

Present: –

Justice Girish Chandra Gupta,

Chairperson.

File number 265/25/5/2018.

This is another example of high-handed behaviour of the police directed to a day labourer; bungling of the records; misuse of power; lack of supervision by the higher officials in the hierarchy in police including indifference of the office bearers of West Bengal Human Rights Commission to the cases complaining of violation of human rights with impunity.

A complaint dated 22 October 2017 made by a human rights defender of South Korea sent by email ID "whitepage5@nate.com" was received on 30 November 2017 disclosing an alleged incident of "custodial torture of an enclave dweller in West Bengal by police and failure to follow due process of law."

The Deputy registrar after perusing the complaint passed the remark "may be filed". The judicial member on 16 February 2018 opined "in this petition, matter of torture pertaining to GR 320/17 pending before the court. In this sub judice matter we cannot interfere. It may therefore be filed." The administrative member agreeing with the views of the judicial member, which was his practice, endorsed the views of the judicial member on 19 February 2018.

On 20 February 2018, the chairperson took a dissenting view and passed an order "call for a report from the SP Cooch Behar to be submitted by 20 April 2018."

Almost after 30 months, by a letter dated 13 November 2020, the SP, Cooch Behar, submitted a report dated 19 October 2020 prepared by Sri Nirmal Kumar Das, SDPO, Mekhliganj together with annexures thereto. The report was examined by the Deputy registrar on 9 August 2021 and recorded that "file is produced before me post joining my office in February 2021. It reveals that Haldibari PS received information that two brothers Krishna Roy and Sanatan Roy were fighting with each other with lathis. Police reached the spot, arrested them, released them on PR bond.

Then Krishna Roy was arrested in connection with Haldibari PS Case number 109/17 dated 11 July 2017 and forwarded before Id court, wherefrom he was released on bail. Medical examination report of accused shows no mention of any specific injury on his body. He complained of pain in thigh due to fight with his brother at his home. Accused never complained before Id court of alleged torture by police." She produced the file before the honourable member (A) for further steps. The honourable member on 14 September 2021 expressed the following views: –

"Received file from Id DR on 14 September 2021. Id DR is directed to see my notings (orders) and that of the then member (judicial) whereat we decided to file the matter – reasons mentioned therein. However honourable Chairman disagreed with the decision of two members and decided to take action. Hence I refrain to intervene in the matter any further." The Deputy registrar on 20 September 2021 recorded "in view of above observation of honourable member (A) the file be placed before honourable Chairperson". The file has accordingly been produced.



The complaint reads as follows: –

“Mr Krishna Roy had some personal issues with his two brothers, residents of the same camp. On 19 July 2017, at 11 PM, he sat down with his brothers to settle disputed matters. They started quarrelling with each other. The residents tried to pacify them to no avail. Meanwhile, one of the residents telephoned the Haldibari PS. After some time, six policemen from the Haldibari police station arrived at the camp in a Gypsy car. They took Mr Roy and his brother Sanatan Roy to the police station.

Around 2 AM, the police released Sanatan but not Krishna Roy, despite several requests. Mr Ajay Roy, Mr Roopam Dey and Mr Ujjwal Bakhsi of the Haldibari PS started physically torturing Krishna Roy. They disrobed and tortured him for a span of approximately 30 minutes. After this, the police lodged a complaint against him vide GR number 320/17 under section 353/34 of the Indian penal code. However they failed to prepare an arrest warrant as required by section 41B of the code of criminal procedure (inserted through code of criminal procedure Amendment act 2008).

On the next day, 20 July 2017 Mr Roy was produced before the additional Chief judicial Magistrate at 12 PM(noon?). He was released on bail at 3 PM on the same day. Due to the overwhelming physical torture and assault by the police, Mr Roy suffered severe pain. He was admitted to the Haldibari rural hospital on 20 July 2017. He was under treatment for seven days and discharged on 27 July 2017 according to the discharge report”

The allegation that the victim Krishna Roy was arrested on 19 July 2017 at about 11 PM and was released on 20 July 2017 after he was granted bail by the Id magistrate in the afternoon is not in dispute. It is also not in dispute that the victim Krishna was badly injured necessitating hospitalisation in a government hospital for seven days. However the confession has been sought to be avoided in the manner as follows: –

it is alleged in the report dated 19 October 2020 that at about 23:15 hours information was received from Constable/812 about the fight between the brothers; the information was recorded in general diary entry number 629; assistant sub- inspector Liaqat Ali left with force; returned at 1:05 hours with Krishna and Sanatan arrested under section 151 CRPC and later released “on PR bond from Haldibari PS.”

Non FIR PR number 649/17 dated 21 July 2017 however has a different story to tell that “SI Liaqat Ali came to the PS along with two persons namely Krishna Rai and Sanatan. Then released them under bail bond.”

Neither the bail bond nor the PR bond, bearing different connotations, has been disclosed. There is nothing to show that the provisions of section 50 of the code of criminal procedure “person arrested to be informed of grounds of arrest and of right to bail” and section 50A “obligation of person making arrest to inform about the arrest et cetera, to a nominated person” were complied with. The non FIR PR number 649/17 does not contain any allegation about the arrest “under section 151 CRPC” as alleged in the report dated 19 October 2020. Section 151 CRPC provides “a police officer knowing of a design to commit any cognizable offence may arrest.....” There is nothing whatsoever to show that the officer making the arrest had the requisite knowledge of a design of the arrested persons to commit any cognizable offence.

