

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- WP(Crl) No. 50/2024
CM No. 3504/2024

Diwan Chand

.....Appellant(s)/Petitioner(s)

Through: Mr. Maneesh Rampal, Advocate.

Vs

**Commissioner Secretary
to Govt. Home Department
& Ors.**

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
(20.06.2024)**

- 01.** “Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward – flag of humanity must on each such occasion fly half-mast.”
- 02.** Above said are some of the salient and serious observations coming from the pen and pain of the Apex Court of India i.e. the Hon’ble Supreme Court of India which have found a perpetual place in a judgment in the case of **“D.K. Basu: Ashok K. Johari Vs State of West Bengal and others”** (1997 AIR SC 610).

- 03.** The entire judgment of the Hon'ble Supreme Court of India in the above said case is nothing but emphatic laying of law in the cases of custodial violence, torture, rape and ultimate death in the police lockups.
- 04.** Before passing said judgment, the Hon'ble Supreme Court of India had taken a Pan India view of state of things obtaining in the name of misconduct and misbehavior of police vis-à-vis the citizens of India getting roughed up in police custody or at the hands of the police and, therefore, all the State governments were put to notice for stating their respective positions in the matter.
- 05.** Eleven directives came to be passed in para 36 of the said judgment which are meant to be in the perpetual mind and memory of all the State Governments/Union Territories/its Police/Investigating Authorities/Civil Administration without affording or admitting of any miss.
- 06.** In para 37 of the judgment, it has come to be made clear that failure to comply with the requirements apart from rendering the concerned official liable for departmental action shall also render him/her liable to be punished for contempt of court for which proceedings may be taken in any High Court of the Country having territorial jurisdiction over the matter.

- 07.** The present writ petition is a cry of a father who has lost his son, namely, Sunil Kumar allegedly at the hands of the police authorities while in a state of confinement in the Police Post, Jourian under the Police Station, Akhnoor.
- 08.** It is pleaded in the writ petition that on 21.12.2023, the petitioner's son – Sunil Kumar came to be picked up by the police officials of the Police Post, Jourian during night hours on 21.12.2023 when a police team from said Police Post, Jourian head by Munshi - Raj Kumar came to the house of the petitioner on the pretext of a fake and forged arrest warrant allegedly issued by the court of 2nd Additional Munsiff (Judicial Magistrate) 1st Class, Jammu and forcibly took away the petitioner's son – Sunil Kumar and that was the last time when the petitioner had seen his son – Sunil Kumar alive only to see his dead body delivered to him after post-mortem done on 22.12.2023.
- 09.** It is pleaded in the writ petition that the District Magistrate (Deputy Commissioner), Jammu ordered a magisterial enquiry to be conducted by Sub-Divisional Magistrate (SDM), Khour, whereas till date almost six months of the incident, the petitioner has heard no words with respect to the outcome of the said magisterial enquiry, thereby leaving the case of custodial death of his son – Sunil Kumar go

unreported and unprobed so as to bring the culprits to justice.

10. It is in the state of helplessness that the petitioner has petitioned this Court with the present writ petition under article 226 of the Constitution of India seeking investigation into the matter and also for payment of compensation.
11. *Prima facie* case is made out.
12. Issue notice to the respondent No. 3 – Deputy Commissioner (District Magistrate), Jammu, respondent No. 4 – Senior Superintendent of Police (SSP), Jammu and respondent No. 5 – Sub-Divisional Magistrate (SDM), Kour only.
13. Respondent No. 5 – Sub-Divisional Magistrate (SDM), Kour to appear in person on the next date of hearing before this Court to apprise about the state and stage of magisterial enquiry, if any, undertaken in the matter at his end.
14. Registrar Judicial, Jammu to issue notice to the aforesaid three officials along with a copy of this order for notice and compliance.
15. List on 8th of July 2024.

(RAHUL BHARTI)
JUDGE

JAMMU
20.06.2024
Bunty