

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISIDITION**

[UNDER ORDER XXII RULE 2(1) OF S.C. Rules 2013]

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2023
[WITH PRAYER FOR INTERIM RELIEF]

(Against the final Order and Judgment dt. 11.10.2023 passed by the Hon'ble High Court of Judicature at Madras, in W.P. No. 29444/2023)

IN THE MATTER:-

R. Dhanalakshmi

...Petitioner

Versus

The Home Secretary, Home Department

Govt. of Tamil Nadu & Ors.

...Respondents

WITH

I.A. No. _____ of 2023: Application for grant of exemption from
filing the certified copy of the Impugned Order

I.A. No. _____ of 2023: Application for filing the official translation
of Annexures

PAPERBOOK

[For Index, please see inside]

PRASANNA S.

[ADVOCATE FOR THE PETITIONER]

PLACE: New Delhi

DATE: 31.10.2023

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

[ORDER XXII RULE 2(1)]

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2023

(Against the final Order and Judgment dt. 11.10.2023 passed by
the Hon'ble High Court of Judicature at Madras, in W.P. No.
29444/2023)

IN THE MATTER:-

R. Dhanalakshmi

...Petitioner

Versus

The Home Secretary, Home Department

Govt. of Tamil Nadu & Ors.

...Respondents

OFFICE REPORT ON LIMITATION

1. The present Special Leave Petition is/are within time.
2. The Petition is barred by time and there is delay of _____ days
in filing the same against Impugned order dated _____ and
Application for condonation of _____ days delay has been filed.
3. There is delay of _____ days in refiling the petition and
Application for condonation of delay of _____ days in refiling
has been filed.

BRANCH OFFICER

PLACE: New Delhi

DATE: 31.10.2023

LISTING PROFORMA

IN THE SUPREME COURT OF INDIA

Section:

The case pertains to (Please tick/check the correct box):	Criminal
Central Act: (Title)	N/A
Section:	N/A
Central Rule: (Title)	N/A
Rule No.(s):	N/A
State Act: (Title)	N/A
Section:	N/A
State Rule: (Title)	N/A
Rule No.(s):	N/A
Impugned Interim Order: (Date)	N/A
Impugned Final Order/Decree (Date)	11.10.2023
High Court: (Name)	The High Court of Judicature at Madras
Names of Judges:	Justice G. Jayachandran
Tribunal/Authority: (Name)	N/A
1.Nature of Matter:	Criminal
2.(a)Petitioner/appellant No.1:	R. Dhanalakshmi
(b) e-mail ID:	N/A
(c) Mobile Phone number:	N/A
3. (a) Respondent No.1:	The Home Secretary, Home Department, Govt of Tamil Nadu
(b) E-mail ID:	N/A
(c) Mobile phone number:	N/A
4.(a) Main category classification:	14- Criminal Matters
(b)sub classification:	1418- Others
5. Not to be listed before:	N/A

6(a). Similar disposed of matter with citation, if any, and case details:	No similar disposed of matter.
6(b). Similar pending matter with case details:	N/A
7. Criminal Matters:	N/A
(a) Whether accused/convict has surrendered:	N/A
(b) FIR No.	277 of 2023
(c) Police Station:	Kattur Police Station
(d) Sentence Awarded:	N/A
(e) Sentence Undergone:	N/A
8. Land Acquisition Matters:	N/A
(a) Date of Section 4 notification:	N/A
(b) Date of Section 6 notification:	N/A
(c) Date of Section 17 notification:	N/A
9. Tax Matters: State the tax effect:	N/A
10. Special Category (first petitioner/appellant only):	N/A
Senior Citizen > 65 years	N/A
SC/ST	N/A
Woman/Child	N/A
Disabled	N/A
Legal Aid Case	N/A
In custody	N/A
11. Vehicle Number (in case of Motor Accident Claim Matters):	N/A

FILED BY:

PRASANNA S,
Advocate for the Petitioner
CC:2919

Office Address: C-64, IInd Floor,
Neeti Bagh, New Delhi 110049
Contact: 8750350762

Place: New Delhi
Date: 31.10.2023

SYNOPSIS

The present Special Leave Petition is filed against the final Judgment and Order dt. 11.10.2023 (Impugned Order) passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023, whereby which the Hon'ble High Court dismissed the Writ Petition of the Petitioner without considering the averments of the Petitioner with respect to custodial violence and illegal arrest of the detenu (her son), and without referring to any records (both medical and of the detenu's illegal arrest) relevant in the present case, but only on the basis of an assumption that since the allegation against the son of the Petitioner (detenu) were of grave nature, the Petitioner had made bald allegations against the police.

It is worthy to note that the fact of injuries and the ongoing medical treatment of the otherwise healthy 22 year old detenu, after the arrest were uncontroverted, however instead of directing an inquiry or calling for records, the Hon'ble High Court made an unsatisfactory observation that his health was *taken care of* by the police. Further, the Impugned Order clearly shows that the Hon'ble High Court has proceeded with a pre-conceived notion that the detenu *had committed the crime(s)* he was accused of, running contrary to the basic yet crucial principle of criminal law that an accused is innocent until proven guilty (*Ei incumbit probatio qui dicit, non qui negat*). The relevant extract of the Impugned Order is produced hereinbelow:

This petition does not deserve any consideration by this Court in view of the fact that the petitioner herein has been arrested for involving in a preplanned brutal murder and been arrested. For his health condition, already police has taken care and he is now admitted in the CMC, Coimbatore. **Making some bald allegations against the police, the writ petition would have been filed considering the gravity of the crime committed by the petitioner's son.**

The challenge to the Impugned Order is concisely put forth as follows:

Firstly, the Hon'ble High Court erred in not taking note of the serious and grave violation of this Hon'ble Court's guidelines in *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 in the arrest and detention of the detenu.

Secondly, the Impugned Order is unreasonable when the Hon'ble High Court of Bombay in *Maaysha Singh D/o. Sudha Bharadwaj vs. The State of Maharashtra and another (W.P. 1958 of 2021)* has held that the prisoner's right to obtain medical records is entrenched in Article 21 of the Constitution of India.

It is an established position in law that the detenu has his right to life intact even if he is detained by the police. He is thus, entitled to be provided with his medical records and contact one of his guardians with respect to his treatment. Amidst the serious allegations of custodial violence and the sudden hospitalization of the otherwise healthy 22-year old for severe condition such as kidney failure and injuries, the State was only duty bound to supply the parents the medical records of the detenu, or at-least produce the same before the Hon'ble Court

Thirdly, the Hon'ble High Court passed the Impugned Order without considering the landmark decision of this Hon'ble Court in *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 wherein, it was held that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21, thus the duty to care on the part of the State is strict and admits no exception.

Fourthly, as stated earlier, the Hon'ble High Court proceeded on a pre-conceived notion against the detenu, that he had committed the offences alleged in the FIR. Thus, the Impugned Order is fit to be set-aside by this Hon'ble Court.

Lastly, the Hon'ble High Court ignored the fact that the police was duty-bound to register the complaint of the Petitioner for custodial violence after receiving the representation of Petitioner's husband dt. 27.09.2023. [*Lalita Kumari vs. State of Uttar Pradesh (2014) 2 SCC 1*; *Sindhu Janak Nagargoje vs. The State of Maharastra & Ors. SLP(Crl) 5883/2023*]. The police was duty bound to register a compliant and proceed with the investigation, but in the present case the police even kept the treatment of the detenu under wraps, making it suspicious and endangering the safety and well being of the detenu.

Hence the present Petition.

LIST OF DATES AND EVENTS

S. No.	Date	Event
1.	NIL	Petitioner is the mother of the detenu Jayakumar. Petitioner along with her husband Rajarathinam run a shop in the locality. Due to the ill health of the father, the detenu in order to support his family works as a driver and drives the car belonging to one Murugan who is associated with Red Taxi. The detenu is a young man of 22 years of age having no criminal record nor any history of violence.
2.	12.09.2023	FIR 277/2023 was registered against the detenu and other Accused at Kattur Police Station by one Nithish Kumar under Sec. 147, 148, 294(b), 307 and 506(2) of the Indian Penal Code, 1860 ('IPC'), wherein, allegations were made by the Complainant that he was attacked by the Accused with the intention of killing him. True translated copy of the FIR 277/2023 is annexed herewith and marked as ANNEXURE P-1 from Pg. No. 26 to Pg. No. 30.
3.	16.09.2023	Detenu was picked up by the police and taken into custody. None of the family members, relatives or friends of the detenu were informed of his arrest and his detention at the Karur. Murugan, the employer of the detenu, called up the Petitioner to inquire if the detenu had returned home or not. Detenu's parents were then informed by Murugan that the police had come to take the detenu for some enquiry

		at the Saravanampatty Police Station and had informed him that after enquiry, the police would allow him to return. True copy of the arrest details as available on the Tamil Nadu CCTNS forum are annexed herewith and marked as ANNEXURE P-2 at Pg. No. 31
4.	16.09.2023	After the call, the Petitioner along with her husband rushed to Saravanampatty Police Station, where they were joined by Mr. Murugan. No details of the alleged crime, or whereabouts of the detenu were given to the detenu's family. After waiting for a few hours, at about 08:15 PM, the Petitioner and her husband witnessed that the detenu along with his school friend and fellow Red Taxi driver Jenarthanan, were being moved from one car to another car by policemen who were in plainclothes. Petitioner and her husband, waited at Saravanampatty Police Station till about 11:00PM hoping to see their son. However, the were told by the Police that they could only see their son the following morning.
5.	17.09.2023	The Petitioner and her husband waited at the Saravanampatty Police Station the entire day and were only later told of the alleged incident and FIR registered on 12.09.2023. The Petitioner inquired from the police of her son's whereabouts but was not told anything. At about 08:30 PM the parents of the detenu were told by the police that their son <i>could be</i> at the Rathinapuri Police Station. The

		<p>Petitioner along with her husband immediately left for Rathinapuri Police Station, where they were informed that the detenu was not there and they should check at Kattur Police Station. At about 09:00 PM, the Petitioner along with her husband left for Kattur Police Station where again they were told that their son was not there either. The arrest was blatantly against the guidelines laid by this Hon'ble Court in the case of <i>D.K. Basu vs. State of Bengal</i>, where no details of the arrest were made to the parents of the detenu, nor were they even informed where their son was kept. True copy of the judgment of this Hon'ble Court in <i>D.K. Basu v. State of W.B., (1997) 1 SCC 416</i> is annexed herewith and marked as ANNEXURE P-3 from Pg. No. _32__ to Pg. No. 59_____.</p>
6.	18.09.2023	<p>Petitioner was constrained to make an emergency phone call to the police at 100 to know the whereabouts of her son and was informed that the detenu was at Kattur Police Station at Gandhipuram, Coimbatore. Petitioner and her husband left for Kattur Police Station at about 10:15 A.M.</p> <p>Detenu's parents met one woman inspector at Kattur Police Station who showed that the detenu was detained in a room surrounded by about eight police personnel for interrogation. The detenu had visible injuries on his face, particularly on his cheeks, lips and jaw. Petitioner nor her husband</p>

		<p>were allowed to meet or speak with the detenu. The Petitioner and her husband were asked to leave and come to the station by 02:00 P.M.</p> <p>The Petitioner and her husband visited the station again at 02:00 P.M., and found that the detenu was not at the police station and was taken elsewhere.</p>
7.	20.09.2023	<p>Father of the detenu spoke to the police regarding the detenu being arrested on 16.09.2023 and having been kept in illegal custody without remanding him by producing him before the Judicial Magistrate. Around noon, police personnel called and informed them that their son was to be remanded. However, Petitioner nor her husband were allowed to meet him in the police station.</p> <p>At about 05:30 P.M, the detenu was brought out from the police station to be remanded. Petitioner and her husband observed that their son, the detenu, could not walk properly due to noticeable violence/ torture meted out against him. He was holding on to the railing in the police station and slowly limped towards the police jeep.</p> <p>Detenu was brought to the Central Prison at Coimbatore, it was then that the Petitioner had a few moments to meet and speak to her son who was sitting inside the car. The detenu cried and revealed to his mother that the police had taken him to various places and had subjected him to severe torture. It was then that the police hurriedly took</p>

		<p>him away from the car and asked him to walk into the prison. Petitioner observed that the detenu was having trouble walking due to the custodial torture meted out against him.</p> <p>Shortly, the Petitioner and her husband were informed that the detenu was being shifted to the Tiruppur Prison.</p>
8.	21.09.2023	<p>Petitioner and her husband met the detenu at the Tiruppur Prison. The detenu tearfully narrated to his parents that the police had taken him to various places blindfolding his eyes. He further told that the police had kept him in a separate room. The police spread his legs and stood on his legs, beating him on his legs and feet with rubber pipes and lathis. He further shared that the police had also beaten him with a wooden log in the hip region, and kicked him with shoes on his stomach.</p> <p>Police did not even allow the detenu to urinate. Detenu was given only around half a liter of water per day and was blindfolded and his mouth was tied shut with a cloth. Due to the constant torture he had been subjected to, he had swelling all over his body and severe pain. The police further used a painkiller spray and continued their torture, and kept him in illegal custody. Police had severely beaten the detenu on his head, and he showed the Petitioner and his father the blood clots on his thighs. The detenu cried in pain and revealed that his private</p>

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		<p>organ too was swollen as a result of the torture. He also informed his parents that he had trouble urinating and when he urinated, his urine contained blood. The Detenu was evidently in an unbearable amount of pain and was in desperate need of medication and professional medical help. Since nothing was done by the police to help his condition, Petitioner gave him an ointment for pain relief for the time being.</p>
9.	22.09.2023	<p>Petitioner and her husband were informed that due to the severe injuries, detenu's health was deteriorating and he was being taken to the Government Hospital, Tiruppur. He was under treatment and his parents were informed that the detenu was having difficulty in urinating and that his kidneys were not functioning. The detenu's health condition started to worsen and he was immediately shifted to the Intensive Care Unit, where he was kept for a day.</p>
10.	23.09.2023	<p>Detenu's condition did not improve and he was shifted to the Coimbatore Medical College Hospital.</p> <p>The doctors at the Coimbatore Medical College Hospital informed the Petitioner and her husband that both the kidneys of their son had failed, and that he was undergoing dialysis. Detenu's health condition was serious. Doctors refused to share any further details regarding the detenu's medical</p>

		condition or treatment due to undue pressure exercised by the police/prison authorities. Repeated oral requests regarding information and status of the detenu's medical condition/records made to the police and prison authorities were met with silence.
11.	26.09.2023	<p>Petitioner filed a Criminal Miscellaneous Petition before the Ld. Judicial Magistrate Court No.2, Coimbatore as CrI. M.P.No. 42359 of 2023 under Section 91 Cr.P.C. seeking to preserve the CCTV footage of the Respondent police stations and for the violation of Sec. 41(b), 46 and 57 of Cr.P.C. amounting to illegal arrest and detention of the detenu.</p> <p>The Petition was not contested by the Respondent and was allowed by the Ld. Magistrate. Copy of the order is not made available to the Petitioner till date, however, the online case status has been updated. True translated copy of CrI. Misc. Petition no. 42359/2023 is annexed herewith and marked as ANNEXURE P-4 from Pg. No.60 to Pg. No.68. True copy of the case update of CrI. Misc. Petition no. 42359/2023 is annexed herewith and marked as ANNEXURE P-5 from Pg. No.69 to Pg. No.70.</p>
12.	27.09.2023	Petitioner's husband sent representations to the State Level Oversight Committee (SLOC) and the District Level Oversight Committee DLOC, and to the Respondents – the Inspector of Police, Kattur and Saravanampatti Police Stations seeking to

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		retrieve, preserve and also provide a copy of the CCTV footage of all the CCTV cameras of the Kattur and Saravanampatty Police Stations from 16.09.2023 (10 a.m.) to 21.09.2023 (10 p.m.) in compliance to the order of this Hon'ble Court in <i>Paramvir Singh vs Baljit Singh in SLP (Crl.) No. 3543 of 2020</i> dated 02.12.2020. In addition, he also sought for prompt action against perpetrators who committed torture and injured the detenu. However, till date no action nor any material has been supplied to the Petitioner. Not even a complaint of the visible torture and violence resulting in injuries to the detenu was registered by the police. True copy of the representation dt. 27.09.2023 is annexed herewith and marked as ANNEXURE P-6 from Pg. No. _71___ to Pg. No. _74____.
13.	04.10.2023	Detenu whilst in Coimbatore Medical College hospital, was threatened by police officer in plainclothes to provide false statement that he has a history of kidney failure.
14.	04.10.2023	Petitioner submitted representations to Government Hospital Tiruppur and to Coimbatore Medical College Hospital for supply of copy of medical records of the detenu. True translated copies of the representations dt. 04.10.2023 sent to Government Hospital Tiruppur and to Coimbatore Medical College Hospital are annexed herewith and marked

		as ANNEXURE P-7 at Pg. No.75 and ANNEXURE P-8 at Pg. No. 76 respectively.
15.	05.10.2023	<p>Petitioner filed a Writ Petition before the Hon'ble High Court of Madras as W.P. 29444 of 2023 for</p> <ul style="list-style-type: none">- Directing the respondents to provide appropriate medical care to the detenu detained in Crime No.277 of 2023 on the file of Kattur Police Station;- Direct judicial enquiry into the incident of illegal police custody and custodial torture perpetrated by the respondent police against the detenu and take appropriate action against the perpetrators who committed custodial torture and;- Award compensation to the detenu for violation of his fundamental rights. <p>The Petitioner further requested the Hon'ble High Court to shift the detenu from Coimbatore to Tamil Nadu Government Multi Super Speciality Hospital at Chennai (Omandurar Hospital) or any other multi-speciality hospital outside Coimbatore and to be provided the medical records of the detenu at Tiruppur prison, Tiruppur Government Hospital and Coimbatore Medical College Hospital as his next of kin.</p> <p>True copy of the Writ Petition No. 29444/2023 along with affidavit of the Petitioner is annexed herewith and marked as ANNEXURE P-9 at Pg. No. 77-99. True</p>

		copy of the Writ Miscellaneous Petitions Nos. 29060, 29061 and 29062 of 2023 are annexed herewith and marked as ANNEXURE P-10 to ANNEXURE P-12 from Pg. No. 100 to Pg. No. 111 respectively.
16.	11.10.2023	Without considering the gravity of the allegations and the uncontroverted fact of the ongoing medical treatment of the 22 year old detenu, the Hon'ble High Court disposed of the Petition making a cursory observation that the police was <i>taking care</i> of his medical needs. The Hon'ble High Court without any satisfactory reason, refused to provide the medical records to his parents nor commented on the fact that till date no medical record of the detenu was provided by either the hospital or the police. Instead, the Hon'ble High Court unfortunately made unwarranted observation with respect to the motivation of the Petitioner behind filing the Petition and without referring to any records, documents or the illegal arrest of the detenu, referred to the averments of the Petitioner as " <i>bald allegations [made] against the police.</i> "
17.	2023	Hence, the present Petition.

