

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** CD–2369/12

Case of **SALMAN KHAN** (deceased)

This file was opened on receipt of intimation/report from the District Magistrate/Sr.S.P. Patna dated 16.6.2012 about the custodial death of one Salman Khan resident of village Bagahi, P.S. Bihia district Bhojpur, who had been detained by Maner Police in connection with Maner P.S. Case No.157/12 and died while in custody supposedly in course of treatment in Patna Medical College Hospital (PMCH) on 15.6.2012.

The Commission called for copies of FIRs of Maner P.S. Case No.157/12 and Case No.158/12 – registered on the written report of the deceased's son, following his death under sections 323, 302, 379, 504/34 IPC, inquest report, post-mortem report, magisterial enquiry report etc. Considering the gravity of the matter the Commission thought it appropriate to get the incident investigated by IG BHRC Dr. Nirmal Kumar Azad as per provision of the Protection of Human Rights Act. Dr. Azad submitted his report on 25.9.2012. Deceased's son Md. Naushad had in the meantime filed complaint in the Commission. On consideration of Dr. Azad's report and documents brought on record along with the report the Commission issued notice to S.I. Ras Bihari Paswan (the then SHO Maner P.S), S.I. Saurabh Kumar and S.I. Dharendra Kumar, also of Maner P.S, in terms of section 16 of the Protection of Human Rights Act. Copies of the complaint of Md. Naushad – which has been filed in the meantime, and the report of Dr. Azad were furnished along with the notice to them. Notice was also issued to Sr.S.P. Patna. It later came to notice that investigation of Maner P.S. Case No.158/12 had been taken over by the CID. Notice was accordingly issued to ADG (CID) also.

The noticees viz. S.I.s Ras Bihari Paswan, Saurabh Kumar and Dharendra Kumar filed their written defence and the matter was finally heard in their presence on 28.12.2012. S.P. (Crime) Shri Pankaj Kumar Raj and SDPO Danapur Sri S.K. Saroj appeared respectively on behalf of ADG (CID) and Sr.S.P. Patna. S.I. Ras Bihari Paswan was also represented by Advocate Anup Upadhyay. He later filed additional reply/written defence on 31.12.2012.

The custody of deceased Salman Khan with effect from the night of 12/13th June 2012, to be precise, 3 A.M. in connection with Maner P.S. Case No.157/12 is admitted by the police. The case was registered later on 14.6.2012 under sections 401/120B IPC on the statement of S.I. Saurabh Kumar. Salman

Khan (hereinafter referred to as the deceased) admittedly remained in police custody upto the morning of 15.6.2012 when he was sent to the Addl. Chief Judicial Magistrate Danapur for the purpose of remand. Pursuant to remand order he was taken to the Adarsh Central Jail, Beur but in view of his physical condition i.e. injuries on his body, the jail officials refused to admit him in jail and in stead asked the police to get injury report from the doctor. He was taken to Primary Health Centre Maner where Dr. Devendra Kumar Chaudhary found the following injuries: -

- (i) extensive bruise 16"x11" on both glutial region having blood pigmented injuries with swellings.
- (ii) Swelling on the anal region.
- (iii) hard swelling on right and left glutial part of 10"x8.5" on the right side and 9"x7" on the left side.
- (iv) lacerated wound 4"x2.5" on the upper part of posterior region of left thigh.

After primary treatment Dr. Chaudhary referred him to NMCH. It may be mentioned here that as per the medical prescription the deceased had 105°F temperature and besides a few medicines he was given cold bath – apparently to control high temperature. It appears that the deceased was taken to NMCH from where he was referred to the IGIMS. The doctor who attended on the deceased in IGIMS described his condition as "in gasping state" who needed urgent ICU care, but as no bed was vacant in the ICU in IGIMS, he was referred to PMCH. In the circumstances, he was taken to PMCH where he succumbed to his injuries on the same day i.e. 15.6.2012.

The turn of events and the description of the injuries and the medical condition of the deceased leaves no room for doubt that he died as a result of injuries which he apparently suffered while in police custody i.e. at the hands of the police officials.

It may be mentioned that – as it usually happens in such cases – the staff of Maner P.S. including S.I.s Ras Bihari Paswan, Saurabh Kumar and Dharendra Kumar were quickly placed under suspension by Sr.S.P. Patna at 11:15 PM on the same day. It is another matter that their suspension was not only revoked but they were assigned thana duties which is a strange reflection on the working of the Patna police. The Commission will advert to this aspect later in this order.

