

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2110 OF 2014

Leonard Xavier Valdaris
& Others

..... Petitioners.

V/s

Officer-in-charge
Wadala Railway Police Station,
Mumbai & Others

..... Respondents.

Dr. Yug Mohit Chaudhry with Mr. Ajay Basutkar for the
Petitioners.

Mr. S.K. Shinde, Public Prosecutor with Mrs. M.M. Deshmukh,
APP for the State.

Mr, Shyam Mehta, Senior Counsel with Mr. S.R. Shinde for
Respondent Nos. 3 and 4.

**CORAM: V. M. KANADE &
P.D. KODE JJ.**

DATE: 13th August, 2014

P.C.:-

1. Pursuant to the directions given by this Court on the last
occasion, CBI has taken over the investigation and have

submitted status report in a sealed envelope. We have gone through the said report. We must express our appreciation for the efforts taken by CBI in investigating the case and, according to us, much progress has been made by CBI for finding out truth as to what actually happened on that fateful night.

2 The learned Senior Counsel appearing on behalf of CBI has submitted that a direction may be given to the four service providers viz. Aircell, Reliance Tele-communication. MTNL and Dofin so that they can cooperate with CBI and ensure that further investigation is made in this case. We, therefore, direct these four service providers to promptly give all assistance to the Officers of CBI and provide whatever information which is required by them as expeditiously as possible. The learned Senior Counsel has also shown us the statements of some of the witnesses which clearly throw light on the said incident which had happened. Efforts are made to find out the video material which was there on CCTV installed at the Railway Station and further efforts are also being made to retrieve the said material and then to make analysis of the said material to find out as to what actually happened on that night. The learned Senior Counsel also submits that it may take some time to analyze the data and arrive at a particular conclusion.

3 Dr. Yug Chaudhry, the learned Counsel appearing on behalf of the Petitioner has given us statistical data in respect of custodial deaths which take place in State of Maharashtra and has submitted that, unfortunately, though there were 333 custodial deaths over a period of 15 years from 1999 to 2013 and 43 FIRs were filed and 19 charge-sheets were filed, no police officer has been convicted so far in these cases. He has also submitted a note pointing out the directions which can be given by this Court to the State to ensure firstly that custodial deaths do not take place and the remedial measures which can be implemented to ensure that cases of torture in custody and resultant custodial death does not take place. He has also submitted regarding the manner in which investigation has to be made in cases of custodial torture and or custodial death. He has relied upon the judgment of the Supreme Court in D.K. Basu's case (1997) 1 SCC 416. He has also submitted that, in fact, as a result of the directions given by the Supreme Court in D.K. Basu (supra), in the year 2006 and 2009 several amendments were made in the Code of Criminal Procedure and these remedial measures were incorporated in the Criminal Procedure Code. It is submitted that, however, in spite of the amendment being brought into force in 2009, in large number of cases these safety measures which have been introduced in the Cr.P.C. are not adhered to by the

State and by the Police. He has also submitted that certain general directions can also be given by this Court. He has given statistical data regarding details of deaths which have taken place in police custody of persons not remanded to police custody by the courts and also regarding the deaths in police custody of persons who are remanded to police custody by the courts. He has also given the statistics of total deaths in police custody from 1999 to 2013. He has also invited our attention to the recommendation made by the Law Commission of India in its Report No.239 regarding the steps which have to be taken for dealing with this menace. He has submitted that in the said report recommendations have been made to install CCTV Cameras in all the rooms of all Police Stations and steps which have to be taken for modernization of Police Stations and also making use of Mobile Forensic Vans and filing of Charge-sheets by CDs. It is submitted that in spite of the said report being filed and tabled in the case of Virender Kumar Ohri vs. Union of India & Others [WP (C) No.341 of 2004] in the Supreme Court, none of the States has completely followed the recommendations made by the said Law Commission. Our attention is also invited to the judgment of the Gujarat High Court given in PIL No. 200 of 2012 (Prakash Kapadia - President of Jagega Gujarat Sangharsh - Petitioner vs. Commissioner of Police (Ahmedabad City) & 3 - Respondent) in which directions have been given by the Gujarat High

Court in respect of custodial torture and death after going through various provisions and judgments of the Apex Court as well as Law Commission Report. Our attention is also invited to the order passed by Division Bench of this Court in Criminal Writ Petition No.780 of 2013 dated 16/06/2014.

4. We are also informed that in European Countries also CCTV Cameras have been installed in almost all the rooms in Police Stations and this has resulted in reduction of custodial deaths and torture by almost 40%.

5. We propose to give some directions in this case to the State and to the Police Department and time to CBI to give final report to this Court after they have completed their investigation. We find that statistical data which is mentioned in the Note submitted by the learned Counsel for the Petitioner and which is not controverted since these are figures which are found from the National Crime Records Bureau, indicates that number of custodial deaths in the State of Maharashtra is alarmingly high and constitute almost 23.48% of the total custodial deaths in the country and comparatively there is no conviction of Police Officers who are accused in such cases.

6. We, therefore, direct the State Government to immediately install and maintain closed circuit television (CCTV) with rotating cameras in every corridor, room and lock up of each Police Station so that every part of the Police Station is covered 24 hours of the day and the tapes of the CCTV shall be preserved for a minimum period of one year and responsibility of ensuring that CCTV is kept operational shall be on the Senior Police Officer in-charge of the Police Station.

7. We further direct that the directions given by the Apex Court in the case of D.K. Basu (supra) are followed to the hilt and similarly amendments which have been brought into force in 2006 and 2009 in respect of arrest, production of the accused and remand are also scrupulously followed in letter and spirit. The responsibility for safety, health and well being of the arrestee shall be that of the Arresting Officer, Investigating Officer, Station House Officer and the Senior Inspector of the Police Station. As and when it is found that the person who is arrested and remanded to Police Custody suffers any injury, he shall be immediately taken to the nearest hospital where he should be given the best possible medical attention that can save his life and restore him to health. The Senior Inspector in-charge of the Police Station shall promptly produce the accused within 24 hours after his arrest and inform his relatives about his arrest and reason for

his arrest. If any injuries are found on the person who is in police custody, photographs should be taken. In the event of death in custody, postmortem shall be video-graphed and preserved. If such an arrested person is injured as a result of police torture and produced before the Magistrate, the learned Magistrate shall apply his mind and consider whether he should be again remanded to police custody. The Magistrate also should ensure that provisions of arrest and production which are now incorporated in sections 41 to 50 are scrupulously followed. In the event the person dies in custody and injuries are found on his person, an FIR should immediately be registered for the offences punishable under the IPC and immediate steps should be taken to arrest the perpetrators of the crime. Magisterial inquiry should be conducted under section 176 (1A) of the Cr.P.C. and efforts should be taken to ensure that evidence is not destroyed. Investigation in such cases shall be monitored by the Magistrate. In the case of prosecution of cases of custodial deaths, court shall deal with such cases on high priority and the State shall appoint a Special Public Prosecutor who shall be assisted by a woman Public Prosecutor.

8. We hope and trust that these directions which are given are complied with by the State Government.

9. We are informed that PIL has been filed in this Court for

the purpose of providing Video Conferencing Facility so that those accused who are in judicial custody and who cannot be produced before the court can be produced before the Magistrate through Video Conferencing Facility. We are also informed that the jails in which these Video Conferencing Facility is made available are also communicated by this Court to the State Government. We hope and trust that funds are made available by the State Government for installation of Video Conferencing Facility in all the jails. As of today locations of about 371 courts and corresponding jails have been communicated. We hope that State Government takes immediate steps for installation of this Video Conferencing Facility.

10. Stand over for four four weeks i.e. 10/09/2014 for compliance of the directions given by this Court. Status report to be submitted by the CBI within eight weeks.

11. Copy of this order be made available to Director General of Police. Copy of this order shall also be circulated to all Police Stations, Sessions Court and other Courts and I.G., Prisons.

12. Parties to act on the authenticated copy of this order.

(P.D. KODE, J.)

(V.M. KANADE, J.)