



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 1748/WBHRC/COM/690/14-15

Date: 26.02.18

Recommendation No 08, 09, 10 & 11/17-18/WBHRC/690/COM/14-15

From: Shri Laima Chozah IAS,
Secretary & CEO.

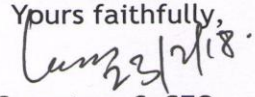
To: The Chief Secretary
Government of West Bengal
NABANNA
325, Sarat Chatterjee Road
Mandirtala, P.O.- Shibpur,
Howrah-711102

Sir,

I am directed to send herewith an authenticated copy of the Recommendations dated 19.02.2018 in connection with the custodial death of Md. Alamin Sarder, a Bangladeshi National made by the West Bengal Human Rights Commission alongwith the enclosures for taking necessary action. The recommendations are self-explanatory.

Action taken or proposed to be taken by the Government on the recommendations may please be intimated to the Commission within four months.

Enclosures: As stated above.

Yours faithfully,

Secretary & CEO.

WEST BENGAL HUMAN RIGHTS COMMISSION
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 690/WBHRC/COM/2014-15

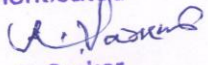
Present

- | | |
|---------------------------------|-------------|
| 1. Justice Girish Chandra Gupta | Chairperson |
| 2. Shri Naparajit Mukherjee | Member |
| 3. Shri M. S. Dwivedy | Member |

Md. Alamin Sardar, aged about 22 years, son of Late Saiful Sardar of Chaltaberia, PO-Bharasimla, PS-Daulatpur, Dist. Satkhira, Bangladesh was arrested under Section 14(A) of the Foreigners' Act vide Hasnabad PS Case No. 480/14 dated 18.10.14 at about 20:05 Hrs. He was allegedly produced for medical check up on 19th October, 2014 at Taki Govt. Rural Hospital and was declared fit. He was thereafter produced in Court and was remanded to jail custody by an order passed in G.R. No. 4570/14 dated 19th October, 2014. He was lodged at the Basirhat Subsidiary Correctional Home vide registration No. 4426/14 at around 05:10 P.M. when he was found non-cooperative and was also suffering from "deep sleep, such addiction, talk less" as would appear from health screening report of newly admitted prisoners maintained by Basirhat Subsidiary Correctional Home – **a copy whereof is annexed hereto and marked with letter 'A'.**

2. On 20th October, 2014 he was referred to Basirhat S.D. Hospital for better treatment and management. The Medical Officer of the district hospital Basirhat on 20th October, 2014 at 10-10 A.M. referred him to R.G. Kar Medical College and Hospital/Department of Psychiatric. The clinical Notes made by the Medical Officer were as follows:

"H/O. Pt is in jail custody. O/E, Aphomia, Ataxia. ?Matintinums, ?Substance abuse disorder." **A copy of the referral letter dated 20th October, 2014 is annexed hereto and marked with letter 'B'.**

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Assistant Secretary
W.B. Human Rights Commission

3. The accused thereafter was shifted to Dum Dum Central Correctional Home and on 20th October, 2014 itself he was admitted to R.G. Kar Medical College & Hospital at around 7:29 P.M. in Ward No. MMW-5, bed No. F-10 as would appear from the attendance report – **a copy whereof is annexed hereto and marked with letter 'C'**. The Medical Officer has recorded the condition of the accused as follows:

“proper history could not be elicited and the pt. was brought by police personnel in disoriented state.”

4. It appears from bed head ticket that on 21st October, 2014 C.T. Scan was planned but could not be done as the condition of the patient had deteriorated. He was disoriented and restless. On 23rd October, 2014 he died in the hospital at 1:00 P.M.

5. A report to that effect was received by the Commission on 27th October, 2014. On 10th November, 2014 an order was passed by the Commission directing the Dy. Commissioner of Police, North & North Suburban Division to make an enquiry and to submit a report within four weeks. A further order was passed directing the ADG, Correctional Services to submit a detailed report along with copy of Post Mortem and Judicial Magisterial Inquest report within four weeks. A copy of the Post Mortem Report under the cover of Memo dated 7th December, 2014 was received by the Commission from which it appears that death was due to the effect of head injuries- ante mortem in nature. On 9th March, 2015, the Commission passed the following order:

“report not clear as to how he sustained head injuries. Also report of Judicial Magistrate(inquest) is pending. Pls call for Ld. JM's report by 30.04.2015 & FSL report by 20.04.2015. Also ask ADG CS to depute a DIG level officer for conducting an enquiry regarding how the inmate sustained injuries and submit report by 30.04.2015.”

In spite of reminder issued on 13. 07. 2015, neither the order dated 10th November, 2014 nor the order dated 9th March, 2015 was complied with. On 17th June, 2015, the Commission passed the following order:

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“1. Pls call for JM’s report as well as FSL report by 20.07.2015.

2. There appears to be a case of assault on the prisoner about which Superintendent’s report is silent. ADG Inv. SHRC to enquiry as to how the inmate sustained injuries/fix responsibility & submit report to Commission by 25.07.2015.”

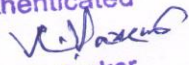
6. In pursuance of the order dated 17th June, 2015 directing the Investigation Wing of the Commission to carry out an enquiry and to fix responsibility, a probe was conducted. Various persons were examined

7. Sri Samiran Biswas, the then Warder of Basirhat Subsidiary Correctional Home, stated that the accused most probably was kept in the hospital ward on 19th October, 2014. A copy of the statement of Sri Samiran Biswas is annexed hereto and marked with letter ‘D’.

8. Sri Sultan Mahammad Mollick, Sub Inspector of Police, posted at Hasnabad Police Station stated that the accused did not disclose any incident of assault upon him when his statement was recorded. A copy of the statement of Sultan Mahammad Mollick is annexed hereto and marked with letter ‘E’.

9. Sri Sujit Kumar Das, Constable. Posted at Hasnabad PS stated that the accused was not assaulted in the Police Station. Same statement was made by Sri Santanu Chakraborty, Arresting Office. Same statement was also made by Sri Subhankar Rana, ASI of Police, attached to Hasnabad PS. **Copies of all the three statements are annexed hereto and marked with the letter ‘F’, ‘G’ & ‘H’.**

10. Sri Tarun Kanti Das, Controller of Basirhat Sub Correctional Home stated that there was no Medical Officer in the Sub-Correctional Home. The accused was, however, examined by the Pharmacist on 20th October, 2014. He opined that immediate medical checkup was necessary by a doctor. Therefore, the accused was sent to Basirhat Sub-Divisional Hospital.

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A copy of statement of Sri Tarun Kanti Das is annexed herewith and marked with letter 'I'.

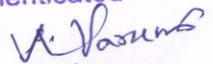
11. Sri Devtosh Singha, the Pharmacist of Basirhat Sub Correctional Home however, made the following statement

“ I screened Md. Alamin Sardar on 19.10.14. As per my observation he was complaining of deep sleepness, may be caused by any addiction, non cooperative. I examined his B.P. as 126/78 mmng, pulse rate= 56/mm & Lung clear. I did not find any injury with him.” “I informed the Superintendent of Basirhat Sub Correctional Home for referring him to Basirhat SD Hospital (O.P.D.) on 20.10.14.”

