



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

WRIT PETITION NO. OF 2020

In the matter of Article 226 of
the Constitution of India

Devika Natwarlal Rotawan

...Petitioner

Versus

1. **State of Maharashtra**
Through its Chief Secretary,
Mantralaya, Madam Cama Road,
Hutatma Raj Guru Chowk, Nariman Point,
Mumbai - 400032
2. **State of Maharashtra**
Through its Home Department,
Mantralaya, Madam Cama Road,
Hutatma Raj Guru Chowk, Nariman Point,
Mumbai - 400032
3. **Union of India**
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi - 110001
4. **Union of India**
Through its Secretary,
Ministry of Social Justice & Empowerment,
Shashtri Bhawan, New Delhi - 110001

.....Respondents

Devika



TO,
THE HON'BLE THE CHIEF JUSTICE
OF BOMBAY AND HIS HON'BLE
COMPANION JUSTICES,

THE HUMBLE PETITION OF 'THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The present Writ Petition has been preferred by the petitioner herein seeking a writ of mandamus or direction to the respondents to provide/allot a residential accommodation to her and make provision for her education on compassionate grounds. The petitioner herein is a victim of a brutal terrorist attack took place at Mumbai on 26.11.2008. In the said brutal attack, 166 persons were killed and 238 persons were serious injured including the petitioner herein.
2. That Respondent No.1 is the State of Maharashtra represented by administrative head of the State Government. Respondent No.2 is also the State of Maharashtra represented by the Home Department of the State Government. The Home Department handles all policy matter related to law and order. Respondent No.3 is the Government of India represented by the Home Secretary, who is the administrative head of the Ministry of Home Affairs. Respondent No.4 is the Government of India represented by Ministry of Social Justice and Empowerment. It is responsible for the welfare, social justice and empowerment of disadvantaged and marginalised sections of the society including the victims of crime.




That a concise statement of the facts and circumstances leading to and/or necessitating the filing of the present Petition is set out below:

That on 26.11.2008, the petitioner herein alongwith his father, Natwarlal Rotawan and brother Jayesh Kumar Rotawan reached at Chatarpathi Shivaji Terminus (CST) Station at 9 pm to catch the train as she was going to Pune to visit her eldest brother Bharat Kumar Rotawan who was residing separately. When they all were waiting for the train in the main hall at about 9.50 pm, they heard loud sound of explosion, hearing which, they decided to leave the station and when they were leaving, the firing started. The terrorists were throwing hand-grenades and firing indiscriminately at public. The terrorists were armed with the highly sophisticated and lethal weapons and ammunitions.

That in the incident, when the petitioner herein was leaving the station alongwith her family, she sustained a serious bullet injury on her right leg. The said bullet was fired by accused Mohammad Ajmal Kesab using AK-47 rifle. The petitioner fell unconscious as the injury was bleeding. After sometime, the police came there and she was taken to St. George Hospital where she was operated. The petitioner herein sustained following injuries on her person:

- (i) Entry wound over anterior aspect of right leg 0.5cm x 1 cm
- (ii) Exit wound over posterior aspect of right leg 1 cm x 1 cm

That the petitioner herein was operated as many as 6 times and her injuries were treated in the hospital for about a month and a half and thereafter, she remained bedridden for four to six months. Even after



six months of the incident, she was not being able to walk properly. It is stated that when the incident took place, the petitioner herein was just 9 years old.

3.4 That after the incident, the representatives of the Central Government as well as State Government visited the chaal where the petitioner herein was residing with her father and brother Jayesh Lumar Rotawan. After meeting the petitioner, when the representatives of the State Government found that she was residing with her father and one brother in the chaal and their financial condition is very poor inasmuch as there was no permanent source of income for their sustenance, the said representative of the State Government promised allotment of a residential accommodation under EWS Scheme and award of monetary compensation for her education etc. in addition to the expenses for medical treatment. Subsequent thereto, the petitioner was awarded monetary compensation which was spent in the medical expenses and her post-operative care.

3.5 That subsequently, in trial of Mohammad Ajmal Kesab, the petitioner herein was summoned to the Court of Sessions Judge for her examination. During the trial, the petitioner was examined as a key eye-witness by the prosecution inasmuch as she sustained the bullet injuries by the weapon of the accused. During her testimony, the petitioner herein identified the accused as the person who was firing at the CST Station. Her father was also examined. The testimony of the petitioner and her father was considered to be of the great



importance by the prosecution and the same was heavily relied by the Sessions Judge. It is stated that based on the testimony of the petitioner and her father, Mohammad Ajmal Kesab was convicted and sentenced to death by the Sessions Judge. The importance of her testimony was appreciated by this Hon'ble Court and the Hon'ble Supreme Court also in their respective judgments whereby the conviction fo the accused was confirmed and death sentence was confirmed.


