IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, FIROZABAD, UP PRESENT: MISS NAGMA KHAN, PCSJ

CASE NO. 3502/2015 CNR:UPFD040110512015 U/S 25 ARMS ACT PS: RASOOLPUR

STATE VS JACKY ALIAS PRASHANT

ORDER ON APPLICATION FOR MEDICAL EXAMINATION OF UNDER TRIAL PRISONER JACKY AND ACTION AGAINST THE WRONGDOERS

The order has been divided in to the following sections:

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We just moved past the International Day of Non-Violence. Past, ofcourse.

However if all such days could last forever, the world will be a better place to live for all.

Eerily, straight from an ott series- Reel life criminal justice styled incident has come knocking the doors of justice in Real.

Illegal rackets and brutal prisoner beating allegedly unleashed at the hands of authorities. **The resemblance is uncanny.**

Long Ago, the Hon'ble Supreme Court observed in *Munshi Singh Gautam vs State of MP*¹ that 'custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global.' It still resonates and rings true.

The court quoted what **Abraham Lincoln said once** 'If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that **you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."**

The court further was sharp in its criticism of custodial torture when it stated that 'If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.'

^{1 2005 (9)} SCC 631.

The court then declared for Article 21 right of the Indian Constitution that 'This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries.' And added that 'Article 20(3) and Article 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. Further that 'Justice Brandies's observation which have become classic are in following immortal words: Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law into himself (in (1928) 277 U.S. 438, quoted in (1961) 367 U.S. 643 at 659).'

Though India is not a party yet to the United Nations Convention against Torture², the prohibition of custodial torture and other cruel treatment is a part of Constitution of India and it is a part of international customary law as well. Universal Declaration of Human Rights a 'common standard of achievement for all peoples and all nations' was adopted by the United Nations.³ It contains under Article 5 that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Here has come a shocking incident which has flabbergasted this court-

Today, an under trial prisoner pleads for the medical examination of his person, facilitating his right against custodial torture and in view of his right to security of life and health before the court, on account of brutal assault inflicted, upon him by the authorities forming custodial torture as alleged for an act of defiance against an illegal canteen running in the jail premises and other illegal activities taking place inside jail. He submitted photographs in support of his allegations and showed his bare back before the court.

A. Facts and the prayer

An under trial prisoner Jacky s/o Mahipal Gupta R/o Gurudev Nagar PS Rasoolpur District Firozabad in Case No. 3502/2015, u/s 3/25 Arms Act 1959 Ps-Rasoolpur seeks the relief by way of an application dated 06.10.2025 that his medical examination be carried out and necessary action be taken against jail authorities after his due examination and diagnosis.

This court perused the application and photos attached with the application. This court heard the under trial prisoner Jacky, his counsel and observed the injury marks as present on the bare body of the under trial prisoner.

This court is aware of the battery of cases against the under trial prisoner Jacky but plainly stating, this does not give any authority or person the right to assault him. We might recollect that the purpose to confine a person in the prison wall is never to deprive him of his fundamental rights and physical liberties and not the least to assault him and dehumanize him.

² The Convention Against Torture and other Crue, Inhuman or degrading Treatment of Punishment has been adopted by the UN General Assembly Resolution 39/46 on 10 December 1984.

^{3 10&}lt;sup>th</sup> December commemorates the anniversary of the groundbreaking global pledge- the Universal Declaration of Human Rights, which lays down for the first time the fundamental human rights to be universally protected, available at: un.org/en/observances/human-rights-day.

Learned counsel for the accused submitted that the accused Jacky is an undertrial prisoner in the case beforehand. It has been stated in the application dated 06.10.2025 filed on behalf of under trial prisoner/accused Jacky that Narcotics(charas and ganja) is being sold in the District Jail Firozabad openly and Jailor and Deputy Jailor have openly given contract(theka) to Prisoner(Bandi) Kamlesh for illegal work. Added to that, quite illegally, one hotel is being run inside the jail and food items are being sold at expensive rates which has made the life difficult for poor prisoners. It has been stated that when the accused/undertrial prisoner Jacky objected to this, the Deputy Jailor Basant and Rajaram threatened him to get him transferred to some other jail. Even then he continued objecting, owing to which Sipahi Akash in connivance with Deputy Jailor Basant and Rajaram took him out of the barrack on 05.10.2025 at around 6:00 in the evening and assaulted him and beated him badly using sticks(lathi and danda) due to which the accused received injuries at his back and legs. It has been further stated that today when the undertrial prisoner was brought before this court for attending the court hearing, the undertrial prisoner narrated his ordeal to his learned counsel and showed his bodily injuries to him. It has been thus stated that the above named people have beated him and so it has been prayed that his medical examination be done and then necessary action as per law be taken in the interest of justice against the wrongdoers.

The under trial prisoner also orally informed this court that a canteen is running illegally in the jail premises and a tempo full of edible items arrive daily away from the camera capture and the items are sold at inflated prices. He stated that the fact of canteen being run can be found in the CCTV footage also. He also submitted that when he objected, he was beaten badly by Deputy Jailor, bandi Kamlesh along with others named in the application. When enquired as to why he was beaten he stated that he is not obliging to the demands of the Jail Superintendent and not paying enough courtesies and not giving any 'chauth' and so he was beaten up badly after taking him out of the barrack with lathi and danda on back, legs and thighs. He then lifted his tshirt to show the court the injury marks received on his back due to assault. He then pointed towards his thighs and stated that he has been beaten badly over there also and thus inflicted with injuries there also.

This court is stunned, shocked and is in deep awe witnessing the injury marks all over his bare back. And appalled at the injury marks as manifest from the photos submitted along with the application. The images are deeply troubling and any iota of truth in the allegations of the under trial prisoner should shake the conscience of every human being and us as citizens of the biggest democracy and we should rightfully hang our heads in shame. It is apt to put those photos here:



This court, after hearing on 06.10.2025, called for a report from the jail superintendent but till 2:00 PM today, the report has not been produced by the jail authorities.

Key to observe that:

In the words of the hon'ble Apex Court 'the courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with.'4

B. Rights against custodial torture, security and health of under trial prisoner

"Prisoners are also persons"-so held the hon'ble Supreme Court in the notable case of Sunil Batra vs Delhi Administration.⁵

Hon'ble Justice Iyer further observed that "prisoners have all the rights under the Constitution unless curtailed by due process." Hon'ble Justice quipped: "Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order" and hon'ble Justice concluded that "the world legal order which now recognises rights of prisoners in the International Covenant of Prisoners' Rights to which our country(India) has signed assent."

Article 21 of the Indian Constitution grants the right to protection of life and personal liberty to persons and it has been expanded to include a range of rights. The courts have recognized that these rights extend to prisoners also with curtailments necessitated by incarceration. The ICCPR 1966 under Article 7 declares that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

⁴ Munshi Singh Gautam (D) vs State of MP 2005 (9) SCC 631.

^{5 1980} AIR 1579. The court endorsed the British Government's White Paper titled 'People in Prison' which stated "A society that believes in the worth of individual beings can have the quality of its belief judged, at least in part, by the quality of its prison and probate services and of the resources made available to them."

⁶ See Standard Minimum Rules for the Protection of Prisoners, 1955, also see revised rules of 2015 termed as Nelson Mandela Rules(UNGA resolution 70/175 adopted on 17 December 2015) prescribing right to health care in custody for prisoners, available at: https://undocs.org/A/RES/70/175, also see Hernan Reyes,(December 01, 2001), Health and Human Rights in Prisons, available at: https://www.icrc.org/en/doc/resources/documents/misc/59n8yx.htm.

⁷ See Sunil Batra vs Delhi Administration 1980 AIR 1579, Prem Shankar Shukla vs Delhi Administration 1980 AIR 1535.

⁸ International Covenant on Civil and Political Rights 1966 was signed by India on April 10, 1979.

Every prisoner has a right against custodial torture. Right to health is both a fundamental right and a human right of the prisoner. Whilst "it is true that although we have crossed decades after Sunil Batra's case, till date that conditions in which prisoners are confined are not fully congenial to a very healthy atmosphere." ¹⁰

In **Parmanand Katara vs Union of India**¹¹ it has been established that "Article 21 casts the obligation on the State to preserve life" and 'State is duty bound to extend medical assistance for preserving life."