The victim Krishna was neither released on bail bond nor on PR bond as falsely alleged in differing versions contained in the aforesaid documents. Krishna subsequent to arrest was badly beaten in the police station. The injury inflicted upon the victim in the police station is evidenced by the medical certificate disclosing "pain over inj site." The medical certificate was, it is admitted in the report dated 19/10/2020, issued" before he was forwarded to Ld ACJM Court, Mekhliganj." In order to explain the injury the purported arrest memo was prepared alleging the arrest at" 8:40 hours on 20 July 2017 at the settlement camp and further alleging" complained of pain in the thigh due to fight with brother on 19.7.17at his house". The same document goes to show that the victim is a "day labourer". The document has been witnessed by an illiterate person and also appears to be signed by the victim. But is it believable that a day labourer may understand what is written in a document in English? Even if he does who cares for him? Realising that the injury caused by lathis in the police station needed to be explained, the non FIR PR No649 dtd 21.07 17 was made use of by introducing the allegation that " C/812 Rajib Chowdhury informed over telephone that two persons namely Krishna Roy and Sanatan Roy are fighting each another with lathi". The informant according to the complaint is a resident of the enclave but according to the police he is a constable. The alleged general diary entry No.629 dated 19/07/2017 has not been disclosed.

After arresting the victim, a day labourer, and beating him black and blue he was involved in a case with which, on the basis of the documents disclosed, he does not appear to have been even remotely connected. Only one page of the charge sheet submitted in Haldibari PS Case number 109/17 dated 11 July 2017 has been disclosed which goes to show that all the accused persons have been charge sheeted. The accused persons according to the illegible charge sheet were (1) Bawa Roy (2) .....Sarkar (3) .....Karmakar (4)Arup Roy (5) Ranjit Pandey (6) Raju Sansyasi (7)Ratan Ray (8) Suresh Mahato (9) Arka Ghosh (10) Pradeep Sarkar (11) .....Das (12) Ratan (13)Santosh Rajak (14) Shyamabandhu Roy (15) Soumen Bose and others .

The charge sheet has been submitted against 15+ the victim who is no way connected with the aforesaid case. The case presents a live example of misuse of power by the police.

The SDPO in his report dated 19 October 2020 alleged that "the Id court while granting bail to Krishna Roy did not find any injury on his body and he also did not complain to learned court of such torture by police."

Apropos the aforesaid observation of the police officer I cannot but quote the views expressed by the Apex Court in the case of Sheela Barse versus State of Maharashtra reported in All India Reporter 1983 Supreme Court 378 wherein their Lordships issued the following among other directions: -

"(vii) We would direct that the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the code of criminal procedure, 1973 to be medically examined."

In the case of Arnesh Kumar versus State of Bihar and another reported in (2014) 8 Supreme Court cases 273 their Lordships observed "8.2 before a magistrate authorises detention under section 167 CRPC he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer

does not satisfy the requirements of section 41 of the code, magistrate is duty bound not to authorise his further detention and release the accused .....

11.8 authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court”

Take for instance in this case after the victim was produced in court the Id magistrate, at the first instance, is supposed to have passed an order which reads as follows: – “I C Haldibari PS brought under arrest accused namely Krishna Roy along with forwarding, arrest memo, medical slip, accused challan in connection with above noted case reference.

He is taken into custody and remand to J/C till 03/8/17.

The accused person has filed an application with power praying for bail on the ground stated therein.”

Subsequently the following order was added: – “moved. The learned advocate.....

Perused the CD..... Section 353..... there is no material in CD to show that the present accused used..... force or assaulted anyone. Considering the above material the accused may find bail of ₹ 500..... Return the CD”.

Both the orders are in manuscript. Visibly the handwritings are different. What actually transpired, how were the orders passed may be the subject matter of further enquiry not possible at this stage.

Examination of the concerned sub inspectors, assistant sub- inspector and the SDPO in the normal circumstances would have been made. But considering that I am going to lay down office today itself and the sole honourable member has already recused himself and further considering that there is no doubt that the right to life and liberty of the victim Krishna Roy were violated the matter is disposed of by the following recommendations: –

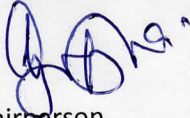
- a) The concerned officers may be asked to show cause why disciplinary proceedings against them shall not be conducted;
- b) Based on the reply a decision either way shall be taken by the Chief Secretary to the State of West Bengal;
- c) A sum of ₹ 1 lakh be paid to the victim Krishna Roy by way of compensation within a month;
- d) The Chief Secretary to the State of West Bengal is directed to file a report by 31 March 2022 as to the steps taken to implement the report.

The additional Secretary is directed to annex all the connected papers to the recommendation. He is further directed to send the recommendation duly authenticated as required under the protection of human rights act to the Chief Secretary to the State of West Bengal.

The additional Secretary is further directed to upload the recommendation in the website at once and not later than within 24 hours. For his convenience the recommendation duly signed, scanned is e-mailed to him.

A copy of the recommendation together with annexures be communicated to The Hon'ble Chief Justice, Calcutta High Court for information and such step as His Lordship may think fit and proper.

A copy of the report be communicated to the petitioner as also the victim Krishna Roy of Enclave settlement Camp B Block- 19&20, PS HDB/CBR.



Chairperson.

Justice Girish Chandra Gupta.

Signed this 20<sup>th</sup> day of December 2021.