3.6 That in spite of the fact that the petitioner herein was a victim of such a gruesome attack and she alongwith her father proved be key eye-witnesses in the trial of Mohammad Ajmal Kesab, when she was neither provided/allotted any residential accommodation nor was any provision made for her education, in 2009, she alongwith her father approached the State Government of Maharashtra seeking its indulgence in providing rehabilitative measures to her and her family as promised to them immediately after the incident. However, all went in vain. Subsequent thereto, a number of representations and requests were made by the petiitoner to provide a residential accommodation and make provision for her education as promised to her by the Government representatives. It is humbly submitted that the father of the petitioner was not having any regular source of income and the financial difficulties were being faced by him in meeting the medical expenses and giving rents, etc.

3.7 It is stated that till the time, the evidence of the petitioner and her father was not recorded in the trial proceedings of Mohammad Ajmal



Kesab, the repeated assurances were given to them verbally, however, after the conclusion of the trial by order dated 06.05.2010, no heed was paid by the State Government for providing/allotting a residential accommodation and making provision for the education of the petitioner and all her requests were fell into deaf ears.

- 3.8 That it is humbly submitted that the petitioner herein and her father have written number of communications to the offices of Hon'ble Prime Minister and Chief Minister seeking their help, however, no response to the same was ever made by the authorities. Recently, on 19.07.2020, the petitioner herein made a representation to the Chief Secretary of the State Government of Maharashtra requesting for the allotment of a residential accommodation under EWS Scheme on compassionate grounds, however, no response to the same was received by the petitioner. A true copy of the Representation dated 19.07.2020 submitted by the petitioner herein is annexed herewith and marked as "**Exhibit A**".
- 3.9 That it is seen that immediately after the attacks by the terrorists, the Governments express concern and solidarity with the families of the deceased and victims, however, attention toward them melt away soon after the memory of the incident fades. It is humbly submitted that the reason for such an indifferent attitude towards the victims of the terrorist attacks is due to the fact that there is no specific law which provides for the rehabilitation of the victims in addition to payment of compensation. On number of occasions, the Bill were



introduced in both the Houses, however, the same were not passed and the details of the same are as follows:-

- (i) On 03.12.2004, the Victims of Terrorism (Compensation and Rehabilitation) Bill, 2004 was introduced in the Rajya Sabha. The Bill provided for establishing a National Commission for Victims of Terrorism so that victims may approach this commission to claim compensation. A true copy of the Victims of Terrorism (Compensation and Rehabilitation) Bill, 2004 is annexed herewith and marked as "**Exhibit B**".
- (ii) On 19.12.2008, Shri Gireesh Kumar Sanghi, member Rajya Sabha introduced Victims of Terrorism (Compensation and Miscellaneous Provisions) Bill. The Bill provided that the appropriate Government shall formulate rehabilitation package for the victims of terrorist violence by way of providing employment, vocational training, self-employment and such other measures as the Government may deem fit and necessary. A true copy of the Victims of Terrorism (Compensation and Miscellaneous Provisions) Bill is annexed herewith and marked as "**Exhibit C**".
- (iii) In 2012, the Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012 was introduced in the Lok Sabha by Shri Chandrakant Khaire. This Bill provided that the Central Government has to bear all the expenses of the victims and makes provision for their rehabilitation. A true copy of the Victims of Terrorism (Provision of Compensation and



Welfare Measures) Bill, 2012 is annexed herewith and marked as **"Exhibit D"**.

- (iv) Lastly in 2017, the Victims of Terrorism (Compensation And Miscellaneous Provisions) Bill, 2017 was introduced by Shri Shivaji Adhalrao Patil in the Lok Sabha. The Bill provided for duty of the appropriate government to rehabilitate victims of terrorism by providing them employment, vocational training, self employment and other such measures. A true copy of the Victims of Terrorism (Compensation And Miscellaneous Provisions) Bill, 2017 is annexed herewith and marked as **"Exhibit E"**.

It is stated that all above Bills became redundant, as no further action was taken by the Parliament.

- 3.10 That in 2008, the Central Government formulated 'Central Scheme for Assistance to Civilian Victims/Family of Victims of Terrorist, Communal and Naxal Violence' which came into force with effect from 01.04.2008. The Scheme was formed to provide the civilian victims and the families of the deceased an amount of Rs.3 lakhs as assistance from the Central Government. Subsequently, in 2016, the Central Government revised the guidelines of assistance scheme as "Central Scheme for Assistance to Civilian Victims of Terrorist/Communal/Left Wing Extremist, Cross Border Firing and Mine blasts on Indian Territory". In the revised Assistance Scheme, the compensation amount has increased from Rs.3 lakhs to Rs.5 lakhs. The benefit of this scheme can be availed in case of death or



permanent impairment only but not otherwise. If a victim suffered injuries in a terrorist attack and later on recovered, then he is not eligible to avail the benefit of this scheme.

3.11 That the Parliament by way of Criminal Procedure Amendment Act, 2008 inserted Section 357A in the Code of Criminal Procedure, 1973 for providing compensation and assistance to the victims of the crime which came into force with effect from 31.12.2009. Section 357A of the Code of Criminal Procedure provides that every State Government in coordination with the Central Government shall prepare compensation scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Section 357A Cr.P.C. mandates that the Court has to recommend the District Legal Service or State Legal Service Authority to decide the quantum of monetary compensation to be awarded to the victims. In terms of Section 357A Cr.P.C., the State Government of Maharashtra has framed Manodharya Scheme which came into force with effect from 21.10.2013. Under the said Scheme, the State Government provides compensation of an amount of Rs.3 lakhs. Subsequently, the said Scheme was revised in 2017. Under the revised Scheme, the State Government of Maharashtra provides Rs.10 Lakh as financial assistance to the women beneficiary. However, the amount to be paid as compensation would depend upon the crime faced by the victim. As per the Scheme, out of the compensation amount, 25% amount is provided immediately whereas the rest of the amount i.e. 75% amount is deposited in her



bank account for a time period of 10 years. The Scheme is prospective in operation.

3.12 It is humbly submitted that at present, there is no law or policy which provides for rehabilitative measures for the victims or his family. Due to the absence of such a specific law dealing with the subject matter, the need of victims of terrorist attack for rehabilitation remained unattained as soon as the memories of the gruesome incidents fades. It is humbly submitted that some special cases require rehabilitative measures on compassionate grounds in addition to the grant of monetary compensation and the present case is one among such cases.

3.13 In the present case, the father of the petitioner herein is more than 60 years old and her mother had already died even prior to the incident. Recently, she has been diagnosed with tuberculosis. Also, Jayesh Kumar Rotawan, the brother of the petitioner is suffering from spinal cord problem and he has been operated thrice for the said problem. At present, he is suffering from hernia and the operation of the same is yet to be done. Other brother of the petitioner, namely, Bharat Kumar Rotawan is still residing in Pune and has severed all his relations with the petitioner and other family members.

3.14 It is humbly submitted that the petitioner and his family have no source of income and they are not in a position to meet even their basic necessities, much less, paying monthly rent of chaal. It is humbly submitted that due to non-payment of rent, the landlord of the chaal has threatened the petitioner and her family members to




forcibly take possession of the room in which they are living on rent. Not only this, the petitioner herein who has recently passed 12th standard is forced to discontinue her education.

4. That in these facts and circumstances, the petitioner herein has approached this Hon'ble Court for seeking its indulgence for passing directions to the respondent for making rehabilitative measures for the petitioner. It is submitted that the respondents be directed to provide/allot a residential accommodation to the petitioner and her family and make provision for her education on compassionate grounds.
5. Being aggrieved by the denial of rehabilitative measures, the Petitioner herein has approached this Hon'ble Court on the following amongst other grounds which are taken without prejudice to one another:

GROUNDS

1. The petitioner herein is a victim of a brutal terrorist attack took place at Mumbai on 26.11.2008. She sustained a serious bullet injury on her right leg for which she was operated 6 times. She remained bedridden for four to six months. Even after six months of the incident, she was not being able to walk properly. It is humbly submitted that immediately after the incident, the said representative of the State Government promised allotment of a residential accommodation under EWS Scheme and award of monetary compensation for her education etc. in addition to the expenses for medical treatment, however, the petitioner herein was neither



provided/allotted any residential accommodation nor was any provision made for her education by the Government.

- II. That the petitioner was examined as a key eye-witness by the prosecution. The petitioner herein identified the accused as the person who was firing at the CST Station. Her father was also examined. The testimony of the petitioner and her father was considered to be of the great importance by the prosecution and the same was heavily relied by the Sessions Judge to convict and sentence him to death. The importance of her testimony was appreciated by this Hon'ble Court and the Hon'ble Supreme Court also in their respective judgments whereby the conviction of the accused was confirmed and punishment of death penalty was upheld.
- III. It is humbly submitted that a victim of a terrorist attack cannot be a forgotten man. It is he who suffers the most. Injustice to victims in terms of reparation would create a constitutional vacuum in the legal system.
- IV. It is humbly submitted that some special cases require rehabilitative measures on compassionate grounds in addition to the grant of monetary compensation and the present case is one among such cases. It is humbly submitted that the petitioner and his family have no source of income and they are not in a position to meet even their basic necessities, much less, paying monthly rent of chaal. It is humbly submitted that due to non-payment of rent, the landlord of