In Re-Inhuman conditions in 1382 Prisons vs State of Assam, 12 in 2017, the hon'ble Supreme Court's attention was drawn towards the Nelson Mandela rules 13 dealing with the prisoners' rights which were adopted by General Assembly of the United Nations in 2015 unanimously serving as internationally accepted guidelines for implementation by prison administrations across the country. The hon'ble court called for "implementation of international covenants 14 to which India is a signatory particularly United Nations Standard of Minimum Rule for Treatment of Prisoners, also called Nelson Mandela Rules."

A number of directions were issued by the court keeping in mind the rights of prisoners. The Court also directed the circulation of Nelson Mandela Rules and Model Prison Manual to DG Prisons/IGP in every state and Union Territory. And in para 33 of the judgment, observed -

"we are clearly of the view that Article 21 of the Constitution cannot be put on the back burner and as mentioned in the Mandela Rules even prisoners are entitled to live a life of dignity. Therefore, no State Government can shirk its duties and responsibilities for providing better facilities to prisoners."

Rule 1 of the Nelson Mandela Rules lays down that 'All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification' and Rule 8 mandates that in the prisoner file management system in the course of imprisonment 'requests and complaints including allegations of torture or other cruel, inhuman or degrading treatment or punishment be entered.' And Rule 34 is strict when it says that 'If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority.'

Additionally Rule 71 enjoins the duty on the jail authorities by stating that 'Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.'

⁹ See also UDHR 1948, ICCPR 1966.

¹⁰ See Bishal Das and others vs The State of West Bengal WP 12098 of 2023 (23 August 2023)

^{11 1980} AIR 2039.

¹² Writ Petition(Civil) 406 of 2013, Decision rendered on 15 September 2017.

¹³ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) A/RES/70/175 (8 January 2016).

¹⁴ Article 5 of UDHR, 1948 mandates non subjection to inhuman treatment and Article 7 of ICCPR, 1976 mandates the same spirit as the UN Statement of Minimum Rules for Treatment of Prisoners, See PV V Aravara Rao v NIA delivered by Bombay High Court on 22 February 2021.

Further the Rule 71 paragraph 2 contain that 'The obligation in paragraph 1 of this rule shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received.'

And paragraph 3 states that 'Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.'

With a view to advance the right to health, Rule 27 of the Mandela Rules prescribes that "All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care."

The UP Jail manual 2022¹⁵ imposes responsibility for health of prisoners' on jail authorities. The Model Prison Manual 2016 also lists right to fulfillment of basic minimum needs such as medical care and treatment under rights of prisoners. The International Covenant on Civil and Political rights contains under **Article 6** that "every human being has the inherent right to life" which "shall be protected by law." And the UDHR under Article 3 contains that "Everyone has the right to life, liberty and security of person."

Highlighting the importance of rights of under trial prisoners hon'ble Bombay High Court in *Dr. P. V. Varavara Rao vs National Investigation Agency And Anr*¹⁷ observed in para 40 that:

"In the case of Inhuman Conditions in 1382 Prisons, In re", hon'ble Apex Court "referred to the conditions in prisons in the context of human rights violations and the urgent need for reforms, including implementation of International Covenants, to which India is a signatory, particularly the United Nations Standard of Minimum Rule for Treatment of Prisoners, also called Nelson Mandela Rules. The Rajasthan High Court in Vaman Narayan Ghiya, specifically considered the right of a prisoner to proper medical treatment in the light of his health conditions. The right of a prisoner to obtain proper medical treatment was specifically recognized as a right under Article 21 of the Constitution of India by holding that the status of a prisoner could not be a consideration and that the prime consideration had to be adequate effective medical treatment necessary to keep the soul intact with the body."

And in the same case in para 83 these are the words of the hon'ble Apex Court that:

"..the fundamental rights guaranteed in Part III of the Constitution of India to prisoners languishing in four walls of prisons could be asserted on the basis of appropriate material to show that to recognize such rights, particularly the right guaranteed under Article 21 of the Constitution of India, the walls of the prison would have to be breached, subject of course, to imposition of appropriate conditions."

