AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.29 of 2014

1. Sunderlal Patel, aged 34 years, S/o Shri Koduram Patel,

2. Bahorikram Bhatt, aged 54 years, S/o Shri Sukhram Bhatt,

Both are residents of Village Sarmandi, P.O. Solounikala, P.S./Tahsil Bhatgaon, District Balodabazar-Bhatapara (C.G.)

---- Petitioners

Versus

1. The High Court of Chhattisgarh, through the Registrar General, Chhattisgarh High Court, Bilaspur, P.S./P.O. Chakarbhata, Tahsil Bilha, District Bilaspur (C.G.)

2. The Sessions Judge-cum-Special Judge, Janjgir, P.S./P.O./ Tahsil Janjgir, District Janjgir-Champa (C.G.)

3. The Superintendent of Central Jail, Bilaspur, P.S. Civil Line, P.O./Tahsil/District Bilaspur (C.G.)

4. The State of Chhattisgarh, through the Secretary, Ministry of Law, Mahanadi Bhawan, New Raipur, P.O./P.S./Tahsil/ District Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Somnath Verma, Advocate.

For Respondents No.1 and 2: -
Mr. Praveen Das, Advocate.

For the State/Respondents No.3 and 4: -
Mr. Dheeraj Kumar Wankhede, Govt. Adv.

Amicus Curiae: Mr. Saurabh Dangi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

11/04/2016

1. Father of our Nation said: -

"To deprive a man of his natural liberty and to

deny to him the ordinary amenities of life is worse than starving the body; it is starvation of the soul, the dweller in the body."

"Mahatma Gandhi"

2. Complaining infringement of their fundamental right guaranteed under Article 21 of the Constitution of India i.e. protection of life and personal liberty, the petitioners herein, who are two in numbers, have filed this writ petition stating inter alia that they have been unlawfully and illegally detained by respondents No.2 and 3 for 113 days depriving them of their personal liberty and therefore, they are entitled for monetary compensation from the respondents jointly and severally, and also seek a direction for holding departmental action for illegal detention against respondent No.2/respondent No.3.

3. The writ petitioners have sought the above-stated relief(s) on the following factual backdrop: —

3.1) The petitioners herein were charge-sheeted and prosecuted for commission of offence under Section 20(b)(i)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Special Case No.1/2011. The Special Judge (NDPS) respondent No.2 herein by its judgment delivered on 27-7-2011 convicted them for the above-stated offence and sentenced them to undergo R.I. for five years and further sentenced them to pay a fine of ₹ 5,000/- each, in default to further undergo RI for six months.

3.2) Feeling aggrieved and dissatisfied against the judgment of conviction recorded and sentence awarded for five years and fine, the petitioners preferred criminal appeal under Section 374(2) of the CrPC before this Court bearing Cr.A.No.657/2011 titled as Sunderlal and another v. The State of Chhattisgarh. This Court ultimately upon hearing to the parties, delivered judgment on 18-6-2013 and upheld the conviction but the jail sentences awarded to the petitioners were reduced to the period already undergone by them.

3.3) In compliance of the judgment of this Court as required under the criminal rules and orders, the Registry of the High Court by its memo dated 25-6-2013 endorsed the copy of the judgment duly certified to the Special Judge, NDPS Act, Janjgir-Champa – respondent No.2 herein and to the respondent No.3 herein – Superintendent of Central Jail and also to the petitioners herein through the Superintendent, Central Jail, Bilaspur for information and necessary action. The certified copy of the judgment of this Court (High Court) was duly received in the Court of Special Judge (NDPS)/respondent No.2 herein, but no release/super-session warrant was issued directing the jail authorities to release the petitioners upon the jail sentence held to be undergone by this Court and thereafter, some how, the petitioners made an application only on 9-10-2013 before the Court of Session, Janjgir-Champa and on the same day, they were released, but in the meanwhile, from 18-6-

2013 to 8-10-2013 = 113 days, they remained in jail, even though their jail sentences were reduced to the period already undergone, by this Court.