- the chaal has threatened the petitioner and her family members to forcibly take possession of the room in which they are living on rent.
- V. That the father of the petitioner herein is more than 60 years old and her mother had already died even prior to the incident. Recently, she has been diagnosed with tuberculosis. Also, Jayesh Kumar Rotawan, the brother of the petitioner is suffering from backbone problem and he has been operated thrice for the same. Besides, the petitioner herein is a meritorious student and recently, she has passed 12th standard, however, due to financial constraints, she is not even able to continue her education.
- VI. That at present, there is no law or policy which provides for rehabilitative measures for the victims or his family. It is humbly submitted that due to the absence of such a specific law dealing with the subject matter, the need of victims of terrorist attack for rehabilitation remained unattained. In the present case also, the petitioner herein was not given what was promised to her after the incident as a rehabilitative measure.
- VII. It is humbly submitted that the concept of restorative justice broadly includes compensating the victim in monetary terms, however, the same is not enough and compensation cannot be the sole remedy to restore the life of the victim. In deeper sense, restoring justice to victims would include all the efforts to make the victim's life as normal as it could be and as similar as it could be before the concerned crime. Such restoration would, hence include rehabilitation, healthcare assistance, educational support, etc.



III. That concerning the rights of the victim and the need for his rehabilitation, the Court of Appeal in (1965) 1 All ER 563, Ward vs. James held that:-

"although you cannot give a man so gravely injured much for his lost years, you can, however, compensate him for his loss during his shortened span, that is during his expected years of survival. You can compensate him for his loss of earnings during that time and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair."

- IX. That the Hon'ble Orissa High Court in *Saraswate Parabhai v. Grid Corp. of Orissa* (AIR 2000 Ori 13) held that "It is the fact that perfect relief is barely possible and money cannot make good a physical structure of that has been battered and shattered" court referred to the Lord Morris in the case of *West v. Shephard* ((1964) AC 326).
- X. That in the *Gopinath Ghosh v. State of Jharkhand & Anr* (MANU/JH/0200/2014) the Hon'ble High Court has held that the compensation amount fixed by the Government is not adequate for the rehabilitation of the victims of the terrorist attacks.



- XI. That it is very unfortunate that on one hand, the importance is given to protect the rights of the accused persons and for the same, the considerable amount of money is spent by the Governments whereas, on the other hand, the victims are not given much importance and forgotten after few days of the incident. As per a news item published in the Hindu Newspaper, both the State Government and Central Government collectively spent an amount of Rs.29.5 crores on accused Mohammad Ajmal Kesab to provide him food, security medicines etc. during his confinement.
6. In the light of the above, the petitioner has no choice but to approach this Hon'ble Court under Article 226 of the Constitution of India for appropriate reliefs. The petitioner does not have any alternate or efficacious remedy except for this Writ Petition.
7. The petitioner submits that she has not filed any other petition or other proceedings concerning the same subject matter for the same reliefs in any other court or tribunal.
8. That the petitioner has affixed the requisite court fees of Rs. to this petition.
9. That the petitioner will rely upon documents, a list whereof is annexed hereto.

PRAYERS

The Petitioners therefore pray for:-

- (a) a writ of *Mandamus* or a writ in the nature of *Mandamus*, or any other writ, order or direction to the Respondents to provide / allot a residential accommodation to the victim of the terrorist attack under EWS Scheme on compassionate grounds;
- (b) a writ of *Mandamus* or a writ in the nature of *Mandamus*, or any other writ, order or direction to the Respondents to make provision for education of the petitioner on compassionate grounds;
- (c) such other and further reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THESE ACTS OF KINDNESS, THE PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY.

Devika
Petitioner

Place: Mumbai
Date : 21.08.2020

Manoj
Advocate for Petitioner

VERIFICATION

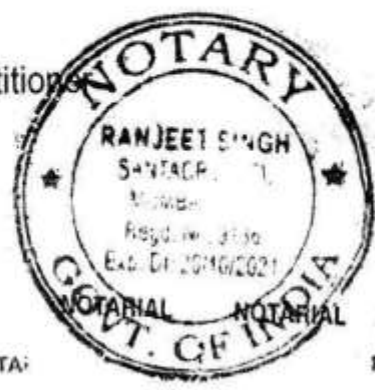
I, Devika Natwarlal Rotawan, the Petitioner abovenamed do, hereby, solemnly affirm and state that the contents of Paragraphs 1 to 9 are true to the best of my knowledge and belief and I believe the same to be true and correct.

Solemnly affirmed at Mumbai]

21st
Dated this day of August, 2020]



Advocate for the Petitioner



RANJEET SINGH
M.Sc.LL.B
NOTARY
MAHARASHTRA
GOVT. OF INDIA

Register Sr. No	2499
Dated	21 AUG 2020

NOTA:

RIA: