

KARNATAKA STATE HUMAN RIGHTS COMMISSION

H.R.C No: 5813/10/02/2016

PRESENT

Date: 14-07-2021

Justice D.H. Waghela
Chairperson

Shri K.B. Changappa
Member

Shri R.K. Dutta
Member

Informant:

Chief Superintendent,
Central Prison,
Belagavi

ORDER

1. The complaint is registered on the basis of wireless message dated 09-09-2016 of the Chief Superintendent, Central Prison, Belagavi. It is reported that Shri Shekhar Arjun Mandolkar, U.T.P No: 2576, R/o Ganeshpur, Jyoti Nagar, near Ganga Nagar Hostel, Belagavi District was remanded to Judicial Custody in Cr. No. 02/2015 u/s 457, 380 of IPC by J.M.F.C. 3rd Court, Belagavi. It is further reported that upon the advice of Jail Medical Officer, the aforesaid prisoner was sent to the District Civil Hospital for higher treatment on 09-09-2016 at 3.45 A.M. and got admitted in S.I.C.U./Ward, as the said prisoner was seriously ill. The aforesaid U.T.P died on the same day at 4.50 A.M., due to

convulsions and behavioural problems in the said hospital.

2. Upon issuance of notices to the Chief Superintendent of Police, Central Prison, Belagavi, post mortem, magisterial enquiry and inquest reports were received. Upon perusal of reports, it is seen that the deceased prisoner Shri Shekhar Arjun Mandolkar had external injuries as mentioned in the post mortem report and it was not made clear by the jail authorities how those injuries were sustained. Further, if the deceased prisoner was suffering from epilepsy, no documents are submitted regarding which date the treatment was given to him in the prison. Although the final opinion submitted by BIMS, Belagavi, states that the death of deceased prisoner was due to secondary complications of brain abscess, but when did the deceased prisoner's brain get injured and treatment given for that are not made out. Apart from the above, Shri Ashok Nippanikar, a co-prisoner had stated on 09-09-2016 before JMFC, 3rd Court, Belagavi that the deceased prisoner Shri Shekhar had been assaulted and kept in isolation by Chief Warden 10 – 15 days before his death.

3. In view of the above, the matter was referred to Deputy Superintendent of Police attached to KSHRC to investigate and submit report. Accordingly, report dated 12-09-2019 was received from the Dy.S.P., KSHRC,

alongwith the annexures thereto. The opinion part of the report which is originally in Kannada language is translated into English as under:

“Overall, on basis of the statements of co-prisoners, officers/officials of the prison, medical officers of the Prison and verification of the documents with regard to the death of Shekar Arjun Mandolkar UTP No.2576, who was in Central Prison, Belagavi, it appears that upon the order of Chief Superintendent of the Prison to keep the deceased UTP Shekar Arjun Mandolkar in an isolated room from 28.8.2016 to 5.9.2016 from security point of view, he was kept in Cell No.5 along with convicted prisoners i.e. Krishna, Santhosh Poojari and Mohammad Naseer. The Medical Officers of the Prison had given treatment to Shekar Arjun Mandolkar when he was in isolated cell from 31.8.2016 to 5.9.2016 and when he was admitted as inpatient in the Prison Hospital from 5.9.2016 to 8.9.2016.

On 31.8.2016 when the said prisoner was taken to prison hospital for treatment, upon enquiry by Doctor, the said prisoner informed that he got fits in night at 1.00 AM and he was suffering from fits earlier also and was taking medicine for the said disease. The doctor gave him Tab. Eptoin 100 MG as the said prisoner told that he is not taking tablets at present. Thereafter, he had taken treatment from next day i.e. 1.9.2016 to 8.9.2016 at prison hospital for head-ache and vomiting. On 8/9-9-2016 midnight at 3.30 A.M, the prisoner fell down near toilet due to fits and then he was sent to District Hospital, Belagavi for further treatment, the Medical Officers of BIMS informed that the prisoner has died at 4.50 A.M.

Shri Akash Shivalinga Nippanikar, the co-prisoner has, while giving statement before the

JMFC-III, Belagavi, stated that 10 to 15 days prior to death of the deceased prisoner Shekhar Arjun Mandolkar, the chief warden had beaten him on his legs, punished him with 300 to 400 baitaks and kept him alone in an isolated room and tortured him for the reason that he had collected dry sticks in the jail. Regarding the said allegation, Dr.K.S.Gurudut, who conducted the post mortem of Shekar Arjun Mandolkar has given the following statement:

In the present case, the reason for death is due to adverse effect of accumulation of pus in the brain. There is no direct connection of his death either by beating on his legs or 300-400 baitaks. No external injuries on the legs of the deceased have been observed during the post mortem. The injuries mentioned in the P.M. Report are not fatal injuries. Since the injuries are in red colour, it might have happened 24 hours before his death. The injuries mentioned in the P.M. report i.e. (1) Injury in left shoulder; (2) four small wounds at left side of the chest may happen to the human body when he suffer from fits. The saliva found in the mouth of the deceased may also occur due to the fits. When pus accumulates in the brain of the human, there is every possibility of unconsciousness. In view of the above, the death has occurred due to Secondary Complication of Brain Abscess. He has stated that there is no reference to show that the Brain Abscess has been occurred due to brain injury.

The deceased UTP Shekar Arjun Mandolkar had informed the prison Doctor that he suffered from fits on 31-8-2016 when he was in an isolated cell and for that, treatment had been given by doctors. Then, he has also been given treatment for head-ache and vomiting from 1.9.2016 to 8.9.2016. It appears that, even though the prison Medical Officers knew that the deceased was suffering from fits, head-ache and vomiting, they did not take any action

to provide him suitable treatment...”

4. Upon perusal of record, the matter was referred to the Full Bench of the Commission. Thereafter, in view of the aforesaid report dated 12-09-2019 of the Dy.S.P., KSHRC, notice was issued to Shri T.P. Shesha, the then Chief Superintendent of Central Prison, Belagavi (presently Deputy Inspector General of Police, South Range, Bengaluru), Shri K.R. Morabad, the then Chief Warder of Central Prison, Belagavi (presently Chief Warder, Mangaluru District Prison) and Dr. Vasanth Mallappa Yamakanamaradi to remain personally present before the Commission with relevant record pertaining to death of Shri Shekhar Arjun Mandolar, U.T.P. No. 2576 for recording of their statements.

5. On 25-02-2020, Shri K.R. Morabad, the then Chief Warder remained personally present and his statement on oath was recorded. Dr. Vasanth Mallappa Yamakanamaradi had sent a letter dated 04-02-2020 alongwith a medical certificate, stating that due to serious health issues, he is unable to attend the hearing. Shri K.R. Morabad has submitted on oath as under:

“...On 28.08.2016 Shekar Arjun Mandolkar who was in Circle No.2 had gone to toilet at the Carpentry back section and was seen breaking the frame of the roof of the toilet. He was then brought by the Warder on duty and another prisoner. I questioned him of his action, but, he did not open his mouth. I then took him to the

Executive Jailor Sri S.R. Shivapura who was my senior. There also he did not say anything and kept quiet. The jailor then told that we will take him to the Assistant Superintendent and thereafter, I and jailor took him to the Assistant Superintendent. There also he did not open his mouth. The Assistant Superintendent then told us to take him to Chief Superintendent Sri T.P. Shesha. We then took him to the Chief Superintendent. There also he did not open his mouth and then the Chief Superintendent told us to put him in an isolated cell for security reason. We then took him to the isolated cell and lodged him there. He was having Fits in the isolated cell and the staff there used to report to me whenever he was having Fits. He had suffered First three to four times. On 05.09.2016 as per the suggestion of the doctor and the Chief Superintendent, I had shifted him from the isolated cell to the prison hospital. I do not know about the injuries seen on the dead body of the UTP. I do not have any enmity with Akash Shivalingu Nippanikar who was also a co-prisoner of the deceased. I do not know why the said Akash Shivalingu Nippanikar alleges assault and sit-ups by me. I do not have previous records pertaining to the deceased or the injuries seen on the deceased UTP. Except the said UTP getting Fits, I have not seen any other disease. I do not have any medical records to show that the deceased UTP was suffering from Fits.

It may be true that the deceased UTP had injuries as mentioned in the post mortem report i.e.

(1) Reddish contusion of 4 x 3 cms. over outer aspect of left shoulder

(2) Four small abraded contusions below the left nipple largest being 2 x 0.5 cms.