¹⁵ Framed under Section 59 of the Prisons Act, 1894. UP Jail Manual Paragraph 980 says-The Medical Superintendent and Medical officer shall be responsible for all matters connected with the health both physical and mental of the prisoners and their treatment when sick and the hygiene of the jail and they shall also comply with the provisions of sections 13,14,15,24(2), 26,29,38 and 50 of the Prisons Act 1894.

¹⁶ See ICCPR 1966.

¹⁷ Criminal Appeal 52 of 2021 with Writ Petition 63 and 64 of 2021, Decision rendered by Justice S.S.Shinde and Manish Pitale (22 February, 2021).

Hon'ble Bombay High Court passed directions in the case *Atul s/o Rajaram Shelke vs The State of Maharashtra and anr*¹⁸ to the Jail Superintendents that:

- 'i) The jail inmates are in the physical custody of Jail Superintendent and under-trial prisoners are in the constructive custody of Judicial Magistrate/Sessions Judge. It is their responsibility that except restriction on the liberties, their other fundamental rights should not be violated. There should not be any ill-treatment or harassment to them and there should not be any assault on them either by the jail authorities or by the other inmates which may threaten their life or limb. All precautions shall be taken by Superintendent of Jail to prevent such incidents of assault even in cases where the victim may be arrogant or of quarrelsome nature.
- ii) In case, any accused person is arrogant or indulges in abusing or assault, the Jail Superintendent may report about the same to concerned Judge and may also take appropriate action as per jail manual but he cannot be subjected to physical assault by the jail authorities.
- iii) In spite of taking all precautions, if any jail inmate is subjected to assault by jail guard or other inmates, he should be immediately provided medical aid in Jail Hospital. If the injuries are serious, he should be taken to Civil Hospital or any other hospital for proper treatment. The report about the said assault should be submitted to the Judges before whom the cases of victim as well as the assailants are pending. If necessary, the victim should be immediately produced before the concerned Judicial Magistrate who can record his FIR and direct investigation. Care should be taken to see that the victim and other witnesses are not subjected to any pressure so as to refrain them from disclosing the truth.
- iv) The Jail Superintendent shall immediately take steps to see that the members of assailant group and the members of victim group are not kept in the same barrack. In case there is complaint of assault by jail guards, the Jail Superintendent shall report the fact to his superior and shall also see that the same Jail Guard is not given duty in the barrack where the victim and other witnesses are kept.

v) The Judicial Magistrate while recording the complaint of the victim and statement of witnesses should take utmost precaution to see that they are not under fear. They should be assured that they would be kept away from the assailants and they should be free to disclose the true facts. The inquiry in such matters should be conducted expeditiously within a very short time and as far as possible the cases of such assaults on jail inmates should be expeditiously decided on priority basis.

The right against custodial torture and right to health and security of life of the under trial prisoner is thus concretely grounded and flows from under the Constitution of India and also under the Nelson Mandela Rules and other human rights and international conventions as detailed.

In the light of the landmark decisions of the hon'ble Apex court and various High Courts in the domain of right to security, health and right against custodial torture of prisoners and above observations of this court, it is equally important to point out that the State is duty bound to act as a facilitator in upholding the fundamental rights of citizens in a democracy. The court in view of the above discussion, Article 21 of the Indian Constitution, international legal instruments -the ICCPR and UDHR, and Nelson Mandela Rules concludes that right against custodial torture and to the security of one's person and health of an under trial prisoner subject to reasonable restrictions are well established.

¹⁸ Criminal Writ Petition No 331 of 2015, Decided on 23 January 2018.

C. Conclusion and Interim Order and Directions

Precious human rights cannot be put on a backburner. There is no gainsaying the fact that the authorities should not do a mere lip service.

As to the facts as asserted by the under trial prisoner through ld counsel, the photos as submitted and injuries as apparent require immediate and urgent medical intervention, this court is duty bound to exercise what is mandated by law and language of the courts as explained in the preceding part.

Being fully aware of the significance of the right against custodial torture, right to security, and health clearly as covered under Article 21 of the Indian Constitution and international conventions, this court feels it is duty-bound to protect the precious human rights of the right to health of under trial prisoner Jacky and get him independently examined and also to facilitate his right to security of life and right against custodial torture.

FINAL ORDER

'A right delayed is a right denied' Martin Luther King Jr. stated once; this court feels immediate and urgent remedial steps are necessitated in the given factual scenario concerning the under trial prisoner. This court will stop short in assessing the true level of medical treatment required for the under trial prisoner as that can only be possible after the complete diagnosis by the experts in the field concerning his medical condition, who will assess and submit their report as directed below.

This court therefore issues the following directions keeping in mind the enjoinment of duty upon the magistrate to be ever mindful of the constitutional mandates of the hon'ble Supreme Court¹⁹-

a. This court directs the **Chief Medical Officer**, **Firozabad** to constitue an independent medical board comprising at least two doctors of highest standard and integrity from the District Hospital Firozabad immediately to medically examine under trial prisoner Jacky and sumbit a detailed report on the complete injuries present on the body of the under trial prisoner within 48 hours. The board shall report on medical and legal aspects of the injury. The board shall recommend the required treatment plan for under trial prisoner Jacky.

A copy of his examination and analysis suggesting the course of treatment to be followed be sent to this court immediately after examination the under trial prisoner within 48 hours and a copy of the same be sent to the Jail Medical Superintendent also who will implement the order as to the treatment of the undertrial prisoner.

b.The **Jail Superintendent** is directed to produce him before the Chief Medical Officer, Firozabad immediately without fail and cooperate with medical board and get his examination done and complete report submitted to this court within 2 days and thereafter periodic reports twice a week to fully implement the course of treatment as suggested by the board. Both of them should coordinate in an efficient way so that he is examined urgently and properly;

c.Based on under trial prisoner's specific circumstances, this court directs the **Superintendent of Police Firozabad** to be prompt in rendering necessary assistance to the jail authorities as demanded in taking the under trial prisoner in the case beforehand to the district hospital and the CMO, Firozabad for his diagnosis and treatment safely. He is also directed to ensure that the under trial prisoner Jacky is not placed in the same barrack as that of the co-inmate named by him in his complaint and his safety be ensured in jail and he should not be placed in contact with the officials named in the complaint.

¹⁹ Mantoo Majumdar vs State of Bihar AIR 1980 SC 847.

d.The Jurisdictional SDM is directed to make enquiry after taking the following steps-

i. The statement of the under trial prisoner Jacky, co-prisoners, other witnesses and jail authorities named in the complaint and who were involved in the assault of under trial prisoner Jacky and were witnesses to the incident

ii.statement of the medical staff of the jail who administered him

iii.assess the CCTV footage of the date of incident and accompanying dates as to the allegations of running of illegal canteen and assault

iv. check and enquire whether any Narcotics are being sold in the Jail

The jail Superintendent is also directed to preserve the CCTV footage of the day of the incident of assault.

- e. Considering the bounden duty of the Jail Superintendent Firozabad to make sure that no assault takes places against the prison inmates and in case it does necessary action warranted and reporting of such incident of assault and proper medical treatment afforded to the prisoner to this court which is clearly lacking in the case beforehand, DIG Prison Agra is directed to conduct a parallel enquiry as to the negligence and breach of service rules on the part of the Jail Superintendent, Deputy Jailor and other authorities involved in not controlling the entire situation leading to the assault and thereafter recommend necessary disciplinary action for breach of service rules of the wrongdoers
- f. A copy of the complaint and this order is being sent to respected CJM Firozabad for FIR and necessary action
- g. The court believes that interest of justice and implementation of this right to realize the prisoners' access to justice would be best served with the help of, DM, SSP, CMO and jurisdictional SDM; therefore the court believes a copy of this order be communicated to these authorities along with DGP UP, DG Prisons UP and IG Agra Range.

Dated this 07th day of October 2025.

Nagma Khan Addl Chief Judicial Magistrate, Firozabad JO Code UP02445

Copy to DGP UP, DG Prisons UP and IG Agra Range, CJM, DM, SSP, CMO and Jail Superintendent through email as well for necessary action