

**(2010) 06 DEL CK 0060**

**Delhi High Court**

**Case No:** Writ Petition (C) No. 5520 of 2007 and CM No. 5655 of 2008

Saroj Rani

APPELLANT

Vs

Govt. of N.C.T. of Delhi and  
Others

RESPONDENT

**Date of Decision:** June 3, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19, 21
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 151, 176, 176(1A)
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2010) 5 ILR Delhi 407

**Hon'ble Judges:** Dr. S. Muralidhar, J

**Bench:** Single Bench

**Advocate:** Sunil Kumar, Rajveer Bansal and Anurag Kasana, for the Appellant; Avnish Ahlawat, for R-1 and R-2 and Amitabh Marwah, for R-3, for the Respondent

**Judgement**

S. Muralidhar, J.

The Petitioner is the wife of late Vinod Kumar and is the mother of two small children aged 8 years and 3 years respectively. Vinod Kumar was arrested by the Delhi Police on 9th June 2007 and was sent to judicial custody in Tihar Jail on 10th June 2007. He died on 12th June 2007 while in Tihar Jail. This petition seeks compensation for his death from both the Delhi Police as well as the Tihar Jail authorities.

Events leading to the petition

2. This Court in the first instance proposes to set out the versions of the events leading up to Vinod Kumar's death as narrated in the counter affidavit of the Tihar Jail authorities (Respondent No. 2) and the Delhi Police (Respondent No. 3).

3. According to the Delhi Police, Vinod Kumar used to work as a labourer, cleaning sewage lines. He was an alcoholic for the last five years. He used to consume locally brewed alcohol as he could not afford branded alcohol available in the market. It is claimed that even in the past Vinod Kumar had been prosecuted for drinking in public and creating nuisance. Reference is made to FIR No. 619 dated 18th August 2006 which was registered against him in that connection.

4. On 9th June 2007, one Smt. Krishna, wife of late Baburam, resident of T-2553, Gali No. 21, Baljit Nagar filed a complaint that Vinod Kumar had stolen her water meter and was verbally abusing her in public. Ranbir Singh, Assistant Sub-Inspector of police station Patel Nagar was sent to the said address. On his way to the spot, the Police Officer is stated to have found that a large crowd had caught hold of Vinod Kumar and was in the process of bringing him to the police station. Accordingly, Vinod Kumar was arrested at police station Patel Nagar u/s 107 read with 151 CrPC on 9th June 2007 at 8 pm vide DD No. 30A dated 9th June 2007.

5. It is stated that "as per procedure" Vinod Kumar was sent to the Deen Dayal Upadhyay Hospital ("DDU Hospital") wherein upon examination the doctor opined that there was no evidence of any fresh external injury over his body. A copy of the said report has been enclosed with the affidavit.

6. It is stated that Ranbir Singh, ASI thereafter went to the house of Vinod Kumar to inform about his arrest. It is claimed that the Petitioner refused to sign the arrest memo stating that she was already aware of Vinod Kumar's arrest. It is stated that despite knowing about the arrest, the Petitioner took no steps to procure bail for him. It was claimed that Vinod Kumar was kept in police lock-up and produced before the Special Executive Magistrate ("SEM") on 10th June 2007. Since there was no person to stand surety for Vinod Kumar, the SEM directed him to be sent to judicial custody for a period of 14 days.

7. As a consequence, according to the Delhi Police, Vinod Kumar was deposited in the Tihar Jail at around 5 pm on 10th June 2007. It is stated that he died on 12th June 2007 at 5.15 pm. Upon receiving this information, Mr. Jai Hind Singh, Sub-Inspector was deputed to Tihar Jail to investigate the matter and to assist the Inquiry Officer Shri Deepak Garg, Metropolitan Magistrate ("MM"). It is stated that the MM conducted inquest proceedings u/s 176 CrPC after which he directed that a case be registered and investigation be carried out u/s 302 IPC. It is stated that the MM recorded statement of inmates of Tihar Jail and the concerned doctor. It is claimed that no allegation regarding violence of any kind being perpetrated upon Vinod Kumar was made.

8. On 14th June 2007, a board comprising three doctors was constituted to conduct a postmortem. The findings of the postmortem were that the nature of death was homicide and that "though the bruises are simple in nature individually, but cumulatively can be dangerous to life for any individual; PM findings are consistent

with assault caused to deceased." It is stated that after the postmortem was concluded some of the body parts like kidney, brain, spleen etc. were preserved for histopathology and blood for the chemical analysis. The body was handed over to Vinod Kumar's relatives on 14th June 2007 which was subsequently cremated by them.

#### The stand of the Respondents

9. In the affidavit filed in this Court on 5th January 2008, it was stated by the Respondents that the police was investigating the death of late Vinod Kumar. It was further stated that the histopathology and blood analysis report were awaited. It was claimed that the procedure will take "another minimum period of six months" and that "only after the same are received it could be finally ascertained as to what was the cause of death of late Vinod Kumar." The Delhi Police disowned any liability whatsoever for the death of Vinod Kumar. It is further denied that Vinod Kumar was brought to the DDU Hospital "to save their necks". It is further added that the postmortem report was "not admitted as being totally correct" and that "a board has been constituted to examine the findings of the postmortem report".

10. The affidavit of the Tihar Jail authorities is at variance with the above affidavit. According to them, Vinod Kumar was admitted to the Tihar Jail at 5 pm on 10th June 2007 where he was medically examined. It was found by the duty doctor that Vinod Kumar was an alcoholic and he was accordingly referred to the hospital/Drug De-addiction Centre ("DDC") in Jail No. 7 for treatment. He was admitted in Jail No. 7 on 10th June 2007 late in the evening. He was lodged at the DDC on 10th June 2007 and promptly referred to the Central Jail Hospital at Central Jail No. 3 on 11th June 2007 at 7.35 am with complaints of abnormal and aggressive behavior. After being diagnosed thus by the Medical Officers at the Central Jail Hospital, it is claimed that "during his entire stay in the jail, the late Vinod Kumar remained in the hospital/DDC."

11. According to Tihar Jail authorities since Vinod Kumar was displaying abnormal and irrational behaviour and was becoming violent since 6 am, he had to be administered a sedative and had to be transferred to the main hospital (Central Jail Hospital) within the jail premises at 7.40 am on 11th June 2007. It is claimed that his pulse rate was very high and blood pressure was 130/100, when he was administered the sedative. It is claimed that he did not respond to the treatment. The admission and summary record sheet has been appended to the affidavit.

12. It is then claimed that since Vinod Kumar continued to display abnormal and irrational behaviour, he was referred to the DDU Hospital at Hari Nagar at 8.15 am on 11th June 2007. At the casualty ward in the DDU Hospital, the vitals of Vinod Kumar were checked and it was found that his blood pressure and pulse rate were high. He was referred to the Psychiatric OPD of DDU Hospital where he was diagnosed with alcohol dependence and was given treatment accordingly. He

returned to the Central Jail Hospital at 12.45 pm on 11th June 2007. It is claimed that the treatment advised by the Psychiatric OPD of DDU Hospital was administered to late Vinod Kumar.

13. It is then claimed that Vinod Kumar continued with his abnormal behaviour "due to alcohol withdrawal symptoms." He was again referred to DDU Hospital at 5.15 pm. This time he was checked by a Medical Specialist who opined that since late Vinod Kumar continued to display abnormal behaviour and that there was no indoor facility available at DDU Hospital, he should be referred to the Lady Hardinge Medical College ("LHMC"). Notwithstanding this advice, Vinod Kumar was sent back to the Central Jail Hospital. When he returned to the Jail Hospital at 9.30 pm, Vinod Kumar was stated to be irritable, shouting and violent. Therefore he was again administered a sedative and also I.V. Fluid. He was stated to have taken dinner and at that time his vitals were within normal limits. He was examined at 12.40 am on 12th June 2007. He was again found to be irritable and given sedatives. Thereafter Vinod Kumar went to sleep. It is then stated that "he was again examined at 2.20 am and was found sleeping comfortably on his bed and his vitals were within normal range and when the doctor went to check Vinod Kumar at 5.15 am he was found dead."

14. In the above circumstances, it is submitted that due care was taken by the Jail authorities of late Vinod Kumar and "he was not physically harmed in any way." It is again maintained that the Tihar Jail authorities cannot be held liable and that "until the investigation is not concluded, it might be difficult to ascertain the cause of death."

15. A number of directions were issued by this Court on 7th February 2008 calling for the learned MM to place a copy of the report before this Court by the next date of hearing. The DCP (West) was also asked to place before the Court the result of the investigation into FIR No. 37 dated 25th June 2007. The learned MM sent a copy of the postmortem report in a sealed cover on 15th March 2008. On 6th February 2009, the Delhi Police also filed a further affidavit enclosing copy of the cancellation report dated 29th January 2009.

16. The report of the Review Board constituted to review the postmortem report dated 18th August 2008 confirmed that the death was homicidal. In its written statement dated 19th November 2009, the Delhi Police took the following stand:

This Respondent most respectfully submits that in view of the concurrent findings of two Medical Boards that the injuries sustained by the late Vinod Kumar have been sustained by him around 24 to 36 hours prior to his death, when he was in the custody of the jail authorities and not in police custody. At the time of handing over the late Vinod Kumar to the jail authorities, there was no injury upon him as would also be evident from the medical report of Deen Dayal Hospital and the fact that no injury was recorded on the person of the late Vinod Kumar at the time of his

admission into the jail. As such, this Respondent cannot be held liable for the death of late Vinod Kumar and consequently, no damages can be awarded against this Respondent.

17. The Petitioner filed a brief synopsis on 27th August 2009 pointing out that although the postmortem found several injuries over the body of Vinod Kumar, in the records of either the DDU Hospital or the Tihar Jail, this is not reflected. Further, although the Jail authorities were advised to take Vinod Kumar to LHMC, they instead took him back to the Jail Hospital. The learned MM who inspected the dead body of Vinod Kumar before the postmortem on 12th July 2007 while conducting the inquest proceedings found that there were multiple injuries on the body of the deceased. A copy of the report of the MM has been placed on record by the Delhi Police. It is further pointed out that when the Petitioner was referred to the DDU Hospital at 8.15 pm on 11 June 2007, his pulse rate was 160 and blood pressure was 130/100. It is claimed that there is overwriting on both the pulse rate and the blood pressure. At 12.40 pm when Vinod Kumar returned to Tihar Jail his pulse rate was 84 per minute and blood pressure was 124/86. It is pointed out that it is surprising that pulse rate and blood pressure reduced while coming from Tihar Jail to the DDU Hospital which is a journey of 10 minutes. It is surmised that the deceased might have been beaten-up in the Tihar Jail and just to save their skin, the Respondents were concocting a story. On the basis of the above pleadings, a compensation in the sum of Rs. 20 lakhs is sought. In addition, a direction to grant the Petitioner employment on compassionate ground is sought.

#### Analysis of facts and submissions

18. The above submissions have been considered. Certain facts are not in dispute at all. These include the fact that the Petitioner's husband Vinod Kumar was first arrested on 9th June 2007 and despite being held under a bailable provision, was kept in police lock-up because the Petitioner herein was too poor to even furnish a surety. As a result, Vinod Kumar was remanded to judicial custody for 14 days to Tihar Jail. The medical examination of Vinod Kumar at Tihar Jail states that "no evidence of external fresh injuries over body" was found. The time indicated in the above report of medical examination of Vinod Kumar at DDU Hospital is 7.45 pm on 9th June 2007. He was then kept in lock-up the whole of the night of the 9th and brought to the Tihar Jail only at 5 pm on 10th June 2007. The medical examination at this time concluded that Vinod Kumar was an alcoholic. A copy of the status report dated 10th June 2007 has been enclosed with the affidavit. He was referred to the DDC at the Central Jail in Tihar. According to the Jail authorities, there was no recording of any injury on the person of Vinod Kumar even at this stage. He displayed abnormal behaviour for which he was being administered sedatives. He continued displaying abnormal and irrational behaviour and becoming violent and therefore was referred again to the main hospital at the Central Jail at 7.40 am on 11th June 2007 and then to the DDU on 11th June 2007. Apart from these reports

indicating high blood pressure and pulse rates, there was no indication of injuries. He, on being brought back to the Central Jail at 12.45 pm, was referred to the Psychiatric OPD at DDU Hospital at 5.15 pm on 11th June 2007. There is yet another report of DDU Hospital of 11th June 2007 which states "alcohol withdrawal symptoms" and "patient is irritable". He was at this stage referred to LHMC but instead was taken back to the Jail Hospital. No explanation is forthcoming as to why Vinod Kumar was not referred to the LHMC. The whole of 12th June 2007 till his death in the evening on that day Vinod Kumar was found irritable and given sedatives.

19. There is nothing in the narration of either the Delhi Police or the Tihar Jail authorities to show that Vinod Kumar administered injuries to himself during this period. None of the contemporaneous medical records of the Jail hospital notice any injury on his person. However, the examination of his body thereafter depicted a very different picture.

20. After Vinod Kumar was found dead at 5.15 pm an inquest was conducted by the learned MM. The following report of inquest of the learned MM dated 14th June 2007 on the basis of which an FIR was registered indicates that the death was indeed homicidal. The said report reads as under:

The S.H.O.

PS Hari Nagar

Delhi.

One undertrial namely Vinod, S/o Kartar Singh, R/o T-407 Gali No. I, Baljeet Nagar, Patel Nagar, Delhi was found dead in the casualty ward in the Tihar Jail hospital on 12/06/07 at 5.15 am. He was in fact admitted in jail on 10/06/07 in case DD No. 30A dated 09/06/07 u/s 107/151 CrPC, PS Patel Nagar, Delhi.

Ld. ACMM, Delhi had directed me to conduct inquest proceedings u/s 176(1A) CrPC. I had seen the dead body on 12/06/07 in DDU Hospital, Delhi and I had found that there were multiple injuries on the body of the deceased. On my direction post mortem of the deceased was got conducted in DDU Hospital on 14/06/07 and doctors who had conducted the post mortem have clearly mentioned in the post mortem examination report regarding the nature of death as HOMICIDE.

You are hereby directed to register an FIR u/s 302 IPC immediately. The investigation of the case be handed over to DIU (West). DCP/West district is also directed to supervise the investigation of the case as the offence is of very serious nature.

Copy of the order be sent to the SHO, PS Hari Nagar as well as DCP/W for compliance.

21. Since this was the earliest point in time when anyone saw the dead body of Vinod Kumar, the above report of the learned MM is significant. On 12th June 2007 when at the DDU Hospital the learned MM saw the dead body of Vinod Kumar, he found multiple injuries. The immediate earlier medical report is the report dated 11th June 2007 at the DDU Hospital which makes no note of any injury. The records of the Tihar Jail which have been produced state that at 2.20 am "patient is comfortably sleeping on his bed". If one would read this along with the earliest counter affidavit filed on behalf of the Jail authorities where it is asserted that "at all material times, he remained in hospital and never shifted to Jail barrack where criminals and undertrials are housed", it is plain that it is the Jail authorities themselves who have to answer how is it that when learned MM saw his dead body on 12th June 2007, he found that "there were multiple injuries on the body of the deceased". It is on the basis of the report of the learned MM that the case was registered u/s 302 IPC and taken up for investigation.

22. We then have the postmortem report first conducted on 14th June 2007 by a Board of three doctors i.e. Dr. B.N. Mishra, Dr. Anil Shandil and Dr. Manpreet. The injuries found on the body read as under:

Ante mortem injuries dark red to bluish coloured multiple overlapping bruise with and without areas of abrasion, irregular shape, varying in size from  $\frac{1}{2} \times \frac{1}{2}$  cm to 7 x 3 cm present at both palms, both soles, both side elbow, both side knee, both side ankles and dorsum of foot, both tibial shins, both arms (dorsolaterally), at back of chest & abdomen right side supriliac and supriliac spine, left side ear, both lips nose, right side neck, top of left shoulder, left forearm, It. side hip, It. side front of chest (just above epigastric area), both side calf with dried up reddish brown cab formation and collection of blood clots (effored blood) dark reddish and simple and about 24 hours to 36 hours in duration, blunt.

23. The injuries on the head portion were as under:

Sub scalp hematoma, dark reddish, in 3 x 2 cm and 4x3 cm NAD respectively at It. side occipital area & It. side parietal area with subperiosteal hematoma, It. side Subdual hematoma all over contusion of brain matter both side occipital & parietal lobe & cerebellus in 1 cm thickness for periphery with suarachoid hematoma correspondingly.

The opinion given was as under:

Cause of death from cumulative effect of multiple injuries (over head, chest, abdomen and various other parts of the body) accused and inflicted to the deceased which is sufficient to cause death in ordinary course of nature. All injuries are ante mortem in nature, cause by blunt force impact and between 24-36 Hours prior to death in duration.

Regarding nature of death, the opinion was as under:

Though bruises are simple injuries individually but cumulatively can be dangerous to life for any individual.

PM findings are consistent with assault caused to deceased.

(emphasis supplied)

24. As already noticed in the affidavit of the Delhi Police, they did not straightway accept the above postmortem report and decided to constitute another Board to review the above report.

25. At this stage a mention should be made of the inquest documents placed on record which include the unnatural death by violence report dated 14th June 2007 of the learned MM. In Column 10 titled "Injuries or marks of violence the body may have received: Wounds and bruises" the following was noticed by the learned MM:

- (i) Injury on left side neck.
- (ii) Injury on left side shoulder near neck.
- (iii) Bruises on right side neck.
- (iv) Injuries marks on left side elbow
- (v) Injuries marks upon porsom hand
- (vi) Injuries marks on right hand elbow
- (vii) Injuries marks on back side
- (viii) Injuries marks on Buttocks
- (ix) Injuries marks on right leg & knee of right leg.

26. The statements recorded of several witnesses during the course of investigation do not also throw light on how Vinod Kumar suffered these injuries while he was in custody. Dr. Sunil Sharma who was posted at the Central Jail No. 7 Dispensary, conducted the first examination on 10th June 2007 and stated that "patient has not given any history of assault/trauma or history of medical significance." He further states that on examination "I did not find any injury on his body. The only inference one can draw from the above statement is that till he was brought to Tihar Jail, there was no complaint of any injury caused to Vinod Kumar.

27. We now come to the Forensic Science Laboratory ("FSL") report Ex. 1/A containing stomach and piece of small intestine with contents, kept in sealed jar and Ex. 1/B containing piece of liver, spleen and kidney, kept in a sealed jar. Both were found to contain "Ethyl Alcohol". However the quantitation of ethyl alcohol was not carried out as blood sample was not provided. The FSL report is dated 25th June 2008. We then come to the report of the Review Board dated 18th August 2008. The three members who constituted this Board were Dr. S.K. Khanna, Director

Profession and Head of the Department of Forensic Medicine, Maulana Azad Medical College ("MAMC"), Dr. Upender Kishore, Asst. Professor, Department of Forensic Medicine, MAMC and Dr. Vinay Kumar Singh, Junior Specialist, Department of Forensic Medicine, LBS Hospital. This report narrates the complete history of the case including what was found in the earlier postmortem report. The opinion of the Review Board reads as under:

Opinion of the Review Board:

57 photographs taken at the time of post mortem examination were produced by the I.O. Members of the board examined the photographs & compared them with the injuries mentioned in the post mortem report.

Most of the injuries as seen in the photographs are small in size. Many of the injuries mentioned in the post mortem report could be seen in the photographs. However some of the findings/injuries (e.g. black eye with sub conjunctival haemorrhages and petechiae, bruises on left side ear, both lips and nose & both calf, injury to intestines, retroperitoneal hematoma )described in the post mortem report were not seen in photographs. It is possible that post mortem artifacts (which may be mistaken as injuries) like "tache noire" (seen in the eye), drying up of mucosa of the lips, post mortem staining on the skin as well as in various abdominal organs have been mentioned as injuries.

Cause of death: Death due to cerebral damage consequent upon blunt force impact to the head. As per the history recorded in medical records the deceased was violent and irritable due to alcohol withdrawal. He was shouting in the ward and attached a sewadar. It is possible that the injuries on the body of the deceased could be caused while an attempt was being made to control/restrain him. The nature/position of the injury on the head indicates that it could be caused due to the head striking a hard surface.

28. A careful reading of the above report shows that the Review Board was seeing the case after over a year after the death of Vinod Kumar. They only had the photographs to go by and compare the photographs with the injuries mentioned in the postmortem report. This is really not the best way of comparing. The photographs cannot obviously substitute the physical examination by three members who saw the body during postmortem. This is also to be seen along with the report of the MM who also saw the body on 12th June 2007 at the earliest point in time. It is plain even in the opinion of the Review Board that there were several injuries on the body. Although it is surmised that "possibly" the injuries could have been caused while an attempt has been made to control/restrain him. Repeatedly it has been said that the deceased was administered sedative and that no physical force was ever used at any point in time. Therefore clearly the Review Board expressing the cause of the injuries was not based on any record. The further expression by the Review Board that the injuries could be caused "due to the head

striking a hard surface" is also unhelpful. It does not rule out the possibilities of those injuries being caused by "blunt force/impact" as mentioned in the postmortem report.

29. What is important is that the Review Board did not disagree with the earlier postmortem report that the death was homicidal and not as a result of injuries that may be self-inflicted. It also did not dislodge the postmortem report findings that death was due to assault. It further did not dislodge the opinion that the injuries though simple in nature cumulatively can be dangerous to the life of an individual.

30. Although police has filed a closure report only on the basis of the above report of the Review Board, this Court is informed that the said cancellation report has not yet been accepted by the trial court. Therefore this Court would not like to comment on that aspect. In any event, criminal liability for the death of Vinod Kumar is distinct and separate from the liability of the State for the death caused of an undertrial prisoner injudicial custody as has been explained in several decisions, some of which will be discussed hereafter.

31. It was for the Tihar Jail authorities to have conducted a thorough inquiry to find out who was responsible for causing the numerous injuries to which Vinod Kumar was subject while he was in judicial custody. As far as the victim's family is concerned, they are fully justified in demanding compensation from the Respondents for the death of Vinod Kumar while he was injudicial custody.

32. This Court would like to observe that the Delhi Police was also acting in violation of the guidelines laid down in D.K. Basu Vs. State of West Bengal. It is not understood why for an offence u/s 107/151 CrPC the Petitioner could not have been released on a personal recognisance bond and further why he had to be sent to judicial custody for 14 days. The presence of alcohol was explained by the fact that admittedly the deceased Vinod Kumar was an alcoholic. That arduous, deplorable and undignified work as a sewage cleaner perhaps explains why late Vinod Kumar had to take to drinking. It is not uncommon to find those working with sewage, and with corpses in mortuaries to take to drink to be able to cope with the repulsive and revolting nature of their work. In any event, the emphasis placed by the Respondents on this aspect of the deceased does not for a moment justify doing away with Vinod Kumar while in judicial custody.

33. In the considered view of this Court, the above findings clearly point to the homicidal death of late Vinod Kumar which took place while he was in judicial custody in the Tihar Jail. A clear case of violation of the fundamental right of the late Vinod Kumar under Article 21 of the Constitution has been made out.

#### Liability of the State for custodial death

34. The law concerning the liability of the State for custodial violence in prisons is well settled. In one of the early decisions concerning Tihar jail itself, the

constitutional rationale for protecting the fundamental rights of prisoners was explained by the Supreme Court. In [Sunil Batra Vs. Delhi Administration and Others etc.,](#) the court observed:

True, our Constitution has no "due process" clause or the VIII Amendment; but, in this branch of law, after Cooper and Manika Gandhi the consequence is the same. For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21. Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Article 19) become chimerical constitutional claptrap. Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the life-style within the concerns. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether.

(emphasis supplied)

35. Later in [Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others,](#) the Supreme Court laid the firm foundations for state liability for the constitutional tort of custodial violence. It explained the law thus:

31. It is axiomatic that convicts, prisoners or under-trials 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 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, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to 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 except according to the procedure established by law.

36. This was later reiterated in [D.K. Basu Vs. State of West Bengal,](#) and has been followed in a large number of decisions of the Supreme Court and the High Courts

since.

37. Custodial deaths in Tihar Jail are not an uncommon phenomenon as is evident from some of the recorded cases including [Murti Devi Vs. State of Delhi and Others](#). The following is the short order passed by the Supreme Court which reveals a familiar pattern of explanation offered by the jail authorities for a custodial death, which explanation was of course not accepted:

Heard Mr Sodhi, learned Counsel appearing for the appellant and Mr Subba Rao, the learned Counsel for the respondent-State of Delhi. This writ petition has been presented by the petitioner Murti Devi for appropriate compensation for the death of an undertrial prisoner Raj Kumar who while kept in judicial custody in Tihar Jail had been seriously assaulted inside the jail and on account of injuries suffered by him died after being admitted in a Delhi hospital. Initially, the jail authorities made an attempt to assert that the said undertrial prisoner Raj Kumar was a drug addict and presumably as a consequence of withdrawal symptoms had suffered some injuries and also on account of an old injury in kidney, he had died. Such case of the jail authorities had been demonstrated to be false by the post-mortem report indicating that there were no such withdrawal symptoms and the doctor who held post-mortem examination had noticed a number of injuries on the person of the deceased. It appears that later on the jail authorities came up with a case that the said undertrial prisoner was assaulted by some of the convicts in the jail for which a criminal case has been initiated against the offending convicts. It has also been established that prompt and appropriate action in rendering medical aid in a hospital was also not given to the said deceased. Whether the said undertrial prisoner had really been assaulted by the convicts or he was assaulted by the Jail Warden and his associates may be ultimately decided in the criminal case stated to be pending. We may only indicate that the pending criminal case should be conducted with utmost seriousness and should be completed as early as practicable. There is no manner of doubt that because of the gross negligence on the part of the jail authorities, the said Raj Kumar, an undertrial prisoner in Tihar Jail, was subjected to serious injuries inside the jail which ultimately caused his death. It has been stated by the petitioner, Murti Devi, the mother of the said deceased, that the said Raj Kumar was the only bread-earner in the family and today she has become a helpless widow with three sons to be maintained. As it was the bounden duty of the jail authorities to protect the life of an undertrial prisoner lodged in the jail and as in the instant case such authorities had failed to ensure safety and security to the said unfortunate undertrial accused, we direct the respondent to pay a sum of Rs. 2,50,000 to the petitioner Murti Devi within a period of six weeks from today. Out of the said amount, rupees two lakhs should be kept in fixed deposit in the name of the said Murti Devi in a nationalised bank for a period of five years so that she can maintain herself and members of the family out of the interest accruing on the said fixed deposit. The balance sum of Rs. 50,000 should be handed over to the said Murti Devi within the period of six weeks from today against proper

receipts. After the said period of five years the petitioner Murti Devi or her legal heirs and successors as the case may be will be free to utilise the said sum of rupees two lakhs according to their desire.

38. Yet another instance of award of compensation for the custodial death of a prisoner is [Ajab Singh and Another Vs. State of Uttar Pradesh and Others](#), where the Meerut jail authorities handed over to his family the undertrial prisoner's dead body two days after he had been remanded to judicial custody. The police offered an incredible explanation that Rishipal, the prisoner, died of "jaundice and liver failure" and that the post-mortem report which lists the cause of death as shock and haemorrhage due to ante-mortem injuries is "rather misleading". They stated that the bandages tied to Rishipal's wrists and ankles because he was throwing his legs and hands about while in a semi-conscious condition caused the injuries referred to in the post-mortem report. They surmised that the injuries on Rishipal's belly mentioned in the post-mortem report "can also be caused by bursting of liver inside the body". Upon the strength of such "expertise", the authorities described the postmortem report and cause of death as "a concocted story". Disbelieving this version, the Supreme Court observed:

If we may be permitted to use the same words, what appears to us to be a concocted story is that set out in the respondent's affidavits. They are, to our mind, desperate attempts to avoid responsibility for acts committed while Rishipal was in judicial custody. There can be no doubt that the respondents have not investigated the cause of death of Rishipal as they ought to have done or that, at any rate, they have not placed all relevant material before this Court. They have attempted to pull the wool over the eyes of this Court. We do not appreciate the death of persons in judicial custody. When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody. It is appropriate, therefore, that the cause of Rishipal's death should be investigated by the Central Bureau of Investigation. CBI shall register a case and conduct an investigation into the circumstances of Rishipal's death. CBI shall forthwith appoint an officer to receive from the respondents all records relating to Rishipal and the respondents shall immediately hand over such records to such officer. The investigation shall be completed expeditiously and a copy of the investigation report shall be filed in this Court. The Registry shall forward a copy of this judgment and order to the Director, CBI.

9. The State of Uttar Pradesh is responsible in public law for the death of Rishipal and must pay compensation to the petitioners for the same. (See D.K. Basu v. State of W.B.) We think that it is appropriate, in the circumstances, to order the State of Uttar Pradesh to pay to the petitioners compensation for the death of Rishipal in the sum of rupees five lakhs within three months. The sum shall be invested by the petitioners and the income thereof shall be so distributed that at least half is utilised for the benefit of Rishipal's children during the period of their minority.

39. Other cases involving custodial deaths in Smt. Dhanno Vs. Union of India and another, and Government of NCT of Delhi v. Nasiruddin 89 (2001) DLT 91 (DB). Recently on 24th May 2010, a Division Bench of this Court in W.P. (Crl) No. 290 of 2010 (Court on its own Motion v. State) enhanced the compensation awarded to the family of a victim of custodial death in Tihar jail from one to three lakh rupees.

40. Therefore this Court holds that for the custodial death of Vinod Kumar in Tihar Jail on 12th June 2007, the Respondent jail authority is liable to compensate the victim's family.

#### Computation of Compensation

41. The question that arises next is the computation of the compensation payable to the petitioners. This Court, in Smt. Kamla Devi Vs. Government of NCT of Delhi and Another, [followed in Ram Kishore v. MCD 2007 VII AD 441, Ashok Sharma and Others Vs. Union of India (UOI) and Others, Ram Singh v. Union of India 2010 v. AD (Delhi) 209, Swarn Singh v. Union of India W.P. (C) 4242 of 2006 decided on 17th March 2010] has propounded that standard compensation for non-pecuniary losses and compensation for pecuniary loss of dependency be calculated separately and added up to arrive at the total amount of compensation payable. The age, income and the number of dependents of the deceased are considered as relevant indicators.

42. In the affidavit filed by the GNCTD the deceased Vinod Kumar was shown as being 25 years old at the time of his death. Applying the minimum wages payable at that time, his monthly income would work out to Rs. 3,636/- and annual income to 43,632/-.

43. In Lata Wadhwa and Others Vs. State of Bihar and Others, the Supreme Court held the standard compensation to be Rs. 50,000/- in 1989. Thereafter, inter alia, in the above mentioned cases, the standard compensation was computed by adjusting the amount based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India as under:

Standard Compensation for Non-pecuniary Losses = 1989 Standard Compensation x Average Consumer Price Index for Industrial Workers (CPI (IW)) when the accident occurred -r- Average CPI (IW) for 1989 (1982 being the base year)

44. CPI (IW) with 1982 as the base year is calculated only till the year 2005 by the Labour Bureau. For subsequent years, 2001 is taken as the base year. The incident in the present case occurred in June 2007, thus making the above calculation based on the base year 1982 impossible. This Court finds it prudent to consider 2001 as the base year while taking Rs. 1 lakh as the standard compensation in that year. Accordingly, the standard compensation in the present case works out to Rs. 1,31,000/-(1,00,000x131/100).

45. To calculate the compensation for pecuniary loss of dependency, the multiplier method (multiplier value given in the Second Schedule of the Motor Vehicles Act, 1988 x Yearly income of the deceased less the amount spent on himself or herself) is used. This is consistent with the procedure adopted in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, Mrs. Sudha Rasheed v. Union of India 1995 (1) SCALE 77 U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , Smt. Kamla Devi v. Govt. of NCT of Delhi, Ram Kishore v. MCD and Ashok Sharma v. Union of India.

46. The method of calculating the amount spent on oneself as explained in Smt. Kamla Devi v. Govt. of NCT of Delhi reads as under:

This (the multiplicand) is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member.

47. In the present case, the Petitioner has two minor children. The value of each unit thus works out to 7,272/- (43,632/6). Therefore, the multiplicand would be 29,088/- (Gross annual income - the value of two units = 43,632 -14,544). Multiplying this by 18 as per the Second Schedule to the MVA 1988, a figure of Rs. 5,23,584/- is obtained, which constitutes the pecuniary compensation payable by the Respondents.

48. Consequently, adding the standard compensation for non-pecuniary losses and the compensation for pecuniary loss of dependency, the total compensation payable by the Respondents is computed at Rs. 6,54,584/-, the break up of which is as under:

Standard compensation for non-pecuniary losses	Rs. 1,31,000/-
Compensation for pecuniary loss of dependency	Rs. 5,23,584/-
Total compensation Payable	Rs. 6,54,584/-

49. Accordingly it is directed that the Government of National Capital Territory of Delhi ("GNCTD") which is in-charge of the Tihar Jail Complex will pay to the Petitioner the aforementioned sum of which one-third will be payable to Petitioner and one-third each to the two children who are minor and whose mother and natural guardian is the Petitioner. The aforementioned amount together with interest @ 6% simple interest per annum from the date of filing of the petition i.e. 12th June 2007 till the date of payment will be deposited in this Court within four weeks. Of the aforementioned amount one-third amount payable to the Petitioner will be disbursed to her forthwith. Of the remaining amount, the one-third share each of the two children will be placed in the names of the two children in fixed deposits and the interest thereon will be transferred to the account of Petitioner till each of the children attains the age of majority. On attaining majority a separate account will be

maintained in the name of the each child and the interest on the respective fixed deposits will be transferred to the account of each child till the child completes 21 years. The fixed deposit will be kept renewed till each child attains 21 years of age and thereafter be transferred to the account of each such child. The Registry will render full assistance to effectuate the above directions.

50. The Respondents will also pay to the Petitioner costs of Rs. 15,000/-within four weeks from today.

51. With the above directions, the writ petition and the application are disposed of.