...In the Belagavi jail there is a dispensary with a doctor, staff and 10 beds. I do not have any record of the deceased having even been treated

in the jail clinic. When I saw UTP falling from Fits, I have taken him to the doctor inside the jail. Then, the doctor was Sri Yemakana Maradi. The deceased was taken to the jail clinic on 05.09.2016. The deceased was admitted into the jail hospital. I do not know he was treated for what. As per the jail record, the deceased was about 20 years of age but there is no proof regarding his date of birth. I cannot say for sure what was his exact age. I cannot say whether he was 17 or 23 years old, but, he could be..... I had not seen the deceased gathering any dry sticks. I cannot say why the sister of the deceased claimed before the learned Magistrate that her brother was not sick, but, he died because he was beaten by the police of the Central Prison.”

6. Thereafter, on 22-07-2020, Shri T.P. Shesha remained personally present and his statement on oath was recorded. Dr. Vasanth Mallappa Yamakanamaradi had sent a letter dated 02-06-2020 alongwith a medical certificate, stating that doctor had advised him not to travel due to his serious health issues and hence, Dr. Vasanth Mallappa Yamakanamaradi's appearance was dispensed. The statement of Shri T.P. Shesha on oath is as under:

“2) It is true that I had stated before the JMFC that deceased Shri Shekhar Arjun Mandolkar was taking treatment for fits from 30th August 2016. According to the OPD clinic record, the deceased was treated on 31-08-2016 for convulsion and that treatment in OPD was only on that day and once. According to the records after prescription of two tablets there is a note mentioning date, i.e., 01-09-2016 and 02-09-2016.

3) According to the record, he was treated in the clinic from 1st to 7th September 2016, but I cannot say whether he was admitted in the clinic and provided any bed. On 7th September 2016, there is a written remark on the record that deceased was required to be referred to psychiatrist. On 7th September 2016, I remember to have sent a request for police escort to take the patient to the civil hospital. I do not remember whether it was an oral request or in writing. Police escort was never provided. From 7th to 9th September 2016, I had not seen the patient and I do not know the condition in which the deceased was lying in the barrack.

4) I do not remember to have seen the deceased during the whole period from 31st August 2016 to 9th September 2016. I say that it is not possible that deceased, under the medical condition in which he was, he could have attempted to break the roof of the ward which is at the height of 12 feet. However, now I say that I do not know whether the deceased could have attempted to break the roof in that condition.

5) I do not have any report of deceased having injured himself, by accident or otherwise during the period from 31st August 2016 to 9th September 2016.

6) I do not have any knowledge, information or report that some one had injured the deceased. I have brought a copy of the post mortem report of the deceased in my file and I am shown the post mortem report on the file of the Commission. Both are correct photocopies of the original.

7) Reading the post mortem report, I say that there is a mention of external injury on the body of the deceased which are described as: "Reddish contusion of 4 x 3 cms, over outer aspect of left shoulder; four small abraded contusions below the left nipple largest being 2 x 0.5 cms".

8) *It is true that the injuries mentioned in the post mortem report are mentioned as antimortem and I cannot explain how these injuries could have happened or were caused to the deceased.*

9) *I do not remember who was incharge of the ward or in which barrack the deceased was kept on 9th September 2016 and I do not know if the deceased was beaten by anyone and had convulsions. I do not know on 7th or 8th September 2016 what the deceased was doing and whether he had convulsion or not.*

10) *I do not know exactly at what time the deceased Shri Shekhar Arjun Mandolkar died. On 9th September 2016 the deceased was shifted to the Civil Hospital, Belagavi in the morning and at that time I was in my quarter and not present. According to the record, the deceased expired at 4.50 a.m at the Civil Hospital, Belagavi on 9th September 2016. I cannot say and I do not know whether the deceased was alive or already dead, when he was taken to the hospital in the early morning of 9th September 2016. I have made absolutely no enquiry about the condition of the deceased and the cause of death even after the death was reported to me. I do not remember to have made any enquiry about the death of the deceased to find out what actually happened during the night of early hours on 9th September 2016. I was not there when the ambulance or police escort was called to take the deceased to the civil hospital. Our staff or gate keeper must have called for shifting the deceased from jail to the hospital. My impression is that our jail vehicle was used to transport the deceased to the hospital and hence no escort was required or provided when the deceased was shifting to the hospital.*

11) *As for the condition of the deceased in the early hours of 9th September 2016, there is no available record about the presence of or calling for the doctor, except that there is a mention in the*

discharge card, according to which, Dr. Yamakanamaraddi, whose handwriting I can recognise, had put the remark "9th September 2016 at 3.30 a.m., h/o fits, fell down in the toilet. B.P> not recordable".

7. Thereafter, having considered the record of the case and statement of the then Chief Superintendent, Central Prison, Belagavi in respect of death of UTP No.2376 late Shri Shekhar Arjun Mandolkar, notice was issued to the Commissioner of Police, Belagavi and the Chief Superintendent, Central Prison, Belagavi to enquire and inform this Commission about the next of kin, near relatives and dependents or guardians of late Shekhar Arjun Mandolkar. Accordingly, letter dated 20-08-2020 was received from the Commissioner of Police, Belagavi, wherein the information was provided regarding the next-of-kin and close relatives of the deceased prisoner Shri Shekhar Arjun Mandolkar. Notice was then issued to Ms. Sangeetha (sister of the deceased) to remain personally present for recording her statement in connection with custodial death of Shekhar Arjun Mandolkar.

8. Thereafter, Statement on an affidavit dated 10-09-2020 of Ms. Sangeetha was received alongwith annexures. Ms. Sangeetha has stated in her affidavit dated 10-09-2020 as under:

"3] I state that police falsely implicated my brother Late Shekhar Arjun Mandolkar in offence alleged

to be U/Sec. 379, 457 of IPC i.e. in C.C. No. 849/2015, on the file of the Hon'ble JMFC III Court, Belagavi.

4] I state that the Police having produced my brother late was subjected to Judicial Custody and retained to central Prisons, Hindalga, Taluka Belagavi.

5] I state that my family members were informed on 9th September 2016, that my brother Shekhar Arjun Mandolkar had succumbed to death.

6] ...The post Mortem was conducted by Dr. Gurudat and stated that the death was due to **"Complication of brain Abscess"** without disclosing the actual facts.

.....

8] I had been present at the time of recording of the events when the alleged accused No.1 Akash Nippanikar, had stated that the deceased was subject to brutal assault, inhumane treatments considered and said to be the 3rd Degree treatment against was under trial prisoner. The statement of alleged co-accused was recorded, including canning him on the legs, weakening his leg muscles, hanging him upside down the tree making him unconscious.

9] I have learnt that statement of Co-Accused, who is eye witness is to be considered at statement recorded U/S. 164 Cr.P.C. but police and Magistrate have treated this loss of life as false, by making "B" False report.

.....

11] The Police had come over to me and got my signature and thumb impression on blank papers, and under the garb of conducted enquiry filed "B" False Report.

.....

13] *The fact that the clarification was sought for and the by the IV J.M.F.C. Belagavi, in itself could be made out that there was something required, which is to be considered a fit case U/S. 175 Cr.P.C. The fact that the Post Mortem was conducted on 9th September 2016 at about 4:30 PM. But looking to the "B" report if there is custodial death the investigation shall be conducted under the supervision of the Judicial Magistrate as per Sec. 176 Cr.P.C. and thereafter the I.O. has file charge sheet, but in the above said case the investigation has been conducted by the ACP without any procedure. Therefore, the I.O. has not adopted the correct procedure before filing charge sheet.*

14] *I state that my deceased brother was hale and healthy and never involved and indulged in any illegal activities. He was never under any treatment.*

.....

16] *...The inhumane treatment at the jail had forced me to contact the Court, but I have been let down by procedural aspect.*

17] *.....Sir I pray that the guilty be punished."*

9. Thereafter, on 06-10-2020, Ms. Sangeetha was present and her statement on oath was recorded. She has submitted on oath as under:

"I submit that I have already submitted my affidavit dated 10-09-2020. In addition to the facts stated in the affidavit, I state that myself and Shekhar Mandolkar are the only children of Late Arjun Mandolkar and Late Mrs. Barmi Arjun. After the death of Shekar Arjun Mandolkar, while in custody, I'm the only sibling of said Shekar Arjun Mandolkar. Shekar Arjun Mandolkar was a coolie and was earning upto Rs. 500-600 per day.

He was aged 20 years at the time of his death. He also used to help me financially. After I lost him, I have lost the affection of my brother and also put in monetary loss. Hence, I request the Hon'ble Commission to provide compensation."

10. It has come out in the report dated 12-09-2019 of Dy.S.P., K.S.H.R.C that Shri Shekhar Arjun Mandolkar U.T.P. No. 2576 was kept in isolation cell after he was beaten and made to do 200-400 sit-ups by the Chief Warden. It is also reported by the Dy.S.P. that Shri Shekhar Arjun Mandolkar was not provided suitable treatment by the jail officials despite knowing that he was suffering from fits, headache and vomiting.

11. In the statement of Shri K.R. Morabad, the then Chief Warder it is mentioned that Shri Shekhar Arjun Mandolkar was having fits while he was kept in isolated cell and he was aware of it. It is clear from the Statement that the jail staff despite knowing that Shri Shekar Arjun Mandolkar was having fits kept him in isolated cell instead of being taken for treatment. In fact Shri Mandolkar was sent to jail hospital only on 05-09-2016 after he has suffered several fits.

12. In the statement of Ms. Sangeetha, it has come out that a co-prisoner by name Shri Akash Nippanikar had stated that Shri Shekhar Arjun Mandolkar was subjected to brutal assault, inhuman treatments, canning him on

his legs, weakening his leg muscles and hanging him upside down and making him unconscious.

13. From the aforesaid paras, it is evident that the jail authorities have not only failed to take proper care of U.T.P Shri Shekhar Arjun Mandolkar but also subjected him to physical and mental torture.

14. Upon perusal of record placed before the Commission, it is clear that the deceased met with an unnatural death without being provided requisite medical treatment, and in all likelihood the physical injuries had been inflicted while he was in prison. Although the prison authorities concerned have not admitted any responsibility for any ill-treatment of the prisoner, his life is lost in the prime of his youth, without being convicted of any offence. The material on record is sufficient to conclude that Shekhar Arjun was subject to physical violence and bodily injuries on the one hand and on the other not provided adequate and timely medical treatment to save his life. The prison authorities and the officers in charge of the person in their custody pending trial have the obligation to protect and preserve life of the detainee, rather than mete out corporeal punishments without trial. The medical facility in the prison appears to have been clearly inadequate and insufficient to treat the victim and prison authorities have failed to even transfer the victim, in time, to proper hospital outside to alleviate

his condition. Therefore, even if the victim was not purposely killed by one or the other kind of corporeal punishment inflicted upon him without any procedure or authorisation, minimum humanitarian consideration required his immediate transfer to a nearby well – equipped hospital. The failure of jail authorities in doing even that much, has resulted into loss of life of a young man who was not convicted of any crime. Hence, it could be fairly concluded that the State has failed in its duty to protect human rights and right to life of the deceased prisoner. Consequently his next-of-kin would be entitled to a fair amount of compensation. Accordingly, it is recommended that:

- a) In the first instance and by way of interim compensation, the State of Karnataka should pay within a month to the next of kin of the victim, namely his sister Ms. Sangeetha a sum of Rs. 5,00,000/- by account payee cheque in her name; and***

- b) The Additional Chief Secretary, Home Department, after holding an enquiry for major punishment against the officers concerned of the prison, impose appropriate punishment including recovery from their salaries and other***

dues of such sums as may be determined so as to compensate the loss suffered by the State for payment of compensation as recommended hereinabove; and

c) If, during the course of or at the end of departmental enquiry against any of the police officers or prison officials concerned, a prima facie case of commission of any cognizable offence is made out, an F.I.R. should be registered for such offences and they should be duly investigated and prosecuted in accordance with law.

15. It may be appropriate to point out at the end that under the provisions of Section 18(e) of The Protection of Human Rights Act, 1993, the Government or the authority concerned is duty bound to forward within a month, its comments on this report and also report the action taken or proposed to be taken. It is hereby brought to kind notice of the authorities concerned that, under the provisions of Regulation 22 of the Karnataka State Human Rights Commission (Procedure) Regulations 2020, if any application seeking modification or review of order or proceeding passed by this Commission is received, it may be considered by the Commission for appropriate order.

16. A copy of this Opinion, Report and Recommendations shall be sent to the informant; The Additional Chief Secretary, Home Department, Government of Karnataka forthwith.

Sd/-
(Justice D.H. Waghela)
Chairperson

Sd/-
(Shri K.B. Changappa)
Member

Sd/-
(Shri R.K. Dutta)
Member

G.S