W.P.No.29444 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.29444 of 2023
and W.M.P.Nos.29060, 29061 & 29062 of 2023

R.Dhanalakshmi

... Petitioner

Vs.

- 1.The Home Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 2.The Secretary,
Health & Famil Welfare Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 3.The Director General of Police,
Head of Police Force,
Government of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.
- 4.The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Edmore,
Chennai – 600 008.

5.The District Collector,
Office of the District Collector,
Coimbatore.

6.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.

7.The Superintendent of Prisons,
Central Prison for Men – Coimbatore,
Coimbatore – 641 018.

8.The Superintendent of Prisons,
District Prison/Sub Jail – Tiruppur,
Tiruppur – 641 602.

9.The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.

10.The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044.

... Respondents

Prayer: Writ Petition is filed under Section 226 of Constitution of India, pleased to issue a Writ of Mandamus, directing the respondents to provide appropriate medical care to the petitioner's son Jayakumar detained in Crime No.277 of 2023 on the file of Kattur Police Station, direct judicial enquiry into the incident of illegal police custody and custodial torture perpetrated by the respondent police against the detainee Jayakumar and take appropriate action against the perpetrators who committed custodial torture and also award compensation to the detainee for violation of his fundamental rights.

For Petitioner : Mr.R.Sunil Kumar
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)
for R1 to R3

ORDER

This petition does not deserve any consideration by this Court in view of the fact that the petitioner herein has been arrested for involving in a preplanned brutal murder and been arrested. For his health condition, already police has taken care and he is now admitted in the CMC, Coimbatore. Making some bald allegations against the police, the writ petition would have been filed considering the gravity of the crime committed by the petitioner's son.

2.Accordingly, this Writ Petition is dismissed. No Costs.
Consequently, connected miscellaneous petitions are closed.

11.10.2023

Index : Yes/No
Neutral Citation : Yes/No
SSR

To

- 1.The Home Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 2.The Secretary,
Health & Famil Welfare Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 3.The Director General of Police,
Head of Police Force,
Government of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.
- 4.The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Edmore,
Chennai – 600 008.
- 5.The District Collector,
Office of the District Collector,
Coimbatore.
- 6.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
- 7.The Superintendent of Prisons,
Central Prison for Men – Coimbatore,
Coimbatore – 641 018.

8.The Superintendent of Prisons,
District Prison/Sub Jail – Tiruppur,
Tiruppur – 641 602.

9.The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.

10.The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044.

11.The Public Prosecutor,
High Court of Madras,
Chennai.

W.P.No.29444 of 2023

Dr.G.JAYACHANDRAN,J.

SSR

W.P.No.29444 of 2023
and W.M.P.Nos.29060, 29061 & 29062 of 2023

11.10.2023

A handwritten signature in black ink, appearing to be 'S. Jayachandran', written in a cursive style.

//TRUE COPY//

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

[ORDER XXII RULE 2(2)]

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF
2023

(Against the final Order and Judgment dt. 11.10.2023 passed by
the Hon'ble High Court of Judicature at Madras, in W.P. No.
29444/2023)

POSITION OF PARTIES

Name	In the Trial Court	In the High Court	In this'Hon'ble Court
R. Dhanalakshmi W/o Sh. Rajarathinam, R/o Balaji Garden, 7th Street, Keeranatham, Coimbatore– 641035	--	Petitioner	Petitioner

VERSUS

The Home Secretary, Home Department, Government of Tamil Nadu, Secretariat, Chennai – 600 009	--	Respondent No.1	Respondent No.1
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The Secretary, Health & Famil Welfare Department, Government of Tamil Nadu, Secretariat, Chennai – 600 009.	--	Respondent No.2	Respondent No.2
The Director General of Police, Head of Police Force, Government of Tamil Nadu, Dr.Radhakrishnan Salai, Mylapore, Chennai – 600 004.	--	Respondent No.3	Respondent No.3
The Director General of Prisons, Department Prisons and Correctional Services, Whannels Road, Edmore, Chennai – 600 008.	--	Respondent No.4	Respondent No.4
The District Collector, Office of the District Collector, Coimbatore.	--	Respondent No.5	Respondent No.5
The Commissioner of Police, Office of the Commissioner of Police, Coimbatore – 641 018.	--	Respondent No.6	Respondent No.6

The Superintendent of Prisons, Central Prison for Men – Coimbatore, Coimbatore – 641 018.	--	Respondent No.7	Respondent No.7
The Superintendent of Prisons, District Prison/Sub Jail – Tiruppur, Tiruppur – 641 602.	--	Respondent No.8	Respondent No.8
The Inspector of Police, Saravanampatty Police Station, Coimbatore City – 641 035.	--	Respondent No.9	Respondent No.9
The Inspector of Police, Kattur Police Station, Coimbatore City – 641 044.	--	Respondent No.10	Respondent No.10

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE
CONSTITUTION OF INDIA, READ WITH ORDER XXII RULE
2(1) OF THE SUPREME COURT RULES, 2013 AGAINST THE
FINAL JUDGMENT AND ORDER PASSED BY THE HON'BLE
HIGH COURT OF MADRAS IN WRIT PETITION NO. 29444 OF
2023 DATED 11.10.2023**

To,

The Hon'ble Chief Justice of India and his companion Justices of
the Supreme Court of India;

The humble petition of Petitioner above named;

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition is filed against the final Judgment and Order dt. 11.10.2023 (Impugned Order) passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023, whereby which the Hon'ble High Court dismissed the Writ Petition of the Petitioner without considering the averments of the Petitioner with respect to custodial violence and illegal arrest of the detenu (her son), and without referring to any records (both medical and of the detenu's illegal arrest) relevant in the present case, but only on the basis of an assumption that since the allegation against the son of the Petitioner (detenu) were of grave nature, the Petitioner had made bald allegations against the police.
- 1A. It is worthy to note that the fact of injuries and the ongoing medical treatment of the otherwise healthy 22 year old detenu, after the arrest were uncontroverted, however instead of directing an inquiry or calling for records, the Hon'ble High Court made an unsatisfactory observation that his health was *taken care of* by the police. Further, the Impugned Order clearly shows that the Hon'ble High Court has proceeded with a pre-conceived notion that the detenu *had committed the crime(s)* he was accused of, running contrary to the basic yet crucial principle of criminal law that an accused is innocent until proven guilty (*Ei incumbit probatio qui dicit, non qui negat*). The relevant extract of the Impugned Order is produced hereinbelow:

This petition does not deserve any consideration by this Court in view of the fact that the petitioner herein has been arrested for involving in a preplanned brutal murder and been arrested. For his health condition, already police has taken care and he is now admitted in the CMC, Coimbatore. **Making some bald allegations against the police, the writ petition would have been filed**

considering the gravity of the crime committed by the petitioner's son.

2. **QUESTIONS OF LAW:-**

The following questions of the law arise for consideration by this Hon'ble Court:

- A. Whether the Hon'ble High Court erred in not taking note of the violation of this Hon'ble Court's guidelines in *D.K. Basu v. State of W.B., (1997) 1 SCC 416* in the arrest and detention of the detenu?
- B. Whether the Hon'ble High Court in the absence of any documents/ records was right in concluding the averments of the Petitioner as bald allegations against the police?
- C. Whether the Impugned Order is unreasonable when the Hon'ble High Court of Bombay in *Maaysha Singh D/o. Sudha Bharadwaj vs. The State of Maharashtra and another (W.P. 1958 of 2021)* has held that the prisoner's right to obtain medical records is entrenched in Article 21 of the Constitution of India?
- D. Whether the Hon'ble High Court passed the Impugned Order without considering the landmark decision of this Hon'ble Court in *Nilabati Behera v. State of Orissa, (1993) 2 SCC 746* wherein, it was held that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21, thus the duty to care on the part of the State is strict and admits no exception?
- E. Whether the Hon'ble High Court proceeded on a pre-conceived notion against the detenu?
- F. Whether the Hon'ble High Court ignored the fact that the police was duty-bound to register the complaint of the

Petitioner for custodial violence after receiving the representation of Petitioner's husband dt. 27.09.2023? [*Lalita Kumari vs. State of Uttar Pradesh (2014) 2 SCC 1; Sindhu Janak Nagargoje vs. The State of Maharastra & Ors. SLP(Crl) 5883/2023*]

3. DECLARATION IN TERMS OF RULE 2(2):-

Petitioner states that no other Petition seeking leave to appeal has been filed against the final judgment and order dated 11.10.2023 passed by the Hon'ble High Court of Judicature at Madras, in W.P. 29444/2023.

4. DECLARATION IN TERMS OF RULE 4:-

That Annexure P-1 to P-12 produced along with the Special Leave Petition are true copies of the pleadings/ documents which formed part of the records of the case in the Court below against whose order the leave to appeal is sought for in this Petition.

5. GROUND:-

Leave to Appeal is sought for on the following amongst other grounds; the grounds taken herein below are in the alternative and without prejudice to one another:

A. **BECAUSE** the Hon'ble High Court erred in not taking note of the serious and grave violation of this Hon'ble Court's guidelines in *D.K. Basu v. State of W.B., (1997) 1 SCC 416* in the arrest and detention of the detenu.

- i. In order to bring about transparency and accountability, certain guidelines were framed by this Hon'ble Court in

the case of *D.K. Basu(supra)*. Guidelines laid down by this Hon'ble Court are produced below:

(1) 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.

(2) 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 either be 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 countersigned by the arrestee and shall contain the time and date of arrest.

(3) 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.**

(4) 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 Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) 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.

(6) 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.

(7) 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.

(8) 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 State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

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

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

(11) 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.

- ii. In the present case however, it is to be noted that the family of the detenu were not informed of his arrest by the Police nor were provided with any FIR or arrest memo to be signed by them. Far from informing about the arrest on

16.09.2023, the police sent the Petitioner from one police station to the other (Kattur Police Station; Rathinapuri Police Station; Saravanampatty Police Station), without informing the Petitioner of where the detenu was actually being taken or kept.

- iii. In violation of Sec. 57 of the Code of Criminal Procedure, 1973 (CrPC) the detenu was not produced before the magistrate within 24 hours of his arrest.
- iv. The illegal detention and arrest are further evident from the fact that the Ld. Chief Judicial Magistrate, Coimbatore allowed the Petition of the Petitioner (Crl. M.P.No. 42359 of 2023) made under Section 91 Cr.P.C. for violation of various provisions of law by the police in arresting and detaining the detenu, namely, Sec. 41(b), 46 and 57 of CRPC, which was not even contested by the State. The Petitioner requests leave of this Hon'ble Court to place on record the Order of the Ld. Magistrate as soon as she receives the same.
- v. The case status of the criminal miscellaneous Petition and the facts of the case clearly show that the detenu was simply picked and detained without any information to his family. He was shifted from prison to prison without being produced before the Magistrate and finally admitted to Tiruppur Government Hospital and then Coimbatore Medical College Hospital for medical treatments for kidney failure and injuries. However, the Hon'ble High Court sidelined all these crucial details and made the observations that the averments of the Petitioner were merely bald allegations against the police.

- vi. The observation of the Hon'ble High Court is therefore, unreasonable, unjust and unwarranted making the Impugned Order untenable in law.

B. BECAUSE the Impugned Order is unreasonable when the Hon'ble High Court of Bombay in *Maaysha Singh D/o. Sudha Bharadwaj vs. The State of Maharashtra and another (W.P. 1958 of 2021)* has held that the prisoner's right to obtain medical records is entrenched in Article 21 of the Constitution of India.

- i. The Hon'ble High Court ignored the fact that the Petitioner had made a reasonable request for production of medical records of Tiruppur Government Hospital and Coimbatore Medical College Hospital.
- ii. The requests were reasonable as the Petitioner is evidently not in a healthy state and was even kept in the intensive care unit. In such circumstances, it is only reasonable that the parents of the detenu, being his natural guardian are made aware of the situation and condition of the detenu.
- iii. It is an established position in law that the detenu has his right to life intact even if he is detained by the police. He is thus, entitled to be provided with his medical records and contact one of his guardians with respect to his treatment. The relevant excerpt of the judgment of the Hon'ble High Court of Bombay in *Maaysha Singh D/o. Sudha Bharadwaj (supra)* are extracted as follows:

3. In our view prisoners have a right to obtain their medical records from the prison Authorities under Article 21 of the Constitution of India. In view thereof, all the medical records including medicines prescribed and the test reports shall be provided to the Petitioner on request. In fact, we would go a step further and say that this direction should be followed by the prison Authorities qua all the

prisoners. We also agree that the Petitioner should be allowed to make a phone call in the presence of a jail official to the approved family member/s after any of her visits to the hospital.

- iv. Further, amidst the serious allegations of custodial violence and the sudden hospitalisation of the otherwise healthy 22-year old for severe condition such as kidney failure and injuries, the State was only duty bound to supply the parents the medical records of the detenu, or at least produce the same before the Hon'ble Court.

C. **BECAUSE** the Hon'ble High Court passed the Impugned Order without considering the landmark decision of this Hon'ble Court in *Nilabati Behera v. State of Orissa, (1993) 2 SCC 746* wherein, it was held that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21, thus the duty to care on the part of the State is strict and admits no exception

- i. It is submitted that the duty of the State to care is strict with no exceptions. Amidst the serious allegations of custodial violence and the uncontroverted fact of the hospitalisation of the otherwise healthy 22 year old, detenu for serious and sudden damages to his health, duty bounds the State to not keep the treatment of the detenu under wraps and provide the best and specialised facility for the treatment of the detenu.
- ii. It was therefore fit for the Hon'ble High Court to intervene in the situation and ensure the rights of the detenu under Article 21 are safeguarded in detention.

D. **BECAUSE** the Hon'ble High Court proceeded on a pre-conceived notion against the detenu.

- i. The Hon'ble High Court proceeded with the preconceived notion that the detenu had committed the crime alleged and therefore, the Petition was filed making bald allegations against the police. The pre-conceived notion of the Hon'ble High Court is reflected in the Impugned Order, relevant portion of which is extracted below:

Making some bald allegations against the police, the writ petition would have been filed considering the gravity of the crime committed by the petitioner's son.

- ii. Thus, it is amply clear that the Hon'ble High Court did not take the Petition with the seriousness or concern that it warranted, firstly by investigating the allegations of custodial violence, secondly, calling for medical records of the 22 years old detenu who was suddenly hospitalised after arrest and lastly calling for records leading to the procedure and arrest of the detenu.
- iii. The Impugned Order runs contrary to the basic yet crucial principle of criminal law that an accused is innocent until proven guilty (*Ei incumbit probatio qui dicit, non qui negat*).