Being a case of custodial death – due to death inflicted on the deceased by the police officials of Maner police station, the Commission expected the CID to book the accused persons under appropriate sections of the Indian Penal Code.

The Commission was dismayed to find that the CID has found the case to be true under sections 330 and 342/34 IPC. There is a clear attempt to dilute the offences committed by the accused – police officials. Section 330 IPC applies to a case of causing “hurt” for the purpose of extorting confession while section 342 applies to the case of wrongful confinement. The Commission is of the view that as the deceased died due to injuries suffered by him at the hands of the police officials, it is not a simple case of “hurt”; it is a case of homicide attracting the ingredients of ‘culpable homicide’ as defined in section 299 of the penal code.

The Commission does not wish to go into the question as to whether in the facts and circumstances, the offence of culpable homicide amounting to murder – as defined in section 300 IPC is also made out. Whether the facts and circumstances of the case constitute the offence of murder or culpable homicide involves niceties which should be better left to the court to conclude – on the basis of evidence led at the stage of trial. But if on evidence led before it – in a given case – it appears to the court that a case of murder or culpable homicide not amounting to murder, punishment under section 302 or 304 IPC respectively, is made out, it cannot convict the accused under those sections if charge has been framed for lesser offence(s) like section 330. The court can ‘climb down’ and award conviction for lesser offence but it cannot ‘climb up’ and convict the accused for a graver offence if the charge is framed for lesser offence.

On behalf of the delinquent-police officials – as also by S.P. (Crime), reference was made to the post-mortem report and it was submitted that as per the opinion of the team of doctors who had held post-mortem, the injuries found on the body of the deceased were not sufficient to cause death.

At this stage it would be appropriate to refer to the ante-mortem injuries found on the body of the deceased in course of post-mortem as under: -

- (i) contusion on both buttocks (whole part)
- (ii) contusion on anal (frontal aspect) of size 3"x2" situated 1¼" left from midline.
- (iii) contusion on left thigh just above knee on 4"x3" and
- (iv) contusion of size 1½"x 1½" on abdomen situated 1" above left umbilicus.

All these injuries had been caused by hard and blunt object.

It is no doubt true that in the opinion of the doctors, the injuries were not sufficient to cause death but it is pertinent to point out that what the doctors exactly said was they were not sufficient to cause “immediate” death. This itself is strange and not in accord with the language of the Indian Penal Code. Be that as

it may, the legal position is well settled that the post-mortem report is only a piece of evidence which is not conclusive of the relevant facts. Whether and how much of it should be believed is for the trial court to decide on consideration of the entire evidence on record.

The Commission would also observe that even if the injuries were not sufficient to cause (immediate) death of the deceased, it could still be a case of culpable homicide as defined in section 299. A bare glance at section 300 IPC will make it clear that where the injuries are sufficient in the ordinary course of nature to cause death, it would be a case of murder (see clause "thirdly" of section 300); else it would be a case of culpable homicide not amounting to murder.

The Commission is therefore of the view that the culpability of the accused-police officials having been proved in course of investigation of Maner P.S. Case No.158/12, they should be tried for the offence under sections 302 IPC, leaving everything else to the court to conclude as to whether the offence of murder punishable under section 302 IPC or culpable homicide punishable under section 304 or simply cause her to extort confession under section 330 or causing grievous injury on hurt under section 326 IPC is made out. The deceased having died a homicidal death, it would be a travesty of justice if the accused police officials are booked under section 330 IPC.

In fairness to the delinquent officials it may be mentioned that in course of hearing reference was made to the supplementary medical report of the doctors in which it was stated that deceased died due to heat stroke and infection, that is, or in other words, due to natural causes. The submission is fit to be summarily rejected. As observed above, it is for the trial court to take the final call. The delinquent officials will have full opportunity to defend themselves and produce evidence to prove their innocence. But if they are to be prosecuted at all the prosecution should be for offence not less than section 302 IPC.

It transpired in course of hearing that the submission of charge sheet in Maner P.S. Case No.158/12 is awaiting sanction from the competent authority. Sanction apparently is being sought in terms of section 197 of the Cr.P.C. – as stated by S.P. (Crime). The Commission would like to clarify in this connection that section 197 Cr.P.C. envisages grant of sanction in cases of judges, magistrates or public servants "removable from office by or with the sanction of the government". In a case where the public servant is removable by any authority lower than the government, no sanction under section 197 is required. Police officials of the rank of Sub Inspector are not removable from office by or with the sanction of the government; they are removable by District

Superintendent of Police and therefore section 197 is not applicable in their case. In any view, section 197 can be applied only in cases where the offence was committed "while acting or purporting to act in discharge of official duty". Committing murder cannot be part of official duty and therefore in such cases prior sanction under section 197 is not at all required. Besides, sanction is required at the stage of cognizance and therefore, whether in the instant case the sanction is at all required or not, also has to be left to the court to consider as and when objection to that effect is taken by an accused. The Commission is therefore of the considered view that charge sheet can be submitted in the instant case i.e. Maner P.S. Case No. 158/12 without sanction.

The Commission is of the view that besides criminal prosecution, departmental proceedings should also be initiated against the delinquent officials. In the facts and circumstances, the Commission is satisfied that the very initiation of action i.e. arrest of Salman Khan was mala fide and arbitrary. As seen above, the arrest was in a case registered under section 401 and 120B IPC. Section 401 applies to a person who is a "member of gang" engaged in "habitually" committing theft or robbery. As found by Dr. Azad, IG BHRC, there was not an iota of evidence that the deceased was associated with any gang nor there was any evidence of any such gang or the deceased habitually committing theft or robbery. Indeed, he had no criminal antecedents. The Commission therefore concurs with the findings of Dr. Azad that section 401 IPC in the facts and circumstances of the case was not applicable. Section 120B is an offence of general nature applicable in cases of criminal conspiracy and does not warrant any comments.

Dr. Azad had also found the officials guilty of violation of the provisions of Article 22 of the Constitution of India and sections 50 and 57 of the Code of Criminal Procedure, for their acts of omissions and commissions. Whereas the deceased was taken into custody in the wee hours of 13.6.2012 at 3 A.M, he was sent to the ACJM for judicial remand after more than 48 hours. Apparently, the officials were more interested in physically assaulting the deceased than following the mandate of law by producing him before the magistrate for remand. The Commission is satisfied that it is a fit case for initiating departmental proceedings against them. It is well settled that pendency of criminal case does not bar initiation of departmental proceeding.

The Commission is also at a loss to appreciate as to how the delinquent officials have been assigned Thana duties – considering their track record. As seen above, they were placed under suspension along with others of Maner P.S. One can take notice of the fact that in such cases, persons prima facie guilty of

committing some offence or wrong are placed under suspension to silence public ire – only to be reinstated later, giving them all benefits including salary for the suspension period without any work. Sr.S.P. Patna would do well to consider as to whether the delinquent officials should be kept on active duty much less assign duties in police stations.

The Commission is further of the view that prosecution of the delinquent officials and departmental proceeding against them may be of some solace to the victim family but is not enough. Justice demands that they be paid monetary compensation for the custodial death of the deceased. In the facts and circumstances, the Commission would award compensation of rupees three lakh to the victim family represented by widow of the deceased, if any, or the sons. The amount should be paid by the State Government at the first instance with liberty to recover the same from the delinquent officials. This should be done within a period of six weeks.

Having thus recorded its findings the Commission would direct ADG CID to submit charge sheet/prosecution report with respect to the delinquent officials in the light of the observations hereinabove, and further direct the Principal Secretary, Home (Special) Department to pay the amount of compensation within a period of six weeks.

The Commission would also direct Sr.S.P. Patna to submit his response in the light of the observations hereinabove.

Put up on 18.2.2013 awaiting compliance report from Principal Secretary, Home (Police) Department and (ii) ADG (CID), Bihar and response from Sr.S.P. Patna.

Copy of this order may be sent to (i) Principal Secretary, Home (Special) Department, (ii) ADG (CID) Bihar, (iii) Sr.S.P. Patna, (iv) S.I. Ras Bihari Paswan, (v) S.I. Saurabh Kumar, (vi) S.I. Dharendra Kumar and (vii) the applicant Md Naushad.

Date: 1.1.2013

Justice S.N. Jha
Chairperson