4. The petitioners herein feeling aggrieved by the said detention, have filed this writ petition alleging that their illegal and unlawful detention of 113 days after the jail sentence having been held to be undergone by the High Court, is clearly unauthorized and has occurred on account of carelessness on the part of the Presiding Officer of respondent No.2 and respondent No.3 which resulted in violation of their fundamental right guaranteed under Article 21 of the Constitution of India for which they are entitled for monetary compensation from the respondents particularly, respondents No.3 and 4, and an appropriate departmental action be directed to be initiated against the official respondents who may be found responsible for negligence in duty and illegal detention of the petitioners. It has been further pleaded that the petitioners have suffered monetary loss on account of their illegal detention apart from mental, physical and psychological pain and suffering and as such, appropriate writ(s) be issued against the respondents herein.

5. Respondents No.1 and 2 have filed joint return stating inter alia that the petitioners' jail sentences were directed to be undergone by this Court by judgment dated 18-6-2013 passed in Cr.A.No.657/2011 by partly allowing the appeal and

upholding the conviction. The Registry of respondent No.1 immediately, on 25-6-2013, dispatched the copy of the judgment dated 18-6-2013 to the Special Judge (NDPS Act), Janjgir-Champa; to the Chief Judicial Magistrate, Janjgir; and to the Superintendent, Central Jail, Bilaspur, where the accused persons/petitioners herein were confined; and also to the accused persons through the Superintendent, Central Jail, Bilaspur which was duly received by the Reader of the Special Judge, NDPS Act on 12-7-2013, but the Reader of the Special Judge Shri Anil Singh did not place the judgment duly received by him before the Sessions Judge, Janjgir-Champa and the said judgment remained with him. On 9-10-2013, an application was moved on behalf of the petitioners herein before the Court of Session, Janjgir for releasing them. The Sessions Judge immediately issued release order and thus, the petitioners were released on the same day. It was further pleaded that the Court of Special Judge, NDPS Act, Janjgir was functioning till 30-3-2013 and thereafter, on 1-4-2013, Shri J.V. Nimonkar was appointed as Additional Sessions Judge (FTC), Janjgir-Champa, however, the Court of Additional Sessions Judge (NDPS Act) was lying vacant. On 3-7-2013, the District Judge transferred the NDPS matters to the Fast Track Court for hearing and disposal in accordance with law. Shri Anil Singh was posted as Reader to the Additional Sessions Judge (FTC) and in that capacity, on 12-7-2013, he received the certified

copy of the judgment dated 18-6-2013 but he did not produce the same before the District Judge or before the Additional Sessions Judge (FTC), who was hearing the NDPS matters, for release of the petitioners and that resulted in unfortunate delay in releasing the petitioners and there is no delay attributed to either respondent No.1 or respondent No.2 which resulted in release of the petitioners. It has been further pleaded that for misconduct committed by Shri Anil Singh, a departmental enquiry has been instituted and charge-sheet has been issued to him on 1-9-2015 and departmental proceeding is pending consideration, as such, the writ petition against respondents No.1 and 2 deserves to be dismissed.

6. Respondents No.3 and 4 – the State Government have filed their separate return stating inter alia that respondent No.3 has acted faithfully and diligently in accordance with law complying the provisions contained in Section 425 of the CrPC as well as Rule 768 of the Jail Manual and on receipt of super-session/ release warrant on 9-10-2013, respondent No.3 with utmost promptness released the petitioners on the same day on 9-10-2013 as such, the writ petition deserves to be dismissed against respondents No.3 and 4.

7. Mr. Somnath Verma, learned counsel appearing for the writ petitioners, would vehemently submit that the petitioners' jail sentences having been held to be undergone by this Court on 18-6-2013, it was the duty on the part of respondents No.2 and

3 to release the petitioners immediately thereafter by taking minimal time in issuing the super-session warrant, but the presiding officer of respondent No.2 and respondent No.3 even after getting the order passed by the High Court duly certified under Section 425 of the CrPC, did not act promptly and failed to take steps for releasing the petitioners by which they remained in jail for 113 days which resulted in violation of their fundamental right provided under Article 21 of the Constitution of India which is plainly unauthorized in law. The presiding officer of respondent No.2 and respondent No.3/Jail Superintendent are responsible for the alleged unlawful act of illegal detention of the petitioners for 113 days for which respondent No.4 being the employer is liable to make payment of compensation and this Court in exercise of jurisdiction under Article 226 of the Constitution of India can grant such compensation. Mr. Verma would further submit that apart from grant of compensation, necessary direction as the Court deems fit be issued for prosecuting the responsible officer(s) for the alleged violation of the fundamental right of the petitioners by allowing this writ petition with cost(s).

8. Mr. Praveen Das, learned counsel appearing for respondents No.1 and 2, would stoutly submit that respondent No.1 with utmost promptness certified the judgment of the High Court under Section 425 of the CrPC read with Rule 315 of the Criminal Courts—Rules and Orders and has promptly sent to

respondent No.2 but the Reader of respondent No.2 did not produce the copy of the judgment/certified order before the presiding officer of respondent No.2 – NDPS Court which resulted in non-issuance of release warrant right in time, but ultimately, when an application was moved on behalf of the petitioners on 9-10-2013, release warrant was immediately issued by the presiding officer of respondent No.2 and the petitioners were released without any delay. Mr. Das would further submit that for the lapse committed by Shri Anil Singh, Reader of respondent No.2, regular disciplinary proceeding has already been initiated and charge-sheet has also been served upon him, as such, there is no carelessness or delay on the part of respondents No.1 and 2 in releasing the petitioners upon jail sentence held to be undergone by this Court. Mr. Das would also submit that the writ petition as framed and filed claiming compensation is not at all maintainable and the petitioners be relegated to the remedy of traditional civil suit for the alleged violation, if any, as such, the public law remedy under Article 226 of the Constitution of India cannot be invoked by the petitioners. Therefore, the writ petition deserves to be dismissed.

9. Mr. Dheeraj Kumar Wankhede, learned Government Advocate appearing for the State/respondents No.3 and 4, would submit that the super-session/release warrant was issued by respondent No.3 only on 9-10-2013 and the petitioners were

released on the same day i.e. on 9-10-2013 acting promptly and complying the super-session/ release warrant confirming to Rule 768 of the Jail Manual and Section 425 of the CrPC issued by respondent No.2 NDPS Court and as such, respondents No.3 and 4 cannot be held liable and the writ petition against them deserves to be dismissed.

10. Mr. Saurabh Dangi, learned *amicus curiae*, would submit that the petitioners remained in jail for 113 days after their jail sentences were held to be undergone by the High Court on 18-6-2013 and their continuance in jail thereafter till 9-10-2013 was completely unauthorized and illegal which has resulted in violation of their fundamental right for which they are entitled for monetary compensation from respondents No.3 and 4 in the writ petition filed, which is maintainable in law for such an unauthorized act by respondents No.2 to 4.

11. I have heard learned counsel for the parties and considered their rival submissions made by either side herein and also gone through the record with utmost circumspection.

12. After hearing learned counsel for the parties and after going through the record, following questions emerge for consideration: -

    1) Whether the petitioners were detained illegally by the respondents for 113 days without authority of law?

    2) Whether the writ petition filed under Article 226 of the

Constitution of India is appropriate remedy for grant of compensation to the petitioners for their alleged unlawful detention?

3) Whether "right to life" is a fundamental right guaranteed under Article 21 of the Constitution of India?

4) Which of the respondent(s) would be liable for payment of compensation?

5) If entitled, what should be the quantum of compensation?

Answer to Question No.1: -

13. The petitioners were convicted for the offence under Section 20(b)(i)(ii)(B) of the NDPS Act on 27-7-2011 in Special Case No.1/2011 and in appeal this Court by its judgment dated 18-6-2013 upheld the conviction but jail sentences were reduced to the period already undergone by the petitioners. The procedure to be followed when the sentence under which the accused is in confinement is reversed or modified by the High Court, is prescribed in sub-rule (2) of Rule 315 of the Criminal Courts—Rules and Orders which states as under: -

> "(2) When a sentence is modified or reversed in appeal by the High Court of Judicature, the warrant shall be signed and issued by the Court to which the appellate judgment or order is certified under Section 425 of the Code:
>
> Provided that if it is shown that delay in the release of a prisoner would otherwise be caused, the warrant may be issued direct by the High

Court of Judicature and the fact intimated to the Lower Court."

14. A careful perusal of the afore-stated rule would show that when a sentence is modified or reversed in appeal by the High Court, the warrant shall be signed and issued by the Court to which the appellate judgment or order is certified under Section 425 of the CrPC which provides as under: -

> "**425. Who may issue warrant**.—Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office."

15. In the case in hand, warrant for execution of sentence awarded by the NDPS Court was issued by the Special Judge (NDPS) – respondent No.2 and therefore for issuing the release warrant, the Registry of this Court sent the certified copy of the judgment dated 18-6-2013 to the Special Judge (NDPS) for certification under Rule 315(2) of the Criminal Courts—Rules and Orders which was duly received by the Reader of that Court on 12-7-2013. Rule 768 of the Jail Manual also provides the same procedure upon modification of the sentence by the appellate Court. Rule 768 of the Jail Manual reads as follows: -

> "768. In every case in which a sentence is reversed or modified on appeal the appellate court shall prepare a fresh warrant in accordance with the terms of the order passed and shall send the same to the officer-in-charge of the jail in which the appellant is confined. It shall at the

same time recall and cancel the original warrant and shall forward it to the original court to be attached to the record. The fresh warrant when returned with an endorsement or execution will be similarly dealt with. Provided that if an appellant has been released on bail pending the hearing of his appeal the fresh warrant shall not be sent to the Superintendent of the Jail until the prisoner has surrendered and it shall be the duty of the appellate court either directly or through the court by which the order of release on bail was actually issued, to take measures to secure his surrender.

Note.—When a sentence is modified or reversed in appeal by the High Court of Judicature, the warrant shall be signed and issued by the court to which the appellate judgment or order is certified under section 425 of the Code of Criminal Procedure, 1898:

Provided that if it is shown that delay in the release of a prisoner would otherwise be caused, the warrant may be issued direct by the High Court of Judicature and the fact intimated to the lower court."

16. Note appended to Rule 768 of the Jail Manual provides that when a sentence is modified or reversed in appeal by the High Court, the warrant shall be signed and issued by the court to which the appellate judgment or order is certified under Section 425 of the CrPC.

17. Thus, by virtue of Rule 315(2) of the Criminal Courts—Rules and Orders read with Rule 768 of the Jail Manual, issuance of

super-session warrant/release warrant upon reversal/ modification of sentence in appeal is the responsibility of the Court to which the appellate judgment or order is certified under Section 425 of the CrPC. In this case, it was the responsibility of the presiding officer of respondent No.2/NDPS Court to issue the release warrant immediately upon receipt of the copy of the judgment dated 18-6-2013 from the High Court / respondent No.1. Therefore, it is not the obligation of the accused persons to produce the copy of the judgment to the concerned Court for their release but the law obliges the appellate Court or the High Court, as the case may be, to send a copy of the judgment to which the appellate judgment or order is certified under Section 425 of the CrPC. Thus, it was the responsibility of the presiding officer of respondent No.2 to issue release warrant or super-session warrant upon receipt of the copy of the judgment from respondent No.1 modifying the sentences awarded to the petitioners and by which they were entitled to be released forthwith.

18. Concededly and doubtlessly, jail sentences of the petitioners were held to be undergone by the High Court on 18-6-2013. Despite the order of the High Court duly certified under Rule 315(2) of the Criminal Courts—Rules and Orders was received by the Reader of respondent No.2 NDPS Court on 12-7-2013, no super-session warrant / release warrant was issued right in time by respondent No.2, as that Court had issued warrant for

execution of jail sentences awarded by them under Section 425 of the CrPC by virtue of Rule 315(2) of the Criminal Courts—Rules and Orders read with Rule 768 of the Jail Manual and the petitioners remained in jail up to 9-10-2013, the date on which an application was filed on behalf of the petitioners by their counsel along with his own affidavit for release of the petitioners, and ultimately, they were released on 9-10-2013. Thus, it is clearly established that the petitioners remained in jail from 18-6-2013 to 8-10-2013 which was completely unauthorized and without backed by any procedure established by law and which resulted in violation of the petitioners' fundamental right guaranteed under Article 21 of the Constitution of India that is protection of life and personal liberty. The first question is answered accordingly.

Answer to question No.2: -

19. Determination of the first question that the petitioners suffered violation of their fundamental right, as they remained in jail for 113 days unlawfully and illegally brings me to the next question as to whether the writ petition is an appropriate remedy for claiming compensation and other ancillary reliefs or they have to be relegated to the traditional mode of recovering damages by instituting usual civil suit in the jurisdictional civil court for redressal of their grievances.

20. In this regard, learned counsel for the petitioners would rely upon Article 21 of the Constitution of India and would submit

strenuously that respondents No.2 to 4, abusing their power conferred on them by the State, unlawfully detained the petitioners which resulted in infringement of their fundamental right to life guaranteed under Article 21 of the Constitution of India. He would further submit that the only proper and valid mode of redressal of their grievances for the interference made to their right to life by the State/its authorities is award of monetary compensation and a claim in public law for compensation by the State for violation of their fundamental right and human right is maintainable. Therefore, respondent No.4 State is liable to pay compensation for the act infringing their fundamental right guaranteed under the Constitution of India.

21. In the matter of **State of Rajasthan v. Mst. Vidhyawati and another**[1], the Supreme Court has held the State of Rajasthan liable for compensation on account of rash and negligent driving of jeep owned and maintained by the State of Rajasthan and it has been held as under: -

> "Now that we have by our constitution, established a Republican form of Government and one of the objectives is to establish a socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle or in public interest that the State should not be held liable vicariously for the tortuous act of its servant."

1 AIR 1962 SC 933

22. In the matter of **Kasturi Lal v. State of U.P.**[2], the Supreme Court reiterated the old 'doctrine of crown immunity'. But, a three Judges Bench of the Supreme Court in the matter of **Common Cause, a Registered Society v. Union of India**[3] (see paragraph 78) did not follow the decision rendered in **Kasturi Lal** (supra) and observed that the theory of sovereign power which was propounded in **Kasturi Lal** (supra) is no longer available in a welfare State.

23. In the matter of **Rudul Sah v. State of Bihar**[4], in a writ petition filed before the Supreme Court seeking compensation for illegal detention in jail for over 14 years, the Supreme Court has held that the only effective remedy open to the judiciary to prevent violation of the right guaranteed under Article 21 of the Constitution of India is payment of compensation under Article 32 of the Constitution of India and observed as under: -

> "Although Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right.
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> *** *** ***

2 AIR 1965 SC 1039
3 (1999) 6 SCC 667
4 (1983) 4 SCC 141 : AIR 1983 SC 1086

> In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with Article 21, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against these officers."

24. Likewise, in the matter of **Nilabati Behera v. State of Orissa**[5], the Supreme Court considered the question whether the constitutional remedy of compensation for infringement of fundamental right is distinct from and in addition to remedy in private law for damages and observed as under: -

> "Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. A claim in

5 (1993) 2 SCC 746 : AIR 1993 SC 1960

public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right."

25. In the matter of **D.K. Basu v. State of West Bengal**[6], the Supreme Court has laid down certain principles to be followed in cases of arrest and detention.

26. Likewise, in the matter of **Chairman, Railway Board and others v. Chandrima Das (Mrs) and others**[7], the Supreme Court has held that in case of violation of fundamental rights, the public law remedy would be available, and observed as under: -

"Where public functionaries are involved and matter relates to violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. The public law remedies have also been extended to the realm, and the court can award compensation to the petitioner who suffered personal injuries

6 (1997) 1 SCC 416 : AIR 1997 SC 610
7 (2000) 2 SCC 465 : AIR 2000 SC 988

amounting to tortuous acts at the hands of officers of the Government."

27. The propositions laid down in **Rudul Sah** (supra) and **Nilabati Behera** (supra) have been followed in principle by Their Lordships of the Supreme Court in **P.A. Narayanan v. Union of India and others**[8], **M.S. Grewal v. Deep Chand Sood**[9], **Bhim Singh v. State of J&K and others**[10], **Smt. Kumari v. State of Tamil Nadu and others**[11], **Saheli, a Womans Resources Centre v. Commissioner of Police**[12], **Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association and others**[13] and **Mehmood Nayyar Azam v. State of Chhattisgarh and others**[14].

28. Thus, in light of the law laid down by Their Lordships of the Supreme Court in above-quoted judgments, it is now well settled that this Court in exercise of jurisdiction under Article 226 of the Constitution of India under public law, can consider and grant compensation to the victim(s) who has suffered infringement of fundamental right i.e. right to life and personal liberty guaranteed under Article 21 of the Constitution of India. This question is answered accordingly by holding that the present writ petition filed claiming compensation for infringement of fundamental right guaranteed under Article 21

8 AIR 1998 SC 1659
9 (2001) 8 SCC 151 : AIR 2001 SC 3660
10 AIR 1986 SC 494
11 AIR 1992 SC 2069
12 (1990) 1 SCC 422 : AIR 1990 SC 513
13 (2011) 14 SCC 481
14 (2012) 8 SCC 1

of the Constitution of India, is maintainable.

Answer to question No.3: -

29. The above-stated determination brings me to advert to the next question whether right to life is a fundamental right under Article 21 of the Constitution of India. Article 21 of the Constitution of India which has been provided in Part-III, Fundamental Rights, provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. It is a principle which has been accepted, recognized and applied in all civilized countries including India. The object of Article 21 is to prevent interference in the personal liberty of citizens by the Executive save in accordance with law and in conformity with the provisions thereof and in accordance with the procedure established by law. Right to Life; personal liberty is one of the basic human rights and even the State has no authority to violate that right. (See **Siddharam Satlingappa Mhetre v. State of Maharashtra**[15].) Right to move freely is an attribute of personal liberty. (See **Maneka Gandhi v. Union of India**[16].)

30. Likewise, “Right to Life” set out in Article 21 of the Constitution of India means something more than mere survival or animal existence. (See **State of Maharashtra v. Chandrabhan Tale**[17].) This right also includes the right to live with human dignity and all that goes along with it, namely, the bare

15 AIR 2011 C 312
16 AIR 1978 SC 597
17 (1983) 3 SCC 387 : AIR 1983 SC 803

necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in different forms, freely moving about and mixing and commingling with fellow human beings. (See **Francis Corallie Mullin v. Administrator, Union Territory of Delhi**[18], **Olga Tellis v. Bombay Municipal Corpn.**[19] and **Delhi Transport Corpn. v. D.T.C. Mazdoor Congress**[20].) In the matter of **Kharak Singh v. State of U.P.**[21], the Supreme Court has held that unwarranted domiciliary visit by the police can be held to be violative of Article 21. In **Uphaar Tragedy Victims Association** case (supra), the Supreme Court has observed that "Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right". Thus, it is implicit that right to life and liberty would include right to live with human dignity and any breach or violation of right to life would entail serious civil consequences and that would be actionable.

31. Therefore, it is well established by catena of decisions and above mentioned judgments of the Supreme Court that if the right guaranteed under Article 21 of the Constitution of India has been denied by illegal action of the State or its officers, the

18 (1981) 1 SCC 608 : AIR 1981 SC 746
19 AIR 1986 SC 180 (paras 33 & 34)
20 AIR 1991 SC 101 (paras 223, 224 and 259)
21 AIR 1963 SC 1295

person concerned is entitled for compensation, though loss to personal liberty cannot be compensated in terms of money.

32. In a celebrated book on law of torts titled as "**Clerk & Lindsell on Torts**" (Nineteenth Edition), false imprisonment is correctly defined as complete deprivation of liberty for any time, however short, without lawful cause and false imprisonment is a type of trespass to a person that is actionable even without proof of special damage.

33. In conclusion, it is held that right to life is a fundamental right guaranteed under Article 21 of the Constitution of India and for its breach or violation, the petitioners are entitled for monetary compensation from the respondents who are responsible for its breach. It is held accordingly.

Answer to question No.4: -

34. The above-stated determination takes me to the question as to the liability of the respondent(s) to pay the compensation. It is not in dispute that the appointing authority of the presiding officer of respondent No.2 is respondent No.4 State Government and respondent No.1 has disciplinary control over respondent No.2 under Article 235 of the Constitution of India. Thus, master-servant – employer-employee relationship exists between respondent No.4 – State Government and the presiding officer of respondent No.2 for all practical purposes.

35. It is well settled law that joint wrongdoers are jointly and

severally responsible for the whole damage, the person injured may sue any one of them separately for the full amount of the loss or he may sue all of them jointly in the same action and the judgment so obtained against all of them may be executed in full or against any one of them.

36. **Salmond and Heuston on the Law of Torts** (Twentieth Edition) defined who are joint tortfeasors by providing as under:-

> "**(1) Who are joint tortfeasors**
>
> Where the same damage is caused to a person by two or more wrongdoers those wrongdoers may be either joint or independent tortfeasors. Persons are to be deemed joint tortfeasors within the meaning of this rule whenever they are responsible for the same tort —that is to say, whenever the law for any reason imputes the commission of the same wrongful act to two or more persons at once. This happens in at least three classes of cases—namely, agency, vicarious liability, and common action, i.e. where a tort is committed in the course of a common action, a joint act done in pursuance of a concerted purpose. In order to be joint tortfeasors there must be a concurrence in the act or acts causing damage, not merely a coincidence of separate acts which by their conjoined effect cause damage. The *injuria* as well as the *damnum* must be the same. ..."

The learned Author in Chapter 21 while dealing with **Vicarious**

Liability defined "**Vicarious Liability**" as under: -

> "A master is jointly and severally liable for any tort committed by his servant while acting in the course of his employment. This is by far the most important of the various cases in which vicarious responsibility or vicarious liability is recognised by the law. Vicarious liability means that one person takes or supplies the place of another so far as liability is concerned. Although the doctrine-has its roots in the earliest years of the common law, it was Sir John Holt (1642-1710) who began the task of adapting medieval rules to the needs of a modern society, and his work was continued by the great Victorian judges."

37. **Clerk & Lindsell on Torts** (Nineteenth Edition) in Chapter 6-Vicarious Liability, while dealing with Liability of employer for torts of employee, held as under: -

> "**Liability of employer for torts of employee**
> Where the relationship of employer and employee exists, the employer is liable for the torts of the employee so long only as they are committed in the course of the employee's employment. The nature of the tort is immaterial and the employer is liable even where liability depends upon a specific state of mind and his own state of mind is innocent. It is not sufficient to make the employer liable if the acts of the employee for which he is responsible do not themselves amount to a tort but only amount to a tort when linked to other acts which were not performed in the course of the employee's employment. All the features of

> the wrong necessary to make the employee liable, have to occur in the course of employment. Where they do so occur, and the question of the employer's liability in contribution proceedings arises, the decision of the House of Lords in *Dubai Aluminium Co. Ltd. v. Salaam*[22] becomes relevant. For it was held there that the innocence of the employer was irrelevant; he should be treated as standing in the employee's shoes."

Further, the learned Author in paragraph 6-51 while dealing with "Employee's breach of statutory duty" held as under: -

> "**Employee's breach of statutory duty** The "master's tort" / "servant's tort" debate comes to the fore when a statutory duty imposed directly and solely on an employee is broken by the employee without his being guilty of common law negligence. Only if the "servant's tort" approach is accepted can the employer be liable. The House of Lords three times considered, and three times left open, the question of whether an employer could be liable for the breach of statutory duty imposed on an employee. But in Majrowski v Guy's and St. Thomas' NHS Trust it was held, authoritatively, that an employer can be so liable. According to Auld L.J.: "it is now clear that, in general, an employer may be vicariously liable for a breach of statutory duty imposed, on his employee, though not on him" on the Lister basis that "his breach of the statutory obligation is so closely connected with his employment and/or is a risk reasonably incidental to the employer's

22 [2002] UKHL 48; [2003] 2 A.C. 366

business, that it is fair and just to hold the employer vicariously liable".

38. **Winfield & Jolowicz on Tort** (Sixteenth Edition) in Chapter 20 Vicarious Liability, defined "The Nature and Basis of Various Liability" as under: -

> "The expression "vicarious liability" signifies the liability which A may incur to C for damage caused to C by the negligence or other tort of B. The fact that A is liable does not, of course, insulate B from liability, though in most cases it is unlikely that he will be sued or that judgment will be enforced against him. It is not necessary for vicarious liability to arise that A shall have participated in any way in the commission of the tort nor that a duty owed in law by A to C shall have been broken. What is required is that A should stand in a particular relationship to B and that B's tort should be referable in a certain manner to that relationship. A's liability is truly strict, though for it to arise, a case of negligence, there has to be fault on the part of B. The commonest instance of this in modern law is the liability of an employer for the torts of his servants done in the course of their employment. The relationship required is the specific one, that arising under a contract of service, and the tort must be referable to that relationship in the sense that it must have been committed by the servant in the course of his employment. It is with this instance of vicarious liability that the first part of this chapter is concerned, but there are other instances which cannot be followed in detail in a

> work of this kind. Such are the liability of partners for each other's torts and, perhaps, the liability of a principal for the torts of his agent."

Same Author while dealing with Scope of Employment in paragraph 20.9 held that "it is necessary that the acts done by the servant within the scope of his employment constitute an actionable wrong in themselves".

39. Thus, a master is vicariously liable for the tort committed by the servant acting in the course of employment. The justification for rule is public policy and for the wrong committed by the presiding officer who presided the NDPS Court/respondent No.2 during the relevant period in not issuing super-session/ release warrant right in time and respondent No.4, both are jointly and severally responsible for the alleged detention of the petitioners and action for damages/compensation can be filed either against both of them or against the employer only and as such, the writ petition filed claiming compensation against the employer/respondent No.4 State Government is maintainable and respondent No.4 is liable for compensation for the wrong done by its presiding officer of the NDPS Court/respondent No.2. It was not necessary for the petitioners to implead the said judicial officer in this writ petition personally. This question is answered accordingly.

Answer to question No.5: -

40. Now, the only question that remains to be determined is the

quantum of compensation.

41. The petitioners in the writ petition have neither pleaded nor averred their avocation, job or their income for quantifying the compensation, and the writ petition is blissfully silent in this regard. They only pleaded that handsome compensation in lakhs be awarded for violation of their personal liberty, by the respondent State.

42. In the matter of **Lucknow Development Authority v. M.K. Gupta**[23], the Supreme Court has held that when the court directs payment of damages or compensation against State, the ultimate sufferer is the common man. It is the tax payers' money, which is paid for action of those who are entrusted under the Act to discharge their duties in accordance with law. Therefore, this Court is inclined to keep this reality in mind while assessing and awarding damages for the petitioners' unlawful detention of 113 days and violation of their fundamental right guaranteed under Article 21 of the Constitution of India.

43. It appears from the record that the petitioners are agricultural labourers. By their illegal detention for 113 days, they have lost their earnings as per the Minimum Wages Act applicable to the agricultural labourers, during this period of detention. In addition to this, I have to consider the fact that they were deprived of their personal liberty and their role as a family member to look-after their family including children and

23 1994(1) SCC 243 : AIR 1994 SC 787

apart from this, they have suffered mental agony and pain for unauthorized detention of 113 days. At present, minimum wages per day as per the rate prescribed by the Collector is around ₹ 200/- per day and for 113 days it would come to ₹ 22,600/-, adding ₹ 28,000/- more for mental pain and suffering it would come to ₹ 50,000/- which each of the petitioners are entitled and respondent No.4 is liable to make payment.

44. For the reasons stated in the foregoing paragraphs, the writ petition is allowed and it is directed that respondent No.4 State of Chhattisgarh shall pay an amount of ₹ 50,000/- to each of the petitioners, total ₹ 1 lakh, for their illegal detention from 18-6-2013 to 9-10-2013 = 113 days, within one month from the date of receipt of certified copy of the order/production of the order failing which the amount would earn an interest at the rate of 6% per annum. The cost(s) is quantified as ₹ 5,000/- to be paid by respondent No.4 to the petitioners.

45. Before parting with the record, I must mention that on account of the inaction/carelessness on the part of the presiding officer of respondent No.2 Court, the petitioners remained in jail unauthorizedly for a period of 113 days and the case of respondent No.2 is that the Reader of that Court failed to produce the order of this Court directing release of the petitioners before the NDPS Court, right in time and therefore, the petitioners could not be released in time and as such,

departmental proceeding has been initiated against the Reader of the respondent No.2 Court. In the considered opinion of this Court, that is not sufficient when the personal liberty of any individual or of a person, who has been directed to be released by the Court, is involved. I hope and trust that upon receipt of the copy of this order, respondent No.1 High Court of Chhattisgarh in its administrative jurisdiction would do well to prevent recurrence of such an event in future and to further consider the feasibility of making a foolproof system to ensure, where a sentence is modified or reserved in appeal by this Court, the warrant is signed and issued by the Court to which appellate judgment or order is certified under Section 425 of the Code of Criminal Procedure, 1973, expeditiously without loss of time as required by sub-rule (2) of Rule 315 of the Criminal Courts—Rules and Orders read with Rule 768 of the Jail Manual to avoid any such embarrassment to all concerned.

46. This Court also appreciates the excellence of written submission prepared and submitted by Mr. Saurabh Dangi, learned *amicus curiae*, in short notice.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.29 of 2014

Sunderlal Patel and another

Versus

The High Court of Chhattisgarh and others

HEAD NOTE

A person detained in jail despite the order of release by the appellate Court is entitled for compensation of his illegal detention for breach of his fundamental right under Article 21 of the Constitution of India.

ऐसा व्यक्ति जो अपीलीय न्यायालय द्वारा मुक्त करने के आदेश के बावजूद जेल में निरूद्ध रखा गया हो, भारतीय संविधान के अनुच्छेद 21 के अंतर्गत अपने मौलिक अधिकारों के हनन के लिए अपने अवैधानिक निरोध के विरूद्ध प्रतिकर पाने का अधिकारी है।