E. **BECAUSE** the Hon'ble High Court ignored the fact that the police was duty-bound to register the complaint of the Petitioner for custodial violence after receiving the representation of Petitioner's husband dt. 27.09.2023. [*Lalita Kumari vs. State of Uttar Pradesh (2014) 2 SCC 1; Sindhu Janak Nagargoje vs. The State of Maharastra & Ors. SLP(Crl) 5883/2023*]

- i. This Hon'ble Court in the case of *Lalita Kumari (supra)* laid down guidelines for mandatory registration of FIR in cases when the information reveals a cognizable offence.

The guidelines as formulated by this Hon'ble Court are extracted as follows:

“120. In view of the aforesaid discussion, we hold:
120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. 120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of

all conditions which may warrant preliminary inquiry.

120.7 While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and, in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

- ii. It is submitted that the Petitioner and her husband had on numerous occasions orally pointed out the offence of custodial violence on their son, the detenu. The husband of the Petitioner had even made a representation to the police and authorities unambiguously stating the fact of custodial violence on his son. However, in sheer violation of the guidelines of this Hon’ble Court, no FIR/ complaint/ inquiry has been undertaken by the concerned officials till date.
- iii. The Petitioner also made a representation to the concerned authorities including the State/ District oversight bodies (SLOC/DLOC) for gathering and preserving the CCTV videos/ audios of the arrest of the detenu and his captivity from 16.09.2023 to 21.09.2023, in line with the order of this Hon’ble Court in *Paramvir Singh Saini v. Baljit Singh, (2021) 1 SCC 184* so as to assist in establishing the sudden hospitalisation of his son young and healthy son, the detenu. No reply has been received by the authorities till date.

- iv. Ignoring the blatant violation of the guidelines and lack of any formal compliant/ FIR, the Hon'ble High Court has committed a grave error by simply terming the averments as bald allegations, rendering the Impugned Order unjust, untenable and fit to be set-aside by this Hon'ble Court.

6. **GROUND FOR INTERIM RELIEF:-**

- i. **BECAUSE** the fact of the ongoing medical treatment of the detenu, that is Petitioner's son is uncontroverted.
- ii. **BECAUSE** the detenu was a healthy 22 year old youth with no history of kidney problems or any other injuries or bodily damages, however, right after one week of his arrest on 16.09.2023 he had to be hospitalized and was even kept in the intensive care unit due to his delicate health.
- iii. **BECAUSE** the sudden hospitalization after arrest raises reasonable suspicions on the police and the Petitioner has reasonable doubts on the quality and kind of treatment given to her son, moreso, when the treatment is kept under a wrap by the police.
- iv. **BECAUSE** the Petitioner has reasonable apprehensions with respect to the health and safety of her son, the detenu.
- v. **BECAUSE** the balance of convenience lies in favour of the Petitioner as she has the life and safety of her 22 year old son at stake.

7. **MAIN PRAYER:-**

It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to:-

A. Grant Special Leave to Appeal under Article 136 of the Constitution of India against the final Judgment and Order dated 11.10.2023 passed by the Hon'ble High Court of Judication at Madras in W.P. 29444/2023; and/or

B. Pass such other order and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF:-**

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to pass the following ad interim directions:

- A. Direct the Respondents to furnish the medical records of the detenu from Tiruppur Government Hospital and Coimbatore Medical College Hospital to ascertain the nature of injuries sustained by the detenu;
- B. Direct medical examination of the detenu by a team of medical experts and submit report to this Hon'ble Court in a time-bound manner;
- C. Direct the Respondents to shift the detenu from Tamil Nadu Government Multi Super Speciality Hospital, Omandurar Estate, Chennai or any other multi super speciality hospital outside of Coimbatore;
- D. Direct the Respondents to preserve the CCTV footage from 16.09.2023 till 21.09.2023 leading to the arrest and detention of the detenu; and/or

E. Pass any other order and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE
PETITIONER AS IN DUTY BOUND SHALL EVER
PRAY**

THROUGH



PRASANNA S,
Advocate for the Petitioner

CC:2919

Office Address: C-64, IInd Floor,
Neeti Bagh, New Delhi 110049

Contact: 8750350762

Place: New Delhi

Date:31.10.2023

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
[ORDER XXII RULE 2(2)]
(Under Article 136 of the Constitution of India)
SPECIAL LEAVE PETITION (CRIMINAL) NO.
(Against the final Order and Judgment dt. 11.10.2023 passed by the
Hon'ble High Court of Judicature at Madras, in W.P. No.
29444/2023)**

IN THE MATTER:-

R. Dhanalakshmi

...Petitioner

Versus

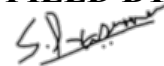
**The Home Secretary, Home Department
Govt. of Tamil Nadu & Ors.**

...Respondents

C E R T I F I C A T E

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken thereon or relied upon in the special leave petition. It is further certified that the copies of the documents/annexures attached to the special leave petition are necessary to answer the question of law raised in the petition or to make the grounds urged in the special leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioners/person authorized by the Petitioner whose affidavit is filed in support of this special leave petition.

FILED BY:



PRASANNA S.

Advocate for the Petitioner

Code: 2919

NEW DELHI

FILED ON: 31.10.2023

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2023**

IN THE MATTER OF:

R. DHANALAKSHMI

...PETITIONER

Versus

**The Home Secretary, Home Department
Govt. of Tamil Nadu & Ors**

....RESPONDENT(S)

AFFIDAVIT

I, R. Dhanalakshmi W/o Rajarathinam aged about 40 years, R/o: Balaji Garden, 7th Street, Keeranatham, Coimbatore-641035 do hereby solemnly affirm and state as follows:

1. That I am the Petitioner herein, I am conversant with the facts of this case and as such competent to swear this affidavit in the present case.
2. I have read and understood the contents of the accompanying Petition/Application which has been prepared by my counsel under my instructions. I say the said facts contained in paragraph 1 to 8, pages 7 to 23 of the petition including synopsis, list of dates from Pg B to N are true and correct to the best of my knowledge and the grounds taken in the petition are the legal submissions to this Hon'ble Court.
3. The documents annexed to the accompanying Petition and marked as Annexure-P- 1 through Annexure-P-12 are true copies of their respective originals.
4. That the Petition is confined only to the pleadings before the Courts below and documents relied upon those proceedings.
5. That the Petitioner has not filed any other Petition against the impugned order for similar relief.

R. Dhanalakshmi
DEPONENT

VERIFICATION:

Verified at Coimbatore on this the 18th day of October 2023 that the contents of this affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed here from.

R. Dhanalakshmi
DEPONENT



**M. LALITHA, B.A., B.L.,
ADVOCATE & NOTARY PUBLIC
Reg.No: 16578 (Govt. of India)
Room No.7, Semi Basement, Baleji Complex,
1st Street, Gopalapuram, Coimbatore-641 018.
Cell: 92457 59094, 82701 49094**

ANNEXURE P-1

//TRUE TRANSLATED COPY//

TAMIL NADU POLICE

FIRST INFORMATION REPORT

Under Section 154 Cr.P.C)

1. District: COIMBATORE CITY PS:KATTUR Year:2023 FIR No. 277
Date: 12.09.2023

2. Act(s)	Sections
INDIAN PENAL CODE 1860	147
INDIAN PENAL CODE 1860	148
INDIAN PENAL CODE 1860	294(b)
INDIAN PENAL CODE 1860	307
INDIAN PENAL CODE 1860	506(2)

3. (a) Occurrence of Offence Day: TUESDAY

Date From:12.09.2023 Date to:

Time Period on Time from: 11.30 Hrs Time to:

(b) Information received at PS Date: 12.09.2023 Time: 15.30 Hrs

(c) General Diary Reference :Entry No.(s)

4. Type of Information ORAL Time:

5. Place of Occurrence (a) Direction and Distance from PS: 1.0 KM WEST
Beat : 2

(b) Address: Near SNV Thirumana Mandapam, Ram Nagar,
Gandhipuram, Kovai

(c) In case, outside limit of this Police Station, the name of PS:

District:

6. Complainant / Informant (a) Name: NITHISHKUMAR

(b) Father's / Husband's Name: THIRUMURUGAN

(c) Date / Year of Birth: 2002

(d) Nationality : INDIAN

(e) Passport No.

Date of Issue Place of Issue

(f) Occupation: Clerk (OA)

(g) Address: F-304, VOC NAGAR POLICE QUARTERS, SARAVANAMPATTY,
COIMBATORE

7. Details of Known / Suspected / Unknown accused with full particulars.

KOVILPALAYAM RAVI, GERMAN RAKESH AND MORE THAN 6 PERSONS

8. Reasons for delay in reporting by the complainant / informant

9. Particulars of properties stolen / involved

10. Total Value of properties stolen / involved:

11. Inquest Report / Unnatural death Case No. if any

12. FIR Contents

SIR, SUBMITTED. BEFORE THE JUDICIAL MAGISTRATE-II, KOVAI

When today at 13.30 Hrs, I, R. Ayyasamy, Sub Inspector of Police, C-1 Kattur Police Station was on duty in the station, as per the information received from the OP of CMC Hospital, Kovai, as per the instructions of the Inspector, having gone to the CMC Hospital, Kovai, having received IR's 8906/2023, 8907/2023, AR's 0927529, 0927530, in this, the complaint deposition having obtained from Nithiskumar (28) S/o Thirumurugan, who was undergoing treatment, found in IR 8906/2023, AR 0927529 is as follows.

DEPOSITION:

Nithishkumar (21), S/o Thirumurugan, Door No. F-304, V.O.C Nagar Police Quarters, Saravanampatti, Kovai. Place of Enquiry: Kovai CMC Hospital, Kovai, dated 12.09.2023. I have been residing in the address No.F-304, V.O.C Police Quarters, Saravanampatti, Kovai, along with my father, Thirumurugan, Mother, Shailaja and Sister, Bhavana. I have studied up to X Std. I have not yet been married. My father has been running Auto. My younger sister, Bhavana, is studying in X Std. I have been running my own Auto. Woman Harassment Case having been filed against me in the Police Station, Saravanampatty, on 31.08.2023, I was in Central Prison, Kovai, for the past 8 days. I had come out on bail on 09.09.2023. Today, on 12.09.2023, my father having dropped me from Auto at 10.30 A.M. in J.M. III Court for my affixing signature. When I affixed my signature in J.M. II, one Meen Karthick of Rathnapuri also signed along with me. Both of us started leaving, after signing, Since one Mr. Ranjit was there, having come for an adjournment in the CJM Court, all the three of us when Karthick drove the Scooty bearing Regn. No.TN 66 AD 4239 belonging to Karthick, parked outside the Court, myself and Ranjith sat as pillion riders. We left the Court by taking the said vehicle, it sounded as if three persons coming in DIO Vehicle have followed us. At once, myself having asked to drive the vehicle to the Petrol Bunk near the Court, when having gone to the Bunk, filled up petrol and looked back, the DIO Vehicle was found at certain distance. Then, we in order to go in the Scooter to the house of Ranjit at Rathnapuri, when we were going through Sivasamy Road Cut in Nanjappa Road to near the SNV Thirumana Mandapam, Ramnagar, Gandhipuram at about 11.30 A.M., since we were chased by Kovilpalayam Ravi and German Rakesh, already known to me, along with more than six persons, who can be identified on being seen, since I raised alarm, gripped with fear, since Karthi had plowed up the vehicle, when myself and Ranjit jumped down from the vehicle and ran away, Kovilpalayam Ravi, shouting

as “Thayozhigala, get passed away, and came towards me to cut my neck with a knife, since I got away in alacrity, I sustained a cut injury on my right shoulder. They effected a cut on the physique of Ranjit also with a sickle. Taken away by fear with the blood started oozing and pouring down in drops, we started running towards Ramar Temple. Then, we ran into and got ourselves into a nearby hidden building. When the neighbors started getting assembled, they fled away towards Ramnagar speedily in the two wheeler in which they came. Had we not been agile, persons numbering more than six who accompanied Kovilpalayam Ravi would have murdered us. On seeing Ranjit, they had caused blood injury in his left hand. Immediately, Having informed my father over phone immediately, I went to the hospital along with my father. Ranjit came to the hospital in 108 Ambulance. When you, Kattur Police had come and enquired, I gave a complaint deposition to take appropriate action against the said Kovilpalayam Ravi, German Rakesh and persons numbering more than six who can be identified on being seen for their having caused blood injuries by cutting us with knife and sickle and attempted to murder us and who had escaped. You had read over the complaint deposition given by me. It was found to be correctly written as I had told. (Sd) Nithishkumar. Having recorded the complaint deposition given by Nithishkumar, having come to the station and sent information to the higher officers, a case was registered, as per orders, at 15.30 Hrs in C-1 Kattur Police Station Crime No. 277/2023 under sections 147, 148, 294(b), 307, 506(ii) IPC.

Along with the original of this FIR, enclosing the complaint of the complainant, I had sent to the Hon’ble Judicial Magistrate Court No.II, Kovai and other copies to the concerned higher officers respectively. A copy if placed for reference of Tmt. G. Palaniammal, Inspector of Police, for investigation.

13. Action Taken : Since the above report reveals commission of offence(s) u/s as mentioned in Item No.2, registered the case and took up the investigation.

FIR read over to the Complainant / Informant, admitted to be correctly recorded and a copy given to the Complainant / informant free of cost

14. Signature / Thumb impression of the Complainant / informant Signature of the Officer in-charge, Police Station

Name: Ayyasamy

15. Date & Time of Despatch Rank: Sub Inspector of Police
To the J.M. No.II Court :
Kovai on 12.09.2023



//TRUE TRANSLATED COPY//



Tamil Nadu Police



ANNEXURE P-2

Details of Arrested Persons

VENKAT RAMAN [9043442023]
View Count: 3
District/City: COIMBATORE CITY
Police Station: KATTUR
Date: 19/09/2023
Total: 5

S.No.	Name, Age & Parentage	Address	Crime Number	Section of Law
1	JAYAKUMAR (22), (S/o) RAJARATHINAM	BALAJI NAGAR, 7TH STREET, KAPPY KADAI BUS STOP, SARAVANAMPATTY, COIMBATORE	277/2023	147, 148, 294(b), 307, 506(2) - IPC @ 120B, 147, 148, 294(b), 307, 506(2) - IPC
2	VASANTHAKUMAR (23), (S/o) BALAMURUGAN	THERKKU THERU, PAPPANAYAKKANPATTY, VEELANAICKANPATTY, DINGUL	285/2023	75(1)(c) - TNCP ACT
3	KRISHNAKUMAR (24), (S/o) KANNAN	D.NO.10 A, SANGANOOR MAIN ROAD, LENIN NAGAR, GANAPATHY, COIMBATORE	286/2023	75(1)(c) - TNCP ACT
4	KANNAN (26), (S/o) VELUSAMY	D.NO.8/7, SOUTH STREET, NALUMAVADI, THOOTHUKUDI	286/2023	75(1)(c) - TNCP ACT
5	VIGNESH (23), (S/o) CHINNADURAI	D.NO.1/37, V.A.O.COLONY, MANAVIDUTHI, PUDUKOTTAI	286/2023	75(1)(c) - TNCP ACT

//TRUE COPY//

ANNEXURE P-3

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SUPREME COURT CASES

(1997) 1 SCC

(1997) 1 Supreme Court Cases 416

(BEFORE KULDIP SINGH AND DR A.S. ANAND, JJ.)

Writ Petition (Crl.) No. 539 of 1986

a

D.K. BASU

.. Petitioner;

Versus

STATE OF W.B.

.. Respondent.

With

Writ Petition (Crl.) No. 592 of 1987

b

ASHOK K. JOHRI

.. Petitioner;

Versus

STATE OF U.P.

.. Respondent.

Writ Petitions (Crl.) No. 539 of 1986[†] with No. 592 of 1987,
decided on December 18, 1996

c

A. Constitution of India — Arts. 21, 22 and 32 — Custodial violence — Torture, rape, death in police custody/lock-up — Infringes Art. 21 as well as basic human rights and strikes a blow at rule of law — Torture involves not only physical suffering but also mental agony — It is naked violation of human dignity and destructive of human personality — Interrogation though essential must be on scientific principles — Third-degree methods are totally impermissible — Balanced approach needed so that criminals do not go scot-free — Custodial death is one of the worst crimes in civilised society — State terrorism is no answer to terrorism — Transparency of action and accountability are two safeguards against abuse of police power — Victim of custodial violence and in case of his death in custody, his family members are entitled to compensation under public law in addition to the remedy available under private law for damages for tortious act of the police personnel — Mandatory directions in the shape of ‘requirements’ issued by Supreme Court for compliance by police personnel while arresting or detaining any person — These are in addition to constitutional and statutory safeguards and previous directions of the Supreme Court — The requirements to govern all enforcement agencies — They must be circulated to all police stations and disseminated through the mass media — Non-compliance with the requirements will render the concerned official liable for departmental action as well as contempt of court — Proceedings for contempt can be initiated in High Court having territorial jurisdiction — Police atrocities — Penal Code, 1860, Ss. 220, 330 and 331

d

e

f

B. Constitution of India — Arts. 32, 226, 21 — Compensation — For established breach of fundamental rights, held, compensation can be granted under public law by the Supreme Court and by the High Courts in addition to private law remedy for tortious action and punishment to wrongdoer under criminal law — Public law proceedings — Object — Different from private law proceedings — Award of compensation in public law proceedings may be adjusted against damages awarded in civil suit

g

Held:

(1) 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

h

[†] Under Article 32 of the Constitution of India

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- a 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 issues are fundamental. (Para 9)

- b “Torture” of a human being by another human being is essentially an instrument to impose the will of the “strong” over the “weak” by suffering. The word *torture* today has become synonymous with the darker side of human civilisation. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. “Custodial torture” is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast. (Paras 10, 12 and 11)

- c Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. The expression “life or personal liberty” in Article 21 includes the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. The precious right guaranteed by Article 21 cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. It cannot be said that a citizen ‘sheds off’ his fundamental right to life the moment a policeman arrests him. Nor can it be said that the right to life of a citizen can be put in ‘abeyance’ on his arrest. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become 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 anarchy. No civilised nation can permit that to happen. The Supreme Court as the custodian and protector of the fundamental and the basic human rights of the citizens cannot wish away the problem. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual’s right to personal liberty. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be “right, just and fair”. Using any form of *torture* for extracting any kind of information would neither be “right nor just nor fair” and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated — indeed subjected to sustained and scientific interrogation — determined in accordance with the provisions of law. He cannot, however, be
- d tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons
- e
- f
- g
- h

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etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge. (Paras 22, 17, 9 and 33)

Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cr) 1172, *Nilaban Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cr) 527 : 1993 Cri LJ 2899, *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262 : 1995 SCC (Cr) 715 : (1995) 3 Scale 343; *Miranda v. Arizona*, 384 US 436 : 16 L Ed 2d 694 (1966), *relied on* *Chambers v. Florida*, 309 US 227 : 84 L Ed 716 : 60 S Ct 472 (1940), *cited*

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it. (Para 28)

However, it is true that in case of too much of emphasis on protection of fundamental rights and human rights of hardened criminals, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself. (Para 31)

To check the abuse of police power, transparency of action and accountability perhaps are two possible safeguards which the Supreme Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation. (Para 29)

It is therefore, appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf, as *preventive measures*:

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a (1) 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 (2) 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 either be 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 countersigned by the arrestee and shall contain the time and date of arrest.

c (3) 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 (4) 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 Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

e (5) 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 (6) 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 (7) 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 (8) 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 State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

i (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

j (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

k (11) 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. (Para 35)

l Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable

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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. (Para 36)

The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP. (Paras 37 and 30)

Death of Sawinder Singh Grover, Re, 1995 Supp (4) SCC 450 : 1994 SCC (Cri) 1464, relied on

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. (Para 38)

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 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 be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. (Para 39)

(2) *Ubi jus, ibi remedium*.—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (Paras 40 and 42)

Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cn) 798; *Sebastian M. Hongray v. Union of India*, (1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407; *Bhum Singh v. State of J&K*, 1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri) 47; *Saheli, A Women's Resources Centre v. Commr. of Police*, (1990) 1 SCC 422 : 1990 SCC (Cn) 145; *Kasturilal Ralia Ram Jain v. State of U.P.*, (1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583, relied on

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.

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- a* Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. (Para 44)

- b* The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply *c* balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family. (Para 45)

Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899; *State (At the Prosecution of Quinn) v. Ryan*, 1965 IR 70; *Byrne v. Ireland*, 1972 IR 241; *Maharaj v. Attorney General of Trinidad and Tobago (No. 2)*, (1978) 2 All ER 670 : (1978) 2 WLR 902 : 1979 AC 385, PC; *Simpson v. Attorney General*, 1994 NZLR 667, *relied on*

- d* *Jaundoo v. Attorney General of Guyana*, 1971 AC 972 : (1971) 3 WLR 13, PC, *cited*

- Awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be *f* adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. (Para 54)

R-M/T/17238/CR

Advocates who appeared in this case :

- g* V.R. Reddy, Additional Solicitor General, Dr N.M. Ghatate, Tapas Ray and Ms K. Amareshwari, Senior Advocates [Dr A.M. Singhvi (*Amicus curiae*), Sushil Kumar Jain, Sudhanshu Atreya, P.K. Bansal, P. Parameswaran, R.P. Srivastava, S.K. Nandy, I.S. Goyal, Ms Indu Malhotra, Naresh Kumar Sharma, Ashok Mathur, Sakesh Kumar, Uma Nath Singh, A.S. Bhasme, D.N. Mukherjee, Ms Hemantika Wahi, Kailash Vasdev, Ms Alpana Kirpal, Raj Kumar Mehta, R.S. Suri, G.K. Bansal, A.S. Pundir, Dilip Singh, Krishnamurthi Swarni, P.K. Manohar, G. Prabhakar, M. Veerappa, Ms S. Janani, G. Prakash, M.T. George, K.V. Venkataraman, K.V. Vishwanathan, B.K. Prasad, T.V.S.N. Chari, B.B. Singh, Anip Sachthey, M. Raghuraman, K.R. Nambiar, Indra Makwana, R. Mohan, Gopal Singh, Ms Kamini Jaiswal, D.N. Goburdhun, C.V.S. Rao, R. Sasiprabhu, S.K. Agnihotri and R.B. *h* Misra, Advocates, with them] for the appearing parties.

422	SUPREME COURT CASES	(1997) 1 SCC	
	Chronological list of cases cited	on page(s)	
1.	(1995) 4 SCC 262 : 1995 SCC (Cri) 715 : (1995) 3 Scale 343, <i>State of M.P. v. Shyamsunder Trivedi</i>	430d, 432g-h	a
2.	1995 Supp (4) SCC 450 : 1994 SCC (Cri) 1464, <i>Death of Sawinder Singh Grover, Re</i>	433g	
3.	(1994) 4 SCC 260 : 1994 SCC (Cri) 1172, <i>Joginder Kumar v. State of U.P.</i>	428a, 428b-c	
4.	1994 NZLR 667, <i>Simpson v. Attorney General</i>	442a-b, 443b	
5.	(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899, <i>Nilabati Behera v. State of Orissa</i>	429c-d, 438d-e, 438f, 439h, 442f, 442f-g	b
6.	(1990) 1 SCC 422 : 1990 SCC (Cri) 145, <i>Saheli, A Women's Resources Centre v. Commr. of Police</i>	438c-d	
7.	(1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407, <i>Sebastian M. Hongray v. Union of India</i>	438c-d	
8.	1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri) 47, <i>Bhum Singh v. State of J&K</i>	438c-d	c
9.	(1983) 4 SCC 141 : 1983 SCC (Cri) 798, <i>Rudul Sah v. State of Bihar</i>	438c-d, 439a-b	
10.	(1978) 2 All ER 670 (1978) 2 WLR 902 : 1979 AC 385, PC, <i>Maharaj v Attorney General of Trinidad and Tobago (No. 2)</i>	441c	
11.	1972 IR 241, <i>Byrne v. Ireland</i>	441a-b	
12.	1971 AC 972 : (1971) 3 WLR 13, PC, <i>Jaundoo v Attorney General of Guyana</i>	441d-e	d
13.	(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583, <i>Kasturilal Ralia Ram Jain v. State of U.P.</i>	438f, 438g, 439b, 439b-c	
14.	1965 IR 70, <i>State (At the Prosecution of Quinn) v. Ryan</i>	440g-h	
15.	384 US 436 : 16 L Ed 2d 694 (1966), <i>Miranda v. Arizona</i>	434e	
16.	309 US 227 : 84 L Ed 716 : 60 S Ct 472 (1940), <i>Chambers v. Florida</i>	434e-f	

The Judgment of the Court was delivered by

DR ANAND, J.—The Executive Chairman, Legal Aid Services, West Bengal, a non-political organisation registered under the Societies Registration Act, on 26-8-1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in *The Telegraph* dated 20-7-1986, 21-7-1986 and 22-7-1986 and in *the Statesman* and *Indian Express* dated 17-8-1986 regarding deaths in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop “custody jurisprudence” and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated in the letter that efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and “flourishes”. It was requested that the letter along with the news items be treated as a writ petition under “public interest litigation” category.

2. Considering the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock-up, the letter was treated as a writ petition and notice was issued on 9-2-1987 to the respondents.

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3. In response to the notice, the State of West Bengal filed a counter. It was maintained that the police was not hushing up any matter of lock-up death and that wherever police personnel were found to be responsible for such death, action was being initiated against them. The respondents characterised the writ petition as misconceived, misleading and untenable in law.

4. While the writ petition was under consideration a letter addressed by Shri Ashok Kumar Johri on 29-7-1987 to the Hon'ble Chief Justice of India drawing the attention of this Court to the death of one Mahesh Bihari of Pilkhana, Aligarh in police custody was received. That letter was also treated as a writ petition and was directed to be listed along with the writ petition filed by Shri D.K. Basu. On 14-8-1987 this Court made the following order:

"In almost every State there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock-up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all-India question concerning all States, it is desirable to issue notices to all the State Governments to find out whether they desire to say anything in the matter. Let notices issue to all the State Governments. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today."

5. In response to the notice, affidavits have been filed on behalf of the States of West Bengal, Orissa, Assam, Himachal Pradesh, Madhya Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra and Manipur. Affidavits have also been filed on behalf of Union Territory of Chandigarh and the Law Commission of India.

6. During the course of hearing of the writ petitions, the Court felt necessity of having assistance from the Bar and Dr A.M. Singhvi, Senior Advocate was requested to assist the Court as *amicus curiae*.

7. Learned counsel appearing for different States and Dr Singhvi, as a friend of the court, presented the case ably and though the effort on the part of the States initially was to show that "everything was well" within their respective States, learned counsel for the parties, as was expected of them in view of the importance of the issue involved, rose above their respective briefs and rendered useful assistance to this Court in examining various facets of the issue and made certain suggestions for formulation of guidelines by this Court to minimise, if not prevent, custodial violence and for award of compensation to the victims of custodial violence and the kith and kin of those who die in custody on account of torture.

8. The Law Commission of India also in response to the notice issued by this Court forwarded a copy of the 113th Report regarding "*Injuries in police custody and suggested incorporation of Section 114-B in the Indian Evidence Act*".

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9. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. 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 issues are fundamental.

10. "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word *torture* today has become synonymous with the darker side of human civilisation.

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."

— Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "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.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

13. "Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international

a community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite the pious declaration the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

b 14. In England, torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common law and more radical ideas imbibing human thought and approach, such inhuman practices were initially discouraged and eventually almost done away with, certain aberrations here and there notwithstanding. The police powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Philips Committee — *"Report of a Royal Commission on Criminal Procedure"* (Command Papers 8092 of 1981). The report of the Royal Commission is instructive. In regard to the power of arrest, the Report recommended that the power to arrest without a warrant must be related to and limited by the object to be served by the arrest, namely, to prevent the suspect from destroying evidence or interfering with witnesses or warning accomplices who have not yet been arrested or where there is a good reason to suspect the repetition of the offence and not to every case irrespective of the object sought to be achieved.

c 15. The Royal Commission suggested certain restrictions on the power of arrest on the basis of the "necessity principle". The Royal Commission said:

e "... We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

f (b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

g (e) the likelihood of the person failing to appear at court to answer any charge made against him."

The Royal Commission also suggested:

h "To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to

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arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case....” a

16. The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to a very great extent. b

17. Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression “life or personal liberty” has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of the Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 CrPC confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes c d e f g h

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clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

18. However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines. ..."

The recommendations of the Police Commission (*supra*) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

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20. This Court in *Joginder Kumar v. State of U.P.*¹ (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined: (SCC p. 267, para 20)

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.”

21. *Joginder Kumar case*¹ involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7-1-1994. On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before this Court on 11-1-1994 and in compliance with the notice, the lawyer was produced on 14-1-1994 before this Court. The police version was that during 7-1-1994 and 14-1-1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenu asserted otherwise. This Court was not satisfied with the police version. It is noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to *detain* the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were important questions which required an answer. Besides, if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said: (SCC pp. 263-64, paras 8 and 9)

“The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider”

This Court then set down certain procedural “requirements” in cases of arrest.

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and

¹ (1994) 4 SCC 260 : 1994 SCC (Cri) 1172

- 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or
- a 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 anarchism. No civilised nation can permit that to happen. Does
 - b 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
 - c 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 law.

23. In *Nilabati Behera v. State of Orissa*² (to which Anand, J. was a party) this Court pointed out that prisoners and detenus are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the
- d fundamental rights of the arrestees and detenus. It was observed: (SCC p. 767, para 31)

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

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
- h investigation or for recovery of case property or for extracting confession

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etc. The torture and injury caused on the body of the arrestee has sometimes resulted in his death. Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose of the body or to make 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 in death, as the police lock-up where generally torture or injury is caused is away from the public gaze and the witnesses are either policemen or co-prisoners who are highly reluctant to appear as prosecution witnesses due to fear 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 policemen 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. *State of M.P. v. Shyamsunder Trivedi*³ is an apt case illustrative of the observations made by us above. In that case, Nathu Banjara was tortured at police station, Rampura during the interrogation. As a result of extensive injuries caused to him he died in police custody at the police station. The defence set up by the respondent police officials at the trial was that Nattu had been released from police custody at about 10.30 p.m. after interrogation on 13-10-1981 itself vide entry Ex. P/22-A in the Roznamcha and that at about 7.00 a.m. on 14-10-1981, a death report Ex. P/9 was recorded at the police station, Rampura, at the instance of Ramesh Respondent 6, to the effect that he had found "one unknown person" near a tree by the side of the tank wriggling with pain in his chest and that as soon as Respondent 6 reached near him, the said person died. The further case set up by SI Trivedi, Respondent 1, in charge of the police station was that after making a Roznamcha entry at 7.00 a.m. about his departure from the police station he (Respondent 1-Shyamsunder Trivedi) and Constable Rajaram respondent proceeded to the spot where the dead body was stated to be lying for conducting investigation under Section 174 CrPC. He summoned Ramesh Chandra and Goverdhan — respondents to the spot and in their presence prepared a panchnama Ex. P/27 of the dead body recording the opinion therein to the effect that no definite cause of death was known.

25. The First Additional Sessions Judge acquitted all the respondents of all the charges holding that there was *no direct evidence* to connect the respondents with the crime. The State of Madhya Pradesh went up in appeal against the order of acquittal and the High Court maintained the acquittal of

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- Respondents 2 to 7 but set aside the acquittal of Respondent 1, Shyamsunder Trivedi for offences under Sections 218, 201 and 342 IPC. His acquittal for
- a the offences under Sections 302/149 and 147 IPC was, however, maintained. The State filed an appeal in this Court by special leave. This Court found that the following circumstances had been established by the prosecution beyond every reasonable doubt and coupled with the direct evidence of PWs 1, 3, 4, 8 and 18 those circumstances were consistent only with the hypothesis of guilt of the respondents and were inconsistent with their
- b innocence: (SCC p. 272, para 16)

- “(i) that the deceased had been brought alive to the police station and was last seen alive there on 13-10-1981; (ii) that the dead body of the deceased was taken out of the police station on 14-10-1981 at about 2 p.m. for being removed to the hospital; ... (iv) that SI Trivedi, Respondent 1, Ram Naresh Shukla, Respondent 3, Rajaram, Respondent
- c 4 and Ganniuddin, Respondent 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu Banjara; (v) that SI Trivedi, Respondent 1 created false evidence and fabricated false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender; (vi) SI Trivedi — respondent in
- d connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a ‘lavaris’ though the identity of the deceased, when they had interrogated for a sufficient long time was well known to them.”

and opined that : (SCC p. 272, para 16)

- “The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne
- e out from the evidence on the record and appear to be an unrealistic over simplification of the tell-tale circumstances established by the prosecution.”

One of us (namely, Anand, J.) speaking for the Court went on to observe: (SCC p. 273, para 17)

- “The trial court and the High Court, if we may say so with respect,
- f exhibited a total lack of sensitivity and a “could not care less” attitude in appreciating the evidence on the record and thereby condoning the barbarous third-degree methods which are still being used at some police stations, despite being illegal. The *exaggerated* adherence to and insistence upon the establishment of *proof beyond every reasonable doubt*, by the prosecution, ignoring the ground realities, the fact-
- g situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the
- h police that no harm would come to them, if an odd prisoner dies in the lock-up, *because there would hardly be any evidence available to the*

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prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society.” a

This Court then suggested : (SCC p. 274, para 18)

“The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.” b

26. The State appeal was allowed and the acquittal of Respondents 1, 3, 4 and 5 was set aside. The respondents were convicted for various offences including the offence under Sections 304 Part II/34 IPC and sentenced to various terms of imprisonment and fine ranging from Rs 20,000 to Rs 50,000. The fine was directed to be paid to the heirs of Nathu Banjara by way of compensation. It was further directed : (SCC pp. 275-76, para 24) c

“The trial court shall ensure, in case the fine is deposited by the accused respondents, that the payment of the same is made to the heirs of deceased, Nathu Banjara, and the court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased, Nathu Banjara, and if found practical by deposit in a nationalised bank or post office on such terms as the trial court may in consultation with the heirs of the deceased consider fit and proper.” d

27. It needs no emphasis to say that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. It was considering these aspects that the Law Commission in its 113th Report recommended the insertion of Section 114-B in the Indian Evidence Act. The Law Commission recommended in its 113th Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court *may presume* that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate may have recorded. Change of burden of proof was, thus, advocated. In *Shyamsunder Trivedi case*³ this Court also expressed the hope that the Government and the legislature would give serious thought to the recommendation of the Law Commission. Unfortunately, the suggested amendment, has not been incorporated in the statute so far. The need of e f g h

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amendment requires no emphasis — sharp rise in custodial violence, torture and death in custody, justifies the urgency for the amendment and we invite

a Parliament's attention to it.

28. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means.

b The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

29. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation.

e 30. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. *Death of Sawinder Singh Grover, Re*⁴, (to which Kuldip Singh, J. was a party) this Court took suo motu notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge an FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was

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also directed to pay a sum of Rs 2 lakhs to the widow of the deceased by way of *ex gratia* payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested persons in such cases too is a genuine need. a

31. There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hardcore criminals like extremists, terrorists, drug peddlers, smugglers who have organised gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself. b c d

32. The response of the American Supreme Court to such an issue in *Miranda v. Arizona*⁵, is instructive. The Court said:

“A recurrent argument, made in these cases is that society’s need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. [See e.g., *Chambers v. Florida*⁶, US at pp. 240-41: L Ed at p. 724: 60 S Ct 472 (1940)]. The whole thrust of our foregoing discussion demonstrates that *the Constitution has prescribed the rights of the individual* when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. *That right cannot be abridged.*” (emphasis ours) e f

33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual’s right to personal liberty. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is the supreme law) coexist g

⁵ 384 US 436 · 16 L Ed 2d 694 (1966)

⁶ 309 US 227 · 84 L Ed 716 · 60 S Ct 472 (1940)

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- and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The
- a action of the State, however, must be “right, just and fair”. Using any form of *torture* for extracting any kind of information would neither be “right nor just nor fair” and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated — indeed subjected to sustained and scientific interrogation — determined in accordance with the provisions of law. He cannot, however, be *tortured or subjected to third-degree methods* or *eliminated* with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and
 - c approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to “terrorism”. That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render
 - d him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.

- e 34. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date
- f and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee.

35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

- g (1) 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.
- h (2) 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 either be a member of the

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family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

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(3) 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.

b

(4) 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 Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

c

(5) 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.

(6) 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.

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(7) 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.

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(8) 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 State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

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

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

(11) 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.

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36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental

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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

a country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

b 38. 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.

c 39. 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 All India Radio besides being shown on the National Network of Doordarshan any 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.

PUNITIVE MEASURES

e 40. *Ubi jus, ibi remedium.*—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

f 41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. g Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The h

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Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience. a

42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen (See with advantage *Rudul Sah v. State of Bihar*⁷; *Sebastian M. Hongray v. Union of India*⁸; *Bhim Singh v. State of J&K*⁹; *Saheli, A Women's Resources Centre v. Commr. of Police*¹⁰.) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See *Nilabati Behera v. State*²) b c d

43. Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In *Nilabati Behera v. State*² the decision of this Court in *Kasturilal Ralia Ram Jain v. State of U.P.*¹¹ wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus: (SCC p. 761, para 14) e f

“In this context, it is sufficient to say that the decision of this Court in *Kasturilal*¹¹ upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no g

7 (1983) 4 SCC 141 · 1983 SCC (Cri) 798

8 (1984) 1 SCC 339 · 1984 SCC (Cri) 87 and (1984) 3 SCC 82 · 1984 SCC (Cri) 407

9 1984 Supp SCC 504 · 1985 SCC (Cri) 60 and (1985) 4 SCC 677 · 1986 SCC (Cri) 47

10 (1990) 1 SCC 422 · 1990 SCC (Cri) 145

11 (1965) 1 SCR 375 · AIR 1965 SC 1039 · (1965) 2 LLJ 583 h

- application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah*⁷ and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal*¹¹ related to the value of goods seized and not returned to the owner due to the fault of government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. *Kasturilal*¹¹ is, therefore, inapplicable in this context and distinguishable.”
44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.
45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.
46. In *Nilabati Behera case*², it was held: (SCC pp. 767-68, para 32)

“Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve ‘new tools’ to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title ‘*Freedom under the Law*’ Lord Denning in his own style warned:

‘No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence.... This is not the task of Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.’ ”

47. A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.

48. The informative and educative observations of O’Dalaigh, C.J. in *State (At the Prosecution of Quinn) v. Ryan*¹² (IR at p. 122) deserve special notice. The Learned Chief Justice said:

“It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought

a or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, *it follows that no one can with impunity set these rights at nought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires.*" (emphasis supplied)

49. In *Byrne v. Ireland*¹³ Walsh, J. opined at p. 264:

b "In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, *the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to*

c *discharge the constitutional obligation imposed.*" (emphasis supplied)

50. In *Maharaj v. Attorney General of Trinidad and Tobago (No. 2)*¹⁴ the Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of "redress" for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking

d for the majority said:

"It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in *Jaundoo v. Attorney General of Guyana*¹⁵. Reliance was placed on the reference in the sub-section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the *enforcement* of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of sub-section (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this."

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Lord Diplock then went on to observe (at p. 680):

"Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of

h ¹³ 1972 IR 241

¹⁴ (1978) 2 All ER 670 . (1978) 2 WLR 902 . 1979 AC 385, PC

¹⁵ 1971 AC 972 . (1971) 3 WLR 13, PC

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deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.” a

51. In *Simpson v. Attorney General*¹⁶ (*Baigent case*) the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violates the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided, Hardie Boys, J. observed: b

“The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment, indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. *Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised State. They are inherent in and essential to the structure of society.* They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning.” (emphasis supplied) c

52. The Court of Appeal relied upon the judgments of the Irish Courts, the Privy Council and referred to the law laid down in *Nilabati Behera v. State*² thus: f

“Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In *Nilabati Behera v. State of Orissa*², the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to “forge new tools”, of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. (at p. 2912 of Cri LJ) may be noted: (SCC p. 768, paras 33 and 34) g

¹⁶ 1994 NZLR 667

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a 'The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. ... The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.' "

b 53. Each of the five members of the Court of Appeal in *Simpson case*¹⁶ delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.

c 54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

g 55. Before parting with this judgment we wish to place on record our appreciation for the learned counsel appearing for the States in general and Dr A.M. Singhvi, learned Senior Counsel who assisted the Court amicus curiae in particular for the valuable assistance rendered by them.

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//TRUE COPY//

ANNEXURE P-4

//TRUE TRANSLATED COPY//

BEFORE THE HON'BLE JUDICIAL MAGISTRATE COURT NO. 2

COIMBATORE

C.M.P No. / 2023

R.Dhanalakshmi (Age 39)

W/o Rajarathnam

Balaji Garden 7th Street

Opp: Vinayagar Koil

Keeranatham, Coimbatore 641 035

Telephone No.9514807077

Petitioner / 3rd party

Vs

The Inspector of Police

C1 Kattur Police Station

Coimbatore

Crime No. 277/2023

Respondent

**PETITION FILED ON THE SIDE OF PETITIONER UNDER
SECTION 91 Cr.P.C.**

Sir

I have been residing in the aforesaid address. I have been doing business running a Petty Shop in Keeranatham. I have been doing business by running a fish shop on Sundays in all the weeks. My

husband has been of assistance to me. I have got two Sons. My elder Son Jayakumar (Age 22) having studied XII Std, is presently working as Driver in the Red Taxi Car belonging to one Mr. Murugan of Vilangurichi. (Vehicle No. TN 34 AZ 8841). There is no criminal case against my Son. He was living by working as a responsible Driver.

While so, on the morning of 16.09.2023 he left the house at 5.00 A.M. with the Red Tax for driving the same. While so, at about 5.30 P.M on that day, the said Murugan, owner of the car in which my Son is working as a driver, having contacted me over phone, and asked me whether my Son had come to the house and stating that himself and my Son are to be enquired, and asked him to identify my Son. Thereafter, I had identified him in a place known as Thanneerpandal. Thereafter, having told that they would be taking to the Saravanampatti Police Station, they took your son. They told that he would be released soon after enquiry. Hew asked me whether my Son had come with the car. I, having been shocked, told him that my Son had not yet come home and I shall go and see him at Saravanampatty Police Station, myself and my husband having gone to the Saravanampatty Police station at about 6.00 A.M and enquired there about my Son. At that time the Constables there asked me to wait. Within a short time of our having gone there, the owner of the car being driven by my Son had come there.

While so, at about 8.15 Hrs, Murugan, my Husband and myself, had come to a tea shop called Ragam Bakery located near the

check post for taking tea. At that time,near the aforesaid check post, my Son and one Janardhan, Red Taxi Driver, who is the school mate of my Son, the constables attired in civil dress having shifted them from one car to another car, the said car carrying my son and the said Janardhan had gone in the road going towards Gandhipuram area.

Thereafter, hoping that they would again come to Saravanampatty Police Station, we have waited up to 11.00 P.M. The constables present there sent us home by asking us to come in the morning. Then, on the next day, at 11.00 A.M we had again gone to Saravanampatty Police Station. At that time, on 12.09.2023, my Son is being suspected by connecting him with a riot that took place on 12.09.2023 in Ramnagar Area, Kattur, it came to be known that the persons connected with that case, were being remanded by implicating them in other cases. In that bid, the said Janardhan, school mate of my Son had been booked under Cannabis Case and was preparing to remand him. I asked them as to where is my son as they remand Janardhan. The constables there stated that my Son Jayakumar is not there. I had waited.

Even after 8.00 P.M on that day, my Son Jayakumar was not brought to Saravanampatty Police Station. Then, after 8.00 P.M when I had again asked the constables, they said there is chance for my Son being in Rathnapury Police Station, and we can go there and see. Immediately, when myself and my husband had gone to Rathnapuri police station at 8.30 P.M and enquired about my son, it came to be known that my Son is not there too. Then,

myself and my husband had gone to Kattur police station in Gandhipuram at about 9.00 P.M and enquired about my Son. But they told me that my Son is not even there.

In these circumstances, at about 7.25 A.M on 18.09.2023, having called the Emergency Police Assistance No.100 through my husband's cell phone No.98433 24785 and told that my Son had been kept by police in illegal custody for the past 3 days from 16.09.2023 and lodged a complaint for redeeming my Son. Within 30 minutes from the lodgment of the said complaint, my husband having been called in his cell phone from Kovilpalayam police station, my Son Jayakuram is in the Kattur Police Station, Gnadhipuram and we can go there and see him. Myself and my husband went to Kattur Police Station, Gandhipuram by 10.15 A.M. I was accompanied by brother in law Thiyagarajan (brother of my husband). At that time, the woman inspector of police, having called us and taken us to the interior room, had shown my Son. There, about 8 Constables were examining my Son. When my Son was seen, he looked with thin cheeks, sustaining wounds in his lips and jaw. At that time, a constable there, asked me whether my Son had revealed any truth in connection with the fighting that took place at Ram Nagar. I told them that when my Son was standing in Gandhipuram to pick up a customer who had booked his tax, that incident took place. Thereafter, they sent us out. Again, they asked us to come at 2.00 P.M. Myself and my husband have again gone to the police station. When we went and saw there, my son was not there. They told us to have taken him somewhere outside. Again, when we went to the police station at

Kattur at about 10.00 A.M. on 19.09.2023 and asked about my Son, the woman constable told that my Son was not there and I can come in the evening and see. Myself and my husband waited in front of the said police station till 10.00 P.M. But they did not bring my Son. Then, we left for home.

Thereafter, we went to the kattur police station at 10.00 A.M. on the next day 20.09.2023. My husband enquired about my Son to the constables there. The constables told that my Son was not there. My Son, who was arrested on 16.09.2023 has not been remanded till date. My husband, having complained that my Son was not produced before the court as well, thinking meeting an Advocate we can give petition in this regard, we came to the court.

In these circumstances, on that day at about 12 Noon, a constable from Kattur police station having called, and told that my son was about to be remanded and asked us to come to the police station bringing the Aadhar Card of my Son. Following this, we went to Kattur Police Station. At that time also, my son could not been seen. He was kept inside the police station. Then, at about 5.30 P.M they brought my Son from the police station for remanding him. At that time, by son Jayakumar being not able to walk on his own, he faltered the distance with the help of a handle bar inside the police station and got into the jeep. They told us to wait in the central jail, Kovai with alternative dress for my Son. Then, at about 7.00 P.M. my Son having been subjected to judicial custody, they brought my Son to the jail for putting him behind the bars. My son was sitting in the call taxi. At that time my son wept and wailed

saying that having taken him to various places from 16.09.2023 to 20.09.2023, the police personnel had manhandled and incarcerated him. Hearing that, myself and my husband also wept. Thereafter, having got my son down from the tax, having forced him to walk which he could not, they took him. At that time, my son faltered and limped on the floor. Myself and my husband waited at the entrance of the prison. Within a short time, my Son wept and told that he had been shifted to Thirupur Jail and asked us to make an application for coming there to see him.

On the next day i.e 21.09.2023 myself and my husband having submitted an application to Thirupur Jail at about 1.00 P.M. and saw our son. At that time, seeing my Son wept and wailed aloud the police personnel pressurized him to tell the truth in regard to the riot at Ramnagar for 4 days i.e from 16.09.2023 to 20.09.2023, till he was remanded, my son had told them that really he was not aware of that incident, consequently the police having covered his eyes and taken him to various places and having taken him to a separate room, and the police tortured my son by their standing on his forcibly widened legs and also had incarcerated him by effecting blows on his palm by rubber pipe forcibly and speedily, and injured by effecting blows with Lathi, further one police had heavily beaten with a log in my Son's left *Allai*, and had kicked his stomach with shoed leg, further he was tortured by not permitting him even not to pass urine, further he was given only half liter water for consumption, having tied his eyes for a whole day, by plugging his mouth with cloth and my Son told that he was thus tortured in several says and he burst into tears. Further because of the since

the occasional tortures resulting in the swelling of wounds sustained by my Son, he was sprayed with pain reliever and then again incarcerated him. Similarly the police effected forcible fisting on my son's head which made him suffer writhing pain. Further, lifting up his dhoti , my son showed the injuries sustained in his thigh. My son having told my husband that due to the tortures inflicted on his, there is swelling in his penis, my son wept aloud. My son wept and wailed saying that he could not normally pass urine, and if he exerts force in passing urin, blood comes along with rune, there is writhing pain all over his body and he could not bear the plight and he is experience hell on earth. Further, my Son asked me to get him pain killer medicine for applying in his physique. Having bought and given him pain killer, we returned home.

On the next day 22.09.2023 when myself and my husband were going to Thirupur for again seeing my Son, a police constable from Thirupur jail having called my cell phone, because of the critical condition of the injuries found in the physique of my son, my son was taken to the government hospital in Tiruppur and told us to come there. Following this, when we went to Thirupur government hospital and saw at about 3.00 P.M. they provided treatment to my Son. They told that they were providing treatment for the inability of my son to pass urine. At that time, seeing us, my Son wept. Telling us that his kidneys would have been affected because of the blows effected on his hip with rolling pin, he wept aloud. My husband stayed in the night at the Tirupur Hospital so as to be of assistance to my son. In these circumstances, since the condition

of my son had worsened, he was shifted to ECU. My Son was kept in ECU for one full day. Since there was no progress in the condition of my son, he was shifted to the Coimbatore Medical College Hospital for further treatment.

The Doctors who examined my Son in the Coimbatore Medical College Hospital, told us that both the kidneys of my son are affected and hence he has been put on Dialysis and my son has been battling for his life.

My Son is only a youth aged only 22 years enjoying sound health. My son never suffered from any physical infirmity. The Coimbatore police personnel having brutally assaulted my Son ever since 16.09.2023 and had very badly incarcerated him and has now pushed my son to the pathetic condition of battling for his very life. It is only the brutal assault, violating all human rights, effected by the police personnel attached to the Coimbatore police station is the solitary reason for the present pathetic physical condition of my Son. The blatant violation of human rights reflected in the inhuman attack by the police personnel against law and justice and on account of incarcerations inflicted on my Son, it is imperative that you ought to intervene and take appropriate action against the police personnel for all their inhuman acts dilated above.

