the procedure in law.

List this matter, once again, on 27.01.2022 at 02:00 PM."

Pursuant to above directions, a report has been received from the District Judge, Bulandshahr, annexing the copy of the judicial enquiry conducted by Additional Chief Judicial Magistrate, Court No.1, Bulandshahr. Conclusions of the enquiry report are at page 10, in which it has clearly been found that the son of the petitioners died in the police custody and the police personnels are responsible for it. We are informed by learned AGA that the report of the judicial enquiry has been

forwarded to Additional Chief Secretary, Home, by the District Magistrate concerned on 18.1.2022. No further instructions are available with the learned AGA about the outcome of such communication.

Custodial death is a serious matter, particularly when the allegations are found true in the judicial enquiry and police personnels responsible for the death of the victim. It is otherwise on record that no postmortem was conducted and the body was cremated by police personnels. In matters of this kind we expect the higher officers to be sensitive to the deprivation of liberty and to immediately proceed to take appropriate action, as is warranted in law. We are not convinced with the version of the State that it is a case of suicide by victim, as the judicial enquiry has come to a different conclusion. Appropriate report ought to have been lodged under Section 154 and investigation ought to have progressed. Claim for payment of compensation also ought to have been considered.

Since no such action is shown to have been taken so far, we call upon the Additional Chief Secretary of the Department of Home to examine the matter on priority and file his personal affidavit clearly disclosing the steps taken by the State in light of the report received in the judicial enquiry. The affidavit shall also explain the action taken against responsible officers in the matter.

List this matter, once again, on 19.4.2022.

Copy of this order shall be issued to learned AGA within 24 hours for its intimation to the concerned officer. Copy of this order shall also be forwarded to the Chief Secretary, State of U.P.

The Registry shall supply copy of the enquiry report to the counsel for the petitioners, within three days.

Order Date :- 25.3.2022

Anil