12.- Home Guard Sri Dharendra Nasth Patra, attached to Basirhat E.F. Line escorted the accused on 20th October, 2014 from Basirhat Sub Correctional Home to Dum Dum Central Correctional Home. He was accompanied by the Constable Asish Kumar Samanta. He stated that the accused was shifted to Dum Dum Central Jail in an Ambulance. He also stated that the accused was unable to walk. He was put aboard the Ambulance with the assistance of two persons. **Statements of Constable Dharendra Nath Patra and Constable Asish Kumar Samanta are annexed hereto and marked with letters 'J' and 'K' respectively.**

13. Dr. Kumud Ranjan Saha of Dum Dum Central Correctional Home examined the accused at Dum Dum Central Correctional Home and found him non cooperative, lack of alertness and non responsive to questions. He also found multiple abrasions over both the knees and the hands. He could not record statement of the accused as he was not responding. He referred the accused to R.G. Kar Medical College & Hospital as a life saving measure. **A copy of the statement of Dr. Kumud Ranjan Saha is annexed hereto and marked with letter 'L'.**

14. Dr. Kalyan Biswas of Basirhat District Hospital examined the accused on 20th October, 2014 at 10-10 A.M. He found that the accused was unable to walk and unable to speak. He referred him to R.G. Kar Medical College & Hospital. **A copy of the statement of Dr. Kalyan Biswas is annexed hereto and marked with letter 'M'.**

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15. After examining the witnesses and considering the records, the Investigating Wing of the Commission expressed the following opinion:

"Dr. Debasish Som – Autopsy Surgeon stated that the distribution and nature of the injuries as mentioned in the PM report, indicates that they could have resulted from accidental manner. At the same time possibility of being resulted from assault could not be ruled out. Injuries to the body of the deceased might have been inflicted anytime between 7 to 10 days before Autopsy Examination i.e. from date 15.10.2014 to 25.10.2014. PM examination was done on 25.10.14, and the UTP was arrested on 18.10.14. During that period, that incident had occurred. So, before his arrest, that incident may take place, and after his arrest also that incident may take place. With existing evidences it is difficult to fix up the responsibility as to who assaulted him when the UTP Md. Alamin Sardar could not make any statement as to how he got an internal head injury. Concerned doctors also could not record his statement. Arresting Police staff, I.O. of the case and Correctional Staff could not say how he got an internal head injury. As per opinion of the Autopsy Surgeon that UTP Alamin Sardar got only one head injury but five in numbers due to impact with hard blunt substance or surface. He also opined that they could have resulted from accidental manner. Arresting Police Station i.e. Hasnabad PS did not start any specific case over the death of UTP Alamin Sardar. Hence, S.P., North 24-Parganas may kindly be directed to start a specific case at Hasnabad PS u/s 304/304A/34 IPC on the basis of PM report, Medical report, FSL report, Histopathological report, Final opinion and Statement of the Autopsy Surgeon. So that the complete facts can be unearth."

16. A Judicial Enquiry under Section 176(1A) of Cr.P.C. was conducted by Mr. Gladly Bomjan on 18th December, 2014 – **a copy whereof is annexed hereto and marked with letter 'N'**

17. The fact that the accused had suffered fatal injuries is well established. The questions for consideration are how did he sustain the injury and who inflicted the same? The evidence collected by the Investigating Wing of the Commission as also by the Judicial Magistrate establishes the fact that the accused was not subjected to any torture either at the Hasnabad PS or at the Basirhat Subsidiary Correctional Home. The question of any injury having had been suffered at Dum Dum Central Correctional Home does not arise because he

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already had suffered the injuries. There is evidence on to record to show that on 19th October, 2014 the accused was kept in the hospital ward of Basirhat Subsidiary Correctional Home which is a pointer to show that the accused was received at Basirhat Subsidiary Correctional Home in an ailing condition. This has also been corroborated by the statement of Sri Tarun Kanti Das, the then Asstt. Controller of Basirhat Sub-Correctional Home, recorded by the Commission on 24th October, 2017. Therefore, only conclusion which can be arrived at is that he suffered the injuries prior to his arrest or during the arrest.

18. In order to ascertain the truth the Commission on 24th October, 2017 examined the Arresting Officer, Sri Santanu Chakraborty, SI of Police, now posted at Bagdah PS and Dr. Sadhak Roy, Medical Officer, now posted at Taki Rural Hospital who had issued the medical certificate dated 19th October, 2014. Copies of the statement of Sri Tarun Kanti Das, Sri Santanu Chakraborty and Dr. Sadhak Roy are annexed hereto and collectively marked with the letter 'O'.