Further to show that in connection with the illegal custody to which my son was subjected and in connection with the tortures inflicted on my son, there was violation of the provisions of Sections 41b, 46(4) and 57 of Cr.P.C and in connection with the severe incarceration caused to my son, in order to safeguard all the

recordings contained in all the CCTV Cameras for the period from 16.09.2023 and 20.09.2023 and for entrustment of one copy of such recordings to this Hon'ble Court, it is imperative that a suitable action is passed by this Hon'ble court. As had been observed by the Hon'ble Supreme Court in the case of Paramvir Singh Sainni V Balaji Singh (2021) 1 SCC 184, there is every right for safeguarding the aforesaid documents by the Hon'ble Court. I pray that your goodself shall pass suitable order in that behalf.

Yours truly

(Sd) R. Dhanalakshmi



//TRUE TRANSLATED COPY//

Chief Judicial Magistrate Court, Coimbatore

Case Details

Case Type	: CRLMP - Criminal Miscellaneous Petition		
Filing Number	: 53783/2023	Filing Date:	26-09-2023
Registration Number	: 42359/2023	Registration Date:	26-09-2023
CNR Number	: TNCB0A-053923-2023		

Case Status

First Hearing Date	: 26th September 2023
Decision Date	: 26th September 2023
Case Status	: Case disposed
Nature of Disposal	: Uncontested--Allowed
Court Number and Judge	: 22-Judicial Magistrate - II

Petitioner and Advocate

1) Dhanalakshmi Advocate- Nikkolaus.R
2) W/o. Rajarathinam Advocate-Nikkolaus.R

Respondent and Advocate

1)

FIR Details

Police Station	: C-1 Kattoor Police Station
FIR Number	: 277
Year	: 2023

Case History

Registration Number	Judge	Business on Date	Hearing Date	Purpose of Hearing
42359/2023	Judicial Magistrate - II			Disposed

Order not uploaded by concerned court

Daily Status	
Chief Judicial Magistrate Court, Coimbatore	
In the court of : Judicial Magistrate - II	
CNR Number : TNCB0A0539232023	
Case Number : CRLMP/0042359/2023	
Dhanalakshmi versus	
Date : 26-09-2023	
<hr/>	
Business	: Petition filed and allowed u/s 91 of crpc.
Nature of Disposal	: Allowed
Disposal Date	: 26-09-2023
Judicial Magistrate - II	



//TRUE COPY//

ANNEXURE P-6

From,

Rajarathinam
S/O M Ponnayya
Balaji Garden,
7th Street,
Keeranatham
Kallukuli,
Pin- 641035

To,

1. The Home Secretary
The State Level Over Sight Committee (SLOC)
Home Department,
Secretariat,
Chennai - 600 009.
2. The Finance Secretary,
The State Level Over Sight Committee (SLOC)
Finance Department,
Secretariat,
Chennai - 600 009.
3. The Director General of Police,
The State Level Over Sight Committee (SLOC)
Office of the Director General of Police,
Head of Police Force- Tami Nadu,
Chennai - 600 004.
4. District collector,
The District Level Over Sight Committee (DLOC)
Office of District Collector,
Coimbatore- 641018
5. The Commissioner of Police,
The District Level Over Sight Committee (DLOC)
Office of Commissioner of Police,
Coimbatore City- 641013
6. The Mayor, Coimbatore City Municipal Corporation
The District Level Over Sight Committee (DLOC)
Corporation of Coimbatore- 641001
7. The Assistant Commissioner of Police,
Office of Commissioner of Police,
Coimbatore City- 641013

8. The Inspector of Police,
E3 Saravanampatti Police Station,
Kalapatti Rd,
Thiruvannamail Nagar,
Ramanandha Nagar,
Saravanampatti, Coimbatore- 641035
9. The Inspector of Police,
C1 Kattoor Police Station,
Sathy Rd,
ATT Colony,
Gopalapuram,
Gandhipuram, Coimbatore- 641044

Sub: Request for prompt action and also to retrieve, preserve, and also provide me a copy of the CCTV footage of all the CCTV Cameras of the C1-Police Station, Kattoor, Sathy Rd and the E3-Police Station, Saravanampatti, Kalapatti Road with compliance of the order of the Hon'ble Supreme Court – Concerned authorities and other members of SLOC/DLOC - Regarding.

Sir,

I am Rajarathinam, F/o Jeyakumar, residing at above address. My son was working as a cab driver and he was taken by Police in Mufti on 16th September 2023 from his workplace in Thanneerpanthal for a small inquiry. By evening I was informed by the employer of Jeyakumar, that he was taken by Saravanampatti Police. On attaining the information, I rushed to Saravanampatti Police Station, but I was not able to see him. On 18th September 2023 my wife, Mrs. Dhanalakshmi contacted police help line number (100) around 7.25 am and stated our son Mr. Jeyakumar was missing from 16th September 2023.

The Kovilpalayam Police reverted to her mentioning that, Mr. Jeyakumar is detained in C1 Kattoor Police Station around 10PM to 12PM. On reaching there, my wife and myself able to meet our son at Kattoor Police Station, where he was under police threat of torturing. The arrest of our son was registered only on 19th Sept 2023 and remained in illegal detention from 16th Sept 2023 to 19th Sept 2023. He was taken into Coimbatore Central Prison on remand and the next day- 21st Sept 2023 shifted to Tiruppur Prison.

When we visited him in Tiruppur Prison he disclosed that on 17th Sept 2023, he was taken to various places blindfolded and was severely tortured and beaten up by materials like club, Lathi and PVC pipes. He even mentioned the deteriorating health condition of him which included the difficulty in urinating and presence of blood in the urine, there were presence of physical injuries too. The Police denied the basic human right and was not allowing him for the sanitation requirements

On 22nd sept we received a call from the Prison officials that he was admitted to Govt. Hospital Tiruppur and we could meet him. Later on, he was shifted to Govt. Medical College & Hospital Coimbatore, and was suffering from renal failure. Now his life is at risk and continuous dialysis is being conducted in the hospital.

It is necessary to prove the above facts related to custodial violence through the coverage of CCTV cameras installed in and out of the Police Station.

So, I seek the above copy of the CCTV footage with regard to the compliance of the order as directed in the order of the Hon'ble Supreme Court in *Paramvir Singh Vs Balgit Singh* in SLP (Crl.) No. 3543 of 2020 dated 02.12.2023 – the concerned authorities and other members of the State Level Over Sight Committee/ District Level Over Sight Committee.

Therefore, I seek to retrieve, preserve, and also provide me a copy of the CCTV footage of all the CCTV Cameras of the C1-Police Station, Kattoor, Sathy Rd and the E3 Police Station, Sarvanampatti, Kalapatti Road, from 10 AM of 16.09.2023 to 10 PM of 21.09.2023 with compliance to the order of the Hon'ble Supreme Court in *Paramvir Singh Vs Balgit Singh* in SLP (Crl.) No. 3543 of 2020 dated 02.12.2023 and also seek prompt action and justice.

Date: 27/09/2023

Place: Coimbatore


(RAJARATHINAM)

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396171IN IVR:6984591396171
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:44
To:THE ASST COMMISSIONER..
PIN:641018, COIMBATORE RMS 24X7 BOOKING COUNTER
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396168IN IVR:6984591396168
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:44
To:THE MAYOR,CBE
PIN:641001, Coimbatore HO
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396154IN IVR:6984591396154
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:44
To:THE INSPECTOR OF POLICE
PIN:641044, Siddhapur S.O
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396145IN IVR:6984591396145
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:44
To:THE INSPECTOR OF POLICE
PIN:641035, Saravanampatti S.O
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396300IN IVR:6984591396300
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:36
To:THE HOME SECRETARY..
PIN:600009, Fort St George S.O
From:RAJARATHINAM..
Wt:30gms

Amt:41.30(Cash)Tax:6.30

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396313IN IVR:6984591396313
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:36
To:THE DIRECTOR,GENERAL
PIN:600004, Mylapore H.O
From:RAJARATHINAM..
Wt:30gms

Amt:41.30(Cash)Tax:6.30

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396327IN IVR:6984591396327
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:36
To:THE FINANCE SECRETARY..
PIN:600009, Fort St George S.O
From:RAJARATHINAM..
Wt:30gms

Amt:41.30(Cash)Tax:6.30

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396208IN IVR:6984591396208
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:36
To:THE DIST COLLECTOR..
PIN:641018, COIMBATORE RMS 24X7 BOOKING COUNTER
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

<Dial 18002666868> <Wear Masks, Stay Safe>

ET591396199IN IVR:6984591396199
SP COIMBATORE RMS 24X7 BOOKING COUNTER <641018>
Counter No:2,27/09/2023,17:36
To:THE COMMISSIONER OF POLICE
PIN:641018, COIMBATORE RMS 24X7 BOOKING COUNTER
From:RAJARATHINAM..
Wt:30gms

Amt:17.70(Cash)Tax:2.70

<Track on www.indiapost.gov.in>

ANNEXURE P-7

//TRUE TRANSLATED COPY//

Sender:

R. Dhanalakshmi Age (39)
Rajarathnam Balaji Garden Seventh Road Vinayagar Temple Opt
Keeranatham Coimbatore .pin 641055
Phone No. 9514807077

Recipient:

CM Tirupur Government Hospital
Tirupur

Object: Application seeking copies of medical records of my son Jayakumar

Sir:

I am living at the above address my elder son Jayakumar Kattur Police Station Crime No. 277/2023 Arrested and remanded in judicial custody on 22/9/2023 admitted as an inpatient in their hospital. My son Jayakumar was subjected to torture in police station custody He was treated in their hospital on 22/9/2023 for severe injuries and failure of both ureters, now I have decided to arrange further treatment for my son as his condition is very bad. So I urgently need the copy of the medical records of my son for the treatment given in their hospital on 22/9/2023 please kindly help me immediately.

//TRUE TRANSLATED COPY//



ANNEXURE P-8

//TRUE TRANSLATED COPY//

Date; 4/10/2023

Sender:

R. Dhanalakshmi Age (39)
Rajarathnam Balaji Garden Seventh Road Vinayagar Temple Opposite
Keeranatham Coimbatore. Pin (641055)
Phone No. 9514807077

Recipient:

CM Coimbatore Medical College Hospital
Coimbatore

Object: Application seeking copies of medical records of my son Jayakumar

Sir:

I am living at the above address my elder son Jayakumar Kattur Police Station Crime No. 277/2023 Arrested and remanded in judicial custody on 22/9/2023 admitted as an inpatient in their hospital. My son Jayakumar was subjected to torture in police station custody He was treated in their hospital on 22/9/2023 for severe injuries and failure of both ureters, now I have decided to arrange further treatment for my son as his condition is very bad. So I urgently need the copy of the medical records of my son for the treatment given in their hospital on 22/9/2023 please kindly help me immediately.

Date; 4/10/2023



//TRUE TRANSLATED COPY//

ANNEXURE P-9

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)****W.P. (CrI) No. 29444 of 2023**

R. Dhanalakshmi (F- 40 years)
W/o. Rajarathinam
Balaji Garden, 7th Street,
Keeranatham,
Coimbatore – 641 035.

...Petitioner

-Vs-

1. The Home Secretary,
Home Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Secretary,
Health & Family Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
3. The Director General of Police,
Head of Police Force,
Govt. of Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Egmore,
Chennai - 600 008.
5. The District Collector,
Office of the District Collector,

Coimbatore – 641 018.

6. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
 7. The Superintendent of Prisons,
Central Prison for Men - Coimbatore,
Coimbatore - 641 018.
 8. The Superintendent of Prisons,
District Prison/ Sub Jail – Tiruppur,
Tiruppur – 641 602.
 9. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.
 10. The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044.
- ... Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

1. The Petitioner is R. Dhanalakshmi, aged 40 years, wife of Rajarathinam, residing at Balaji Garden, 7th Street, Keeranatham, Coimbatore – 641 035. The address of the Petitioner for service of all notices is that of her counsels M/s.Sudha Ramalingam, D.Ramalingam, Akila R S, P Vijayakanth, V Kiruthiga, R Ravindra, E Ananthi and Mohan Raj, Advocates, 269 Law Chambers, Madras High Court, Chennai – 600 104.

2. The 1st Respondent is the Home Secretary, Home Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 2nd Respondent is The Secretary, Health & Family Welfare Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 3rd Respondent is The Director General of Police, Head of Police Force, Govt. of Tamil Nadu, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004. The 4th Respondent is the Director General of Prisons, Department Prisons and Correctional Services, Whannels Road, Egmore, Chennai - 600 008. The 5th Respondent is The District Collector, Office of the District Collector, Coimbatore – 641 018. The 6th Respondent is The Commissioner of Police, Office of the Commissioner of Police, Coimbatore – 641 018. The 7th Respondent is The Superintendent of Prisons, Central Prison for Men - Coimbatore, Coimbatore - 641 018. The 8th Respondent is The Superintendent of Prisons, District Prison/ Sub Jail – Tiruppur, Tiruppur – 641 602. The 9th Respondent is The Inspector of Police, Saravanampatty Police Station, Coimbatore City – 641 035. The 10th Respondent is The Inspector of Police, Kattur Police Station, Coimbatore City – 641 044. The address for the Respondents for service of all notices and summons is the same as above.

3. For the reasons stated in the accompanying affidavit, the Petitioner prays that this Hon'ble Court may be pleased to issue a **WRIT OF MANDAMUS** or any other appropriate writ, order, or direction in the nature of Writ directing the Respondents to provide appropriate medical care to the Petitioner's son Jayakumar detained in Crime No.277/2023 on the file of Kattur Police Station, direct judicial enquiry into the

incident of illegal police custody and custodial torture perpetrated by the Respondent police against the detenu Jayakumar and take appropriate action against the perpetrators who committed custodial torture and also award compensation to the detenu for violation of his fundamental rights, and to pass such further or other orders as this Hon'ble High Court may deem fit and proper to the facts and circumstances to this case and thus render justice.

Dated at Chennai on this the 5th day of October 2023

Counsel for the Petitioner

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

W.M.P.No.29060-62 of 2023

in

W.P. NO.29444 of 2023

R. Dhanalakshmi (F- 40 years)
W/o. Rajarathinam
Balaji Garden, 7th Street,
Keeranatham,
Coimbatore – 641 035.

...Petitioner/ Petitioner

-Vs-

1. The Home Secretary,
Home Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Secretary,
Health & Family Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
3. The Director General of Police,
Head of Police Force,
Govt. of Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Egmore,
Chennai - 600 008.
5. The District Collector,

Office of the District Collector,
Coimbatore – 641 018.

6. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
7. The Superintendent of Prisons,
Central Prison for Men - Coimbatore,
Coimbatore - 641 018.
8. The Superintendent of Prisons,
District Prison/ Sub Jail – Tiruppur,
Tiruppur – 641 602.
9. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.
10. The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044. ... Respondents/Respondents

COMMON AFFIDAVIT FILED BY THE PETITIONER

I, R. Dhanalakshmi wife of Rajarathinam, Hindu aged about 40 years, residing at Balaji Garden, 7th Street, Keeranatham, Coimbatore – 641 035, having come down to Chennai temporarily, do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and as such I am well acquainted with the facts of the case. I am filing this affidavit based on my personal knowledge of the circumstances of the case.

2. I submit that I am the mother of two sons namely Jayakumar aged 22 years, and Kishore Kumar aged 19 years respectively. My husband Rajarathinam is a heart patient suffering from coronary artery disease. Myself and my husband with the help of our two sons run a small shop in our locality and also sell fish during the weekends for our living. My elder son Jayakumar is a driver and presently he drives the car belonging to one Murugan who is attached with Red Taxi. My younger son Kishore Kumar owns an auto and undertakes school trips to drop physically challenged children at school, and also sells soup on the roadside apart from helping us in our shop. Neither of my sons Jayakumar or Kishore Kumar have any history of criminal cases against them.
3. I submit that, on 16.09.2023, my eldest son Jayakumar went to work and we received a call from his car owner Murugan in the evening asking whether our son Jayakumar had returned home. We replied to him in the negative. Subsequently, he informed us that the police had asked him to identify my son Jayakumar and he had identified him to the police at Thaneer Panthal near Peelamedu in Coimbatore. Murugan informed us at 5.30 p.m. that the police had stated to him that they were taking Jayakumar along with the car to Saravanampatty Police Station and after enquiry, the police would allow him to return. Hearing this, we rushed to the Saravanampatty Police Station at around 6 p.m.

where we enquired about our son and we were asked to wait. In the meantime Mr. Murugan also waited at the police station with us.

4. I submit that, after waiting for some time in the police station, myself, my husband, and Mr. Murugan came near the Check post at Ragam Bakery to have tea around 8.15 p.m. Near the Checkpost, we witnessed our son Jayakumar along with his school friend and fellow Red Taxi driver Jenarthanan being moved from one car to another car by policemen who were in plainclothes. The car immediately left the place towards Gandhipuram.
5. I submit that, my husband and I waited at the Saravanampatty Police Station till about 11 p.m. expecting that my son will be brought back to the Police Station. But he did not return and we were asked by the police officers to come back the following morning. We came back to the Saravanampatty Police Station the following morning, as directed by the police officers. We waited at the police station from morning till night. While we were waiting at the police station, we came to know that a crime had occurred at Kattur Ramnagar on 12.09.2023, and the police suspected my son's involvement in this incident. We learnt that persons suspected of involvement in the crime were being booked under other cases and Janarthanan was being remanded for offences under NDPS. I asked the police, while they were

getting ready to remand Janarthanan, where my son was. The police replied stating that our son Jayakumar was not with them and I waited till 8 p.m. Subsequently, I asked the police about my son's whereabouts and we were informed that my son could be at Rathinapuri Police Station. Immediately, around 8:30 p.m, my husband and I rushed to the Rathinapuri Police Station only to be informed that our son was not there, Subsequently, we went by 9 p.m. to the Kattur Police Station and on enquiry there, we were informed that our son was not there either.

6. I submit that, on 18.09.2023 in the morning, since we were still kept in the dark about the whereabouts of our son, we called the police emergency Number 100 from my husband's mobile No: 98433 24785 and informed the police operator that our son was kept in illegal custody for three days and sought their assistance to rescue him. After 30 minutes of our complaint, we received a phone call from the Kovilpalayam police stating that our son was at the Kattur Police Station at Gandhipuram, Coimbatore. We immediately rushed to the Kattur Police Station at 10:15 a.m. We met the woman inspector at Kattur Police Station and she showed that our son was detained in a room surrounded by about eight police personnel and he was being interrogated. I could see that my son had injuries on his face, particularly on his cheeks, lips and jaw. We were not allowed to meet or speak with our son. We were asked to leave and come to the station by 2 p.m. When we visited the station again at 2 p.m., our son was not at the police

station. The police officers informed us that our son had been taken somewhere else.

7. I submit that, on the next day, on 19.09.2023, myself and my husband visited the Kattur police station. The Lady Inspector informed us that our son was not in the station and asked us to come in the evening. My husband and I waited at the police station till 10 p.m. but our son was not brought to the police station, hence we returned back home.
8. I submit that on 20.09.2023, we again visited the Kattur Police station in the morning and were told that our son was not in the police station. My husband spoke to the police regarding our son being arrested on 16.09.2023 and having been kept in illegal custody without remanding him by producing him before the Judicial Magistrate and we left to the court to meet an Advocate to seek advice on redressal of this issue. Around noon, on 20.09.2023, police personnel called and informed us that our son was to be remanded and asked us to bring his Aadhar Card. However, we were not allowed to meet him in the police station when we reached there and hence, we waited outside the station. At about 5:30 p.m, our son was brought out from the police station to be remanded. We were pained to observe that our son Jayakumar could not walk due to the custodial violence / torture meted out against him. He was holding on to the railing in the police station and slowly limped towards the police jeep. We

were informed by the police to wait in the Central Prison with necessary change of clothes for our son for him to use after remand. Our son was brought to the Central Prison at Coimbatore in the car which he used to drive. It was then that I had a few moments to meet and speak to my son who was sitting inside the cab (car). My son cried and revealed to me that the police had taken him to various places and had subjected him to severe torture. Upon seeing me talking to my son, the police took him away from the car and asked him to walk into the prison. My husband and I witnessed my son having trouble walking due to the custodial torture meted out against him. My son went inside the Coimbatore Central Prison while, we waited outside. My son was brought outside the prison in a short while and he informed me that he was being shifted to the Tiruppur Prison. He informed me that he was in severe pain and asked my husband and me to come and meet him at Tiruppur jail.

9. I submit that on the following day 21.09.2023, myself and my husband at about 1 p.m. applied for prisoner interview and met our son at the Tiruppur prison. He tearfully narrated to us that the police had taken him to various places blindfolding his eyes. He told us that the police had kept him in a separate room. He stated that the police had spread his legs and standing on his legs, beat him on his legs and feet with rubber pipes and lathis. He further shared with us that the police had also beaten him with a wooden log in the hip region, and kicked him with shoes on his stomach.

They had not even allowed him to urinate and tortured him. The police only gave him half a liter of water per day and for an entire day, he was blindfolded and his mouth was tied shut with a cloth. Due to the constant torture he had been subjected to, he had swelling all over his body and severe pain. The police used a painkiller spray and continued their torture, continuing to keep him in illegal custody. He also informed us that the police had severely beaten him on his head, and he showed us blood clots on his thighs. My son also informed my husband and cried that his male reproductive organ was swollen as a result of the torture. He also informed us that he had trouble urinating and when he urinates, his urine contained blood. He cried to us that he was in unbearable amounts of pain and wanted us to buy medicine for him. I bought him some ointment for pain and we returned home.

10. I submit that on 22.09.2023, my husband and I started to the Tiruppur prison to meet our son but we received a call from the prison officials. They said that due to the severe injuries, our son's health was deteriorating and that he was being taken to the Government Hospital, Tiruppur. He was under treatment therein and we were informed that he was having difficulty to urinate and that his kidneys were not functioning. My son's health condition started to worsen and he was immediately shifted to the Intensive Care Unit. Our son was kept in the ICU for a day and then as his condition did not improve, on 23.09.2023, he was shifted to the Coimbatore Medical College Hospital.

11. I further submit that, the doctors at the Coimbatore Medical College Hospital informed us that both the kidneys of our son had failed, and that he was undergoing dialysis. I was informed that my son's health condition is serious. They have refused to share any further details regarding his medical condition or treatment due to undue pressure exercised by the police/prison authorities. Our repeated oral requests regarding information and status of his medical condition to the police and prison authorities have also been met with silence.
12. I state that my son was a hale and healthy 22-year-old. His medical condition which includes failure of his kidneys and other injuries is due to inhuman custodial torture that he was subjected to whilst he was in illegal police custody.
13. I submit that on 27.09.2023, my husband sent representations to the State Level Oversight Committee (SLOC) and the District Level Oversight Committee DLOC, and to the Respondents - the Inspector of Police, Kattur and Saravanampatti Police Stations herein seeking to retrieve, preserve and also provide us a copy of the CCTV footage of all the CCTV cameras of the Kattur and Saravanampatty Police Stations from 16.09.2023 (10 a.m.) to 21.09.2023 (10 p.m.) in compliance to the order of the Hon'ble Supreme Court in Paramvir Singh vs Baljit Singh in SLP (Crl.) No. 3543 of 2020 dated 02.12.2020. In addition, he also sought

for prompt action against perpetrators who committed torture and injured our son. Till today, we have not received any CCTV footage and no FIR has been registered for the case of torture in police illegal custody. Since no FIR has been registered, we are unable to seek remedial schemes available for victims including free medical assistance under Section 357A(6) of Cr.P.C..

14. I submit that, I filed a petition before the learned Judicial Magistrate Court No.2, Coimbatore in Crl. M.P.No. 42359 of 2023 under Section 91 Cr.P.C. seeking to preserve the CCTV footage of the Respondent police stations and the violation of section 41(b), 46(4) and 57 of Cr.P.C. The petition was allowed by the Court on 26.09.2023, however, till date, we are waiting for the copy of the order from the Court.
15. I submit that the Respondent Kattur police had foisted a false case and fabricated FIR against my son and he is presently remanded under judicial custody in Crime No. 277 of 2023 on the file of the Kattur Police Station of the Coimbatore City Police for offences under sections 120(b), 147, 148, 294(b), 307, 506(2) of IPC. It is also learnt that the police had altered the FIR and had included section 120(b) with this FIR in Crime No.277 of 2023, in the file of the Kattur Police Station, Coimbatore City.
16. I submit that my son has been subjected to this very gruesome torture by the police while in police custody and this has resulted

in serious injuries including kidney failure to the extent that a young 22-year-old with no history of medical issues has been constrained to undergo dialysis. My husband and I have been kept in the dark about his whereabouts and his condition it is only in short sessions at the Coimbatore Prison and later while in Tiruppur prison that we were able to get some details of the custodial torture from him. My son has never been involved in any criminal cases. He is a law-abiding person.

17. I have been advised to state that a careful perusal of the CCTV footage of the cameras inside and outside the Saravanampatti and Kattur police stations, as well as those at the entrance of the Coimbatore Central Prison and Tiruppur Prison will reveal the truth as to the torture inflicted on my son and the injuries suffered by him. I am further advised to state that the admission records of the prisons, medical records maintained by the prison hospitals of Coimbatore Central Prison and the Tiruppur Prison and medical examination carried out before my son was formally remanded to judicial custody before the Judicial Magistrate No III, Coimbatore and the report of the remand duty counsel at the Coimbatore Judicial Magistrate Court and the remand notes by the Judicial Magistrate No III, Coimbatore will reveal exactly what had transpired.

18. I state that my son Jayakumar is still receiving medical treatment at Coimbatore Medical College Hospital. On 04.10.2023, a

plainclothes policeman who identified himself as Mani, approached my son Jayakumar and threatened him to provide a false statement that he had a history of kidney ailments and that he had been receiving treatment for the same. My son refused to provide such false statement. He informed me of this incident when I briefly met and interacted with him on 04.10.2023. I state that it is shocking that policemen in plainclothes have access to my son who is under judicial custody and that the authorities at Coimbatore Medical College Hospital had facilitated such visit. I fear that my son is in danger and that there is an effort made to create false records in order to suppress the truth of injuries suffered by my son as a result of custodial torture and to escape the clutches of law with impunity.

19. I state that the Coimbatore police are attempting to suppress the incident of custodial torture that has been committed in their jurisdiction. I fear that my son Jayakumar is not safe in Coimbatore Medical College Hospital within the jurisdiction of the Coimbatore police district. The Coimbatore police should be directed not to threaten or influence the detenu Jayakumar or the Petitioner or any of their family members directly or indirectly.
20. I state that it is essential that my son Jayakumar is transferred from Coimbatore to Tamil Nadu Government Multi Super Speciality Hospital at Chennai (Omandurar Hospital) or any other multi-speciality hospital outside Coimbatore for urgent

medical treatment. It is further essential that a panel of independent medical experts perform comprehensive medical examination on the detenu Jayakumar and assess his medical condition. It is prayed that his medical records at Tiruppur prison, Tiruppur Government Hospital and Coimbatore Medical College Hospital may be called for and that the Petitioner is provided access to the same as his next of kin. Without these urgent remedies, I fear that the life of my son Jayakumar may be in peril.

21. My son has been a victim of police excesses. Relevant provisions of the Criminal Procedure Code and applicable judicial precedents have been violated. In this case, there has been illegal detention of the detenu in various police stations, denial of particulars such as the exact location of his police custody which was not being informed to the parents as is expected under provisions of the Criminal Procedure Code. Further, it is feared that he has not been provided access to quality medical assessment for the alleged accused before being remanded to judicial custody. It appears that he was remanded by a routine judicial remand order without diligent examination of his medical records or his general state of health. In light of these serious violations, there is an urgent need to provide the detenu quality, medical attention, at a multi-speciality hospital outside Coimbatore at the cost of the state to save his life. The Petitioner is even willing to donate her kidney if there is a need to do so.

22. I am advised to state that the Madras High Court in *P. Rajakumari vs. The Additional Director General*, W.P.No.23320 of 2014, had directed the victim of custodial torture to be admitted to Multi Super Speciality Hospital at Omandurar Estate, Chennai and also directed the Nodal Officer of the hospital to have the victim examined by a team of doctors and submit a copy to the court in a time-bound manner. I pray that this Hon'ble Court may allow similar remedy in this case as well.

23. I submit that Courts have consistently held that violation of fundamental rights cannot be met with impunity and that stern measures should be taken against those police officials who consider themselves to be above the law and bring disrepute to their department. Else the foundations of the criminal justice delivery system would be shaken and the common man may lose faith in the judiciary. Acts of custodial violence reflects tragic state of affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody. In these circumstances, relief could be moulded by granting compensation to the victims. The Supreme Court, in the case of *Nilabati Behera vs State of Orissa*, proceeded to take view that even convicts, prisoners and undertrials cannot be denuded of their fundamental rights under Article 21 of the Constitution of India and once an incumbent is taken into custody and there are injuries on his body, then State will have to explain, as to how he sustained the injuries, and compensation can be awarded under

public law remedy. The Apex Court has also upheld that prisoners and detainees should not be deprived of their fundamental rights under Art 21 and only the restriction permitted by law could be imposed on the detenus.

24. I submit that I had preferred a representation dated 25.09.2023 to various authorities including Director General of Police, Chief Secretary, Home Secretary, District Judge, Judicial Magistrate and the Commissioner of Coimbatore seeking medical assistance for my son. I requested that my son should be transferred to multi/super specialty hospital for life-saving treatment and that action should be taken against persons who had committed custodial torture. There has been no action taken on my representation and I have received no reply. The inaction of the Respondent amounts to violation of fundamental rights of my son guaranteed under Article 21 of the Constitution.

25. I state that I have not filed any other proceeding on the same cause of action or for the same relief. There is no other efficacious alternative remedy and therefore, I am approaching this Hon'ble Court under Article 226 of the Constitution of India for the following among other GROUNDS:

A. The detenu Jayakumar was illegally detained by the police without being remanded within 24 hours of his detention. His arrest was in violation of the ***DK Basu*** guidelines and his

whereabouts were not informed to his next of kin. Such illegal detention amounts to violation of fundamental rights of the detenu.

- B. The Respondent police have subjected the detenu Jayakumar to continuous torture for several days and inflicted serious injuries on him which has caused permanent damage to his kidneys and other organs. Custodial torture is a reprehensible and illegal act that violates Article 21 of the Constitution.
- C. The Petitioner was not provided copies of the medical records of the detenu Jayakumar and has been kept in the dark pertaining to his medical condition and treatment. Restricting access to his medical records where there are serious allegations of custodial torture further victimizes the detenu.
- D. The detenu was threatened by a police officer to provide a false statement that he has a history of kidney ailments. Such incident of police harassment and threat creates reasonable doubt and suspicion that the Respondent police are not acting in an unbiased manner and that the life and well-being of the detenu is at stake. This apparent threat necessitates transfer of the detenu from Coimbatore to Chennai or any other district for the purposes of his safety and continued medical care at a multi-speciality hospital.

E. Despite representations to the Oversight Committee, CCTV footage of the Respondent police stations have not been secured and copy has not been furnished to the Petitioner. The Respondent authorities have failed to comply with directions of the Hon'ble Supreme Court in ***Paramvir Singh vs Baljit Singh***.

F. There is an imminent and urgent need for judicial intervention and enquire into the incident of custodial torture of the Petitioner's son Jayakumar. No FIR has been registered against the perpetrators for torture. Inaction of the Respondent police despite receiving information on apparent custodial torture blatantly violates law of the land as set out in ***Lalita Kumari vs. State of U.P.***

G. Detenus and prisoners are also entitled to fundamental rights including access to medical treatment. The Respondents, by not taking action on the Petitioner's representation dated 25.09.2023, seeking medical care and attention for the detenu have acted in a manner that prejudices the detenu's constitutional rights.

26. I state that there is an imminent and urgent need for interim remedies in order to protect and safeguard my son. Balance of convenience is in my favour. No prejudice will be caused to the Respondents if these interim prayers are granted, whereas the

Petitioner and her son will be put to irreparable prejudice if the same are not considered and granted immediately.

27. For the reasons stated above, the Petitioner prays that this Hon'ble Court may be pleased to direct the Respondents to transfer the detenu Jayakumar from Coimbatore Medical College Hospital and admit the detenu Jayakumar in the Tamil Nadu Government Multi Super Speciality Hospital, Omandurar Estate, Chennai or any other multi super speciality hospital outside of Coimbatore for medical treatment of the detenu and direct medical examination of the detenu by a team of medical experts and submit report to this Hon'ble Court in a time-bound manner and grant such other remedies as this Hon'ble Court may deem fit and proper in the circumstances of this case pending disposal of this petition.

28. For the reasons stated above, the Petitioner prays that this Hon'ble Court may be pleased to call for medical records pertaining to the detenu Jayakumar maintained by Tiruppur prison, Government Hospital Tiruppur and Coimbatore Medical College Hospital and supply a copy of the medical records to the Petitioner pending disposal of this petition.

29. For the reasons stated above, the Petitioner prays that this Hon'ble Court may be pleased to direct the Respondent police (Respondents No.6, 9 and 10) not to harass, threaten or influence

the detenu Jayakumar or the Petitioner or any of their family members directly or indirectly and grant such other remedies as this Hon'ble Court may deem fit and proper in the circumstances of this case pending disposal of this petition.

30. For the reasons stated above, the Petitioner prays that this Hon'ble Court may be pleased to issue a **WRIT OF MANDAMUS** or any other appropriate writ, order, or direction in the nature of Writ directing the Respondents to provide appropriate medical care to the Petitioner's son Jayakumar detained in Crime No.277/2023 on the file of Kattur Police Station, direct judicial enquiry into the incident of illegal police custody and custodial torture perpetrated by the Respondent police against the detenu Jayakumar and take appropriate action against the perpetrators who committed custodial torture and also award compensation to the detenu for violation of his fundamental rights, and to pass such further or other orders as this Hon'ble High Court may deem fit and proper to the facts and circumstances to this case and thus render justice.

Solemnly affirmed at Chennai on
This the 5th day of October 2023
And the contents of this affidavit
Were read over and explained
in Tamil and she understood its
contents in my presence

Before me,

Advocate, Chennai



//TRUE COPY//

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

ANNEXURE P-10

W.M.P. No. 29060 of 2023
in
W.P. (Crl) No. 29444 of 2023

R. Dhanalakshmi (F- 40 years)
W/o. Rajarathinam
Balaji Garden, 7th Street,
Keeranatham,
Coimbatore – 641 035.

...Petitioner/ Petitioner

-Vs-

1. The Home Secretary,
Home Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Secretary,
Health & Family Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
3. The Director General of Police,
Head of Police Force,
Govt. of Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Egmore,
Chennai - 600 008.

5. The District Collector,
Office of the District Collector,
Coimbatore – 641 018.
6. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
7. The Superintendent of Prisons,
Central Prison for Men - Coimbatore,
Coimbatore - 641 018.
8. The Superintendent of Prisons,
District Prison/ Sub Jail – Tiruppur,
Tiruppur – 641 602.
9. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.
10. The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044. ...Respondents/ Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

1. The Petitioner is R. Dhanalakshmi, aged 40 years, wife of Rajarathinam, residing at Balaji Garden, 7th Street, Keeranatham, Coimbatore – 641 035. The address of the Petitioner for service of all notices is that of her counsels M/s.Sudha Ramalingam, D.Ramalingam, Akila R S, P Vijayakanth, V Kiruthiga, R Ravindra, E Ananthi and Mohan Raj, Advocates, 269 Law Chambers, Madras High Court, Chennai – 600 104.

2. The 1st Respondent is the Home Secretary, Home Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 2nd Respondent is The Secretary, Health & Family Welfare Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 3rd Respondent is The Director General of Police, Head of Police Force, Govt. of Tamil Nadu, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004. The 4th Respondent is the Director General of Prisons, Department Prisons and Correctional Services, Whannels Road, Egmore, Chennai - 600 008. The 5th Respondent is The District Collector, Office of the District Collector, Coimbatore – 641 018. The 6th Respondent is The Commissioner of Police, Office of the Commissioner of Police, Coimbatore – 641 018. The 7th Respondent is The Superintendent of Prisons, Central Prison for Men - Coimbatore, Coimbatore - 641 018. The 8th Respondent is The Superintendent of Prisons, District Prison/ Sub Jail – Tiruppur, Tiruppur – 641 602. The 9th Respondent is The Inspector of Police, Saravanampatty Police Station, Coimbatore City – 641 035. The 10th Respondent is The Inspector of Police, Kattur Police Station, Coimbatore City – 641 044. The address for the Respondents for service of all notices and summons is the same as above.

3. For the reasons stated in the accompanying affidavit, the Petitioner prays that this Hon'ble Court may be pleased to direct the Respondents to transfer the detenu Jayakumar from Coimbatore Medical College Hospital and admit the detenu Jayakumar in the Tamil Nadu Government Multi Super Speciality Hospital, Omandurar Estate,

Chennai or any other multi super speciality hospital outside of Coimbatore for medical treatment of the detenu and direct medical examination of the detenu by a team of medical experts and submit report to this Hon'ble Court in a time-bound manner and grant such other remedies as this Hon'ble Court may deem fit and proper in the circumstances of this case pending disposal of this petition.

Dated at Chennai on this the 5th day of October 2023

Counsel for the Petitioner



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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

W.M.P. No. 29061 of 2023
in
W.P. (Crl) No. 29444 of 2023

R. Dhanalakshmi (F- 40 years)
W/o. Rajarathinam
Balaji Garden, 7th Street,
Keeranatham,
Coimbatore – 641 035.

...Petitioner/ Petitioner

-Vs-

1. The Home Secretary,
Home Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Secretary,
Health & Family Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
3. The Director General of Police,
Head of Police Force,
Govt. of Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Egmore,
Chennai - 600 008.

5. The District Collector,
Office of the District Collector,
Coimbatore – 641 018.
6. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
7. The Superintendent of Prisons,
Central Prison for Men - Coimbatore,
Coimbatore - 641 018.
8. The Superintendent of Prisons,
District Prison/ Sub Jail – Tiruppur,
Tiruppur – 641 602.
9. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.
10. The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044. ...Respondents/ Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

1. The Petitioner is R. Dhanalakshmi, aged 40 years, wife of Rajarathinam, residing at Balaji Garden, 7th Street, Keeranatham, Coimbatore – 641 035. The address of the Petitioner for service of all notices is that of her counsels M/s.Sudha Ramalingam, D.Ramalingam, Akila R S, P Vijayakanth, V Kiruthiga, R Ravindra, E Ananthi and Mohan Raj, Advocates, 269 Law Chambers, Madras High Court, Chennai – 600 104.

2. The 1st Respondent is the Home Secretary, Home Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 2nd Respondent is The Secretary, Health & Family Welfare Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 3rd Respondent is The Director General of Police, Head of Police Force, Govt. of Tamil Nadu, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004. The 4th Respondent is the Director General of Prisons, Department Prisons and Correctional Services, Whannels Road, Egmore, Chennai - 600 008. The 5th Respondent is The District Collector, Office of the District Collector, Coimbatore – 641 018. The 6th Respondent is The Commissioner of Police, Office of the Commissioner of Police, Coimbatore – 641 018. The 7th Respondent is The Superintendent of Prisons, Central Prison for Men - Coimbatore, Coimbatore - 641 018. The 8th Respondent is The Superintendent of Prisons, District Prison/ Sub Jail – Tiruppur, Tiruppur – 641 602. The 9th Respondent is The Inspector of Police, Saravanampatty Police Station, Coimbatore City – 641 035. The 10th Respondent is The Inspector of Police, Kattur Police Station, Coimbatore City – 641 044. The address for the Respondents for service of all notices and summons is the same as above.

3. For the reasons stated in the accompanying affidavit, the Petitioner prays that this Hon'ble Court may be pleased to call for medical records pertaining to the detenu Jayakumar maintained by Tiruppur prison, Government Hospital Tiruppur and Coimbatore Medical College

Hospital and supply a copy of the medical records to the Petitioner pending disposal of this petition.

Dated at Chennai on this the 5th day of October 2023

Counsel for the Petitioner



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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

W.M.P. No. 29062 of 2023

**in
W.P. (Crl) No. 29444 of 2023**

R. Dhanalakshmi (F- 40 years)
W/o. Rajarathinam
Balaji Garden, 7th Street,
Keeranatham,
Coimbatore – 641 035.

...Petitioner/ Petitioner

-Vs-

1. The Home Secretary,
Home Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
2. The Secretary,
Health & Family Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai – 600 009.
3. The Director General of Police,
Head of Police Force,
Govt. of Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Director General of Prisons,
Department Prisons and Correctional Services,
Whannels Road, Egmore,
Chennai - 600 008.

5. The District Collector,
Office of the District Collector,
Coimbatore – 641 018.
6. The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore – 641 018.
7. The Superintendent of Prisons,
Central Prison for Men - Coimbatore,
Coimbatore - 641 018.
8. The Superintendent of Prisons,
District Prison/ Sub Jail – Tiruppur,
Tiruppur – 641 602.
9. The Inspector of Police,
Saravanampatty Police Station,
Coimbatore City – 641 035.
10. The Inspector of Police,
Kattur Police Station,
Coimbatore City – 641 044. ...Respondents/ Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

1. The Petitioner is R. Dhanalakshmi, aged 40 years, wife of Rajarathinam, residing at Balaji Garden, 7th Street, Keeranatham, Coimbatore – 641 035. The address of the Petitioner for service of all notices is that of her counsels M/s.Sudha Ramalingam, D.Ramalingam, Akila R S, P Vijayakanth, V Kiruthiga, R Ravindra, E Ananthi and Mohan Raj, Advocates, 269 Law Chambers, Madras High Court, Chennai – 600 104.

2. The 1st Respondent is the Home Secretary, Home Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 2nd Respondent is The Secretary, Health & Family Welfare Department, Govt. of Tamil Nadu, Secretariat, Chennai – 600 009. The 3rd Respondent is The Director General of Police, Head of Police Force, Govt. of Tamil Nadu, Dr. Radhakrishnan Salai, Mylapore, Chennai - 600 004. The 4th Respondent is the Director General of Prisons, Department Prisons and Correctional Services, Whannels Road, Egmore, Chennai - 600 008. The 5th Respondent is The District Collector, Office of the District Collector, Coimbatore – 641 018. The 6th Respondent is The Commissioner of Police, Office of the Commissioner of Police, Coimbatore – 641 018. The 7th Respondent is The Superintendent of Prisons, Central Prison for Men - Coimbatore, Coimbatore - 641 018. The 8th Respondent is The Superintendent of Prisons, District Prison/ Sub Jail – Tiruppur, Tiruppur – 641 602. The 9th Respondent is The Inspector of Police, Saravanampatty Police Station, Coimbatore City – 641 035. The 10th Respondent is The Inspector of Police, Kattur Police Station, Coimbatore City – 641 044. The address for the Respondents for service of all notices and summons is the same as above.

3. For the reasons stated in the accompanying affidavit, the Petitioner prays that this Hon'ble Court may be pleased to direct the Respondent police (Respondents No.6, 9 and 10) not to harass, threaten or influence the detenu Jayakumar or the Petitioner or any of their family members directly or indirectly and grant such other remedies as this Hon'ble

Court may deem fit and proper in the circumstances of this case pending disposal of this petition.

Dated at Chennai on this the 5th day of October 2023

Counsel for the Petitioner



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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**I.A NO. _____ OF 2023
IN
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2023**

IN THE MATTER:-

R. Dhanalakshmi ...Petitioner

Versus

The Home Secretary, Home Department

Govt. of Tamil Nadu & Ors. ...Respondents

**APPLICATION FOR GRANT OF EXEMPTION FROM FILING
THE CERTIFIED COPY OF THE IMPUGNED ORDER**

To

Hon'ble The Chief Justice of India

And Other Companion Justices of the

Supreme Court of India

The Humble Petition of the Petitioner above named:

Most respectfully sheweth that:

1. The present Special Leave Petition is filed against the final Judgment and Order dt. 11.10.2023 (Impugned Order) passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023, whereby which the Hon'ble High Court dismissed the Writ Petition of the Petitioner without considering

the averments of the Petitioner with respect to custodial violence and illegal arrest of the detenu (her son), and without referring to any records (both medical and of the detenu's illegal arrest) relevant in the present case, but only on the basis of an assumption that since the allegation against the son of the Petitioner (detenu) were of grave nature, the Petitioner had made bald allegations against the police.

2. The detailed facts and grounds have been stated in the accompanying Petition, the contents of the same maybe treated as part and parcel of the present Application, contents whereof are not being reiterated herein for the sake of brevity.
3. That the Petitioner is seeking exemption from filing the Impugned Order dt. 11.10.2023 passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023. It is submitted that the present matter is filed due to the urgency as the same concerns custodial torture and therefore, the Petitioner was unable to secure a certified copy of the Impugned in the duration.
4. Petitioner undertakes to take all necessary steps to file the certified copy of the Order if and when directed by this Hon'ble Court.
5. That the present application is bona fide and in the interest of justice, and no prejudice shall be caused to the Respondent if the same is allowed.

PRAYER

In the above premises, this Hon'ble Court maybe pleased to:

- a. Allow the present application and grant an exemption to the Petitioner from filing the certified copy of the Impugned Order dt. 11.10.2023 passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023; and
- b. Pass any such further Order(s), direction(s) as this Hon'ble Court may deem fit under the facts & circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT
SHALL, AS IN DUTY BOUND, EVER PRAY

THROUGH



PRASANNA S,

Advocate for the Petitioner

CC:2919

Office Address: C-64, IInd Floor,
Neeti Bagh, New Delhi 110049

Contact: 8750350762

NEW DELHI

Date: 31.10.2023

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

I.A NO. _____ OF 2023

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2023

IN THE MATTER:-

R. Dhanalakshmi

...Petitioner

Versus

The Home Secretary, Home Department

Govt. of Tamil Nadu & Ors.

...Respondents

**APPLICATION FOR FILING OFFICIAL TRANSLATION OF
ANNEXURES P-1, P-4, P-7 AND P-8**

To

Hon'ble The Chief Justice of India

And Other Companion Justices of the

Supreme Court of India

The Humble Petition of the Petitioner above named:

Most respectfully sheweth that:

1. The present Special Leave Petition is filed against the final Judgment and Order dt. 11.10.2023 (Impugned Order) passed by the Hon'ble High Court of Judicature at Madras in Writ Petition No. 29444 of 2023, whereby which the Hon'ble High Court dismissed the Writ Petition of the Petitioner

without considering the averments of the Petitioner with respect to custodial violence and illegal arrest of the detenu (her son), and without referring to any records (both medical and of the detenu's illegal arrest) relevant in the present case, but only on the basis of an assumption that since the allegation against the son of the Petitioner (detenu) were of grave nature, the Petitioner had made bald allegations against the police.

2. The detailed facts and grounds have been stated in the accompanying Petition, the contents of the same maybe treated as part and parcel of the present Application, contents whereof are not being reiterated herein for the sake of brevity.
3. For the convenience of this Hon'ble Court and to meet the ends of justice in the present matter, the Applicant has hereby annexed the official translations of the records of the case available in vernacular. The following annexures are the true official translated copies of the original documents in vernacular:
 - a) Annexure P-1: True translated copy of the FIR 277/2023 filed on 16.09.2023 at Kattur Police Station.
 - b) Annexure P-4: True translated copy of Crl. Misc. Petition no. 42359/2023 filed before the Chief Judicial Magistrate, Coimbatore.
 - c) Annexure P-7: True translated copy of the representation dt. 04.10.2023 sent to Government Hospital Tiruppur
 - d) Annexure P-8: True translated copy of the representation dt. 04.10.2023 sent to Coimbatore Medical College Hospital
4. It is hereby submitted that the translated copies annexed as Annexures P-1, P-4, P-7 and P-8 are true official translations of the original documents in vernacular and may be taken on record and referred to by this Hon'ble Court for an effective adjudication of the case at hand.

5. That the Applicant undertakes to file the original copies of the official translations in vernacular if and when required by this Hon'ble Court.
6. That the Applicant is filed in the interest of justice.

PRAYER

In the above premises, this Hon'ble Court maybe pleased to:

- a. Allow the present application for filing the official translation of Annexures P-1, P-4, P-7 and P-8; and
- b. Pass any such further Order(s), direction(s) as this Hon'ble Court may deem fit under the facts & circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT SHALL,
AS IN DUTY BOUND, EVER PRAY

THROUGH



PRASANNA S,

Advocate for the Petitioner

CC:2919

Office Address: C-64, IInd Floor,

Neeti Bagh, New Delhi 110049

Contact: 8750350762

Place: New Delhi

Date: 31.10.2023

M. LALITHA, B.A., B.L.
ADVOCATE & NOTARY PUBLIC
Reg.No: 16578 (Govt. of India)
Room No.7, Semi Basement, Balaji Complex,
1st Street, Gopalapuram, Coimbatore-641 018.
Cell: 92457 59094, 82701 49094

MEMO OF APPEARANCE

To,

The Registrar Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance on behalf of the Petitioner in the
matter above-mentioned.

Dated this 31st of October, 2023

Yours faithfully



Prasanna S.
Advocate-on-Record
Code-2919

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
[ORDER XXII RULE 2(2)]
(Under Article 136 of the Constitution of India)
SPECIAL LEAVE PETITION (CRIMINAL) NO. ____2023

IN THE MATTER OF:

R. Dhanalakshmi

... PETITIONER

Versus

The Home Secretary, Home Department
Govt. of Tamil Nadu & Ors.

... RESPONDENTS

INDEX OF DOCUMENTS

S. No.	PARTICULARS	COPIES	COURT FEES
1.	Limitation Report		
2.	Listing Performa		
3.	Synopsis & List of Dates Writ		
4.	Petition with Affidavit		
5.	Annexure-P-1 to Annexure-P-12		
6.	Vakalatnama & Memo of Appearance		
		TOTAL	

FILED ON: 31.10.2023



PRASANNA S

ADVOCATE FOR THE PETITIONER