19. On 15th November, 2017 the Commission directed its Investigation Wing to produce a legible copy of the Command Certificate in reference to GDE No. 751 dated 18.10.2014. The Investigation Wing by its report dated 30.01.2018 disclosed that no Command Certificate was issued.

20. Dr. Sadhak Roy did not record any identification mark of the accused in his certificate nor did he obtain signature or even thumb impression of the accused in the certificate issued by him. During his examination he stated that he had asked various questions to the accused to which he received answers. But this fact has not been recorded in the certificate issued by him. He admitted that certificates are usually issued on an emergency ticket but in this case certificate was issued on a letter head of Taki Rural Hospital which is a pointer to show that he may have obliged the police by giving the fitness certificate without actually examining the accused. The Certificate does not even correctly describe the age of the accused. It is

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difficult to believe that the doctor would not notice the ailment which had been noticed by the arresting officer Sri Santanu Chakraborty described hereafter..

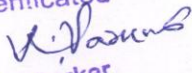
21. The Arresting Officer, Sri Santanu Chakraborty stated during his examination that the accused was apprehended after a hot chase. He stated that the Arrest Memo was prepared on the spot.

22. Section 114 of the Evidence Act provides as follows :

“Court may presume existence of certain facts. – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

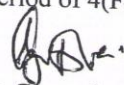
23. Considering all the surrounding circumstances the Commission has reasons to believe that the Arresting Officer, Sri Santanu Chakraborty and his Team inflicted the deadly injury upon the accused when the accused was caught after a hot chase. That explains the reason why the column 8 of the Arrest-cum-Inspection Memo was kept blank which required information as regards health of the arrestee. The statement of Shri Chakraborty that he kept the column blank by mistake is not acceptable. He, thereafter, procured the perfunctory certificate, dated 19th October, 2014 from Dr. Sadhak Roy, on a letter head of the hospital which is not the usual practice, to cover up his misdeeds. The omission to fill up column 8 of the Arrest-cum-Inspection Memo was thus deliberate. He betrayed his guilt when he stated that “on 19.10.2014 when the accused was being forwarded to Court I was present in the Police Station though not on duty. That time I observed that the accused Md. Alamin Sardar was speaking less.” Dr. Sadhak Roy did not even notice this fact because the certificate was issued by him without examining the accused.

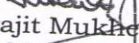
24. The accused could not have suffered the injury prior to arrest because Shri Santanu Chakraborty, SI of Police admitted during his examination that “ just at the time of arrest Md. Alamin Sardar was capable of running so we chased him and arrest him”. It is thus

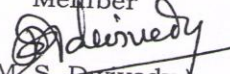
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established that the arrestee was assaulted, after his arrest, by Santanu Chakraborty and his party which led to his death. In the absence of Command Certificate the Commission could not ascertain the particulars of the Constables who may have accompanied Santanu Chakraborty.

25. The Commission, for the aforesaid reasons makes the following recommendations:
- (A) The CID West Bengal to start a case under Section 304 IPC for causing death of - Md. Alamin Sardar and to diligently proceed with the same in accordance with law.
 - (B) Disciplinary Proceedings against Sri Santanu Chakraborty, SI of Police, now posted at Bagdah Police Station, be also initiated in accordance with law.
 - (C) Disciplinary Proceedings should also be started against Dr. Sadhak Roy, now posted at Taki Rural Hospital.
 - (D) Medical checkup of each arrestee should always be recorded in the prescribed format:
26. Principal Secretary, WBSHRC to communicate the recommendations to the Chief Secretary, Govt. of West Bengal and he is requested to communicate an action taken report on the above recommendations to this Commission within a period of 4(Four) months.


(Justice Girish Chandra Gupta)
Chairperson


(Napanarajit Mukherjee)
Member


(M. S. Dwivedy)
Member

Dated, 19th February, 2018

Encl: As stated above.

SDB

Authenticated

N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission