

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 21st OF JULY, 2022**

WRIT PETITION No. 13667 of 2013

Between:-

**INDER SINGH, SON OF SHRI BHODU
DEHARIYA AGED ABOUT 45 YEARS, R/O
PATHARI, P.S. BHICHUVA, DISTRICT
CHHINDWARA (MADHYA PRADESH)**

.....PETITIONER

(SHRI ARUN VISHWAKARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH CHIEF SECRETARY, LAW AND**

**1. LEGAL WORKS DEPARTMENT,
VINDHYANCHAL BHAWAN, BHOPAL (M.P.)**

**THE STATE OF M.P. THROUGH ITS
SECRETARY GENERAL ADMINISTRATION**

**2. DEPARTMENT, MANTRALAYA, VALLABH
BHAWAN, BHOPAL (M.P.)**

**THE DIRECTOR GENERAL OF JAIL AND
REFORMATORY SERVICES, VALLABH**

3. BHAWAN, BHOPAL (M.P.)

**THE SUPERINTENDENT OF JAIL,
CHHINDWARA, DISTRICT CHHINDWARA**

4. (M.P.)

THE SUPERINTENDENT OF JAIL, CENTRAL

5. JAIL, JABALPUR (M.P.)

6. THE STATE OF M.P. THROUGH

COLLECTOR, CHHINDWARA (M.P.)

.....RESPONDENTS
(SHRI SWAPNIL GANGULY- DEPUTY ADVOCATE GENERAL WITH SHRI PRAVEEN NAMDEO - GOVERNMENT ADVOCATE)

This petition coming on for hearing this day, the court passed the following:

ORDER

With the consent of the parties, this petition is heard finally.

2. The instant writ petition has been filed under Article 226 of the Constitution of India seeking direction to the respondents to pay him the compensation for his illegal detention for almost four years in jail.

3. The brief facts leading to filing of this case are that the petitioner is a poor villager, resident of Village Pathari, Police Station Bhichuva, District Chhindwara. The FIR was registered against the petitioner for the offence under Section 302 of the IPC. Vide judgment dated 14.03.2005 passed in Sessions Trial No.176/2004, the petitioner was sentenced to Rigorous Imprisonment for life and fine of Rs.1000/- in default of fine further Rigorous Imprisonment for one month. Being aggrieved by the conviction and sentence dated 14.03.2005 the petitioner preferred a Criminal Appeal which was registered as Cr.A. No.845/2005. Vide judgment dated 25.09.2006 Court modified the conviction and sentence of the petitioner as mentioned in para-7 of the order as under:-

7- *“In the circumstances of the case and considering the nature of injury,*

we are of the opinion that this is a case of culpable homicide not amounting to murder. Therefore, conviction of appellant under Section 302 of the IPC is set aside and he is convicted for the offence under Section 304 Part II IPC and sentenced to 5 years rigorous imprisonment and fine of Rs.1000/- (Rupees one thousand only)''.

4. On 04.10.2006, the judgment dated 25.09.2006 passed in Cr.A. No.845/2005 was dispatched by registered post to the Superintendent, District Jail, Chhindwara as well as the District and Sessions Judge, Chhindwara.

5. This Court vide order dated 16.06.2022 had directed the counsel for the State to call for the records of the Central Jail, Chhindwara in respect of receipt of the judgment and action taken thereof. The report dated 11.07.2022 has been produced before the Court along with certain documents. The Registry of this Court had written to the District Judge, Chhindwara to send the records pertaining to the dispatch of the order from the District Judge Chhindwara for enabling this Court to come to the conclusion as to whether the petitioner would be entitled for compensation or not. The District Sessions Judge, Chhindwara vide letter dated 05.07.2022 has not sent the relevant record in respect of receipt and dispatch of the letter but has sent the order-sheet dated 01.06.2012 by which super-session warrant has been issued.

6. Thus, in the normal course, even if the petitioner did not deposit the fine, he ought to have been released on 25.09.2009. But he was not released. Neither modified warrant, as required under Rule 315 of the Criminal Courts Rules and Orders was issued by the Court concerned for his release nor the jail authorities

approached the Court in this regard. The petitioner was finally released after almost 3 years 11 months and 5 days of illegal detention on 02.06.2012 (as per report) when the letter dated 26.05.2012 was sent by Shri Arun Vishwakarma, Advocate Jabalpur along with the copy of the judgment dated 25.09.2006, the Superintendent, District Jail, Chhindwara, informed the First Additional Sessions Judge, Chhindwara pursuant to which modified warrant was issued. The petitioner, shattered by his prolonged illegal detention for no fault of his, has therefore approached this Court for being compensated by the State Government on the ground of violation of his fundamental right guaranteed under Article 21 of the Constitution of India.

7. Learned counsel for the petitioner contended that there is no dispute or any doubt that the petitioner was detained illegally in prison for almost 3 years 11 months and 5 days even after his sentence was reduced in Criminal Appeal by this Court. In such circumstances, the petitioner was compelled to illegal incarceration in Jail for no fault of his by the State Government or by its Officers or by the Concerned Court.

8. Learned counsel for the petitioner has relied on the judgment of the Division Bench of this Court in the case of *Pooran Singh vs. State of M.P. & Ors.* passed in *WP No.14593/2008* wherein exactly the similar circumstances, the petition was allowed and the State Government was directed to pay him the compensation of Rs.3 lakhs for his illegal detention. On this ground, learned counsel for the petitioner prays for a direction to pay the appropriate compensation.

9. *Per contra*, learned counsel for the State opposed the prayer and contended that 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 Cr.P.C. In this case, it was the responsibility of First Additional Sessions Judge, Chhindwara to issue the release warrant immediately upon receipt of copy of the judgment dated 25.09.2006 from the High Court. Therefore, in view of the above fact the State Government is not responsible for the delay in releasing the petitioner from the jail.

10. Admittedly, according to IA No.5476/2022 which is an application for taking the documents on record, certain RTI information has been produced to show that the judgment dated 25.09.2006 passed in Cr.A. No.845/2005 was dispatched by registered post to the Superintendent, District Jail, Chhindwara as well as District Judge, Chhindwara on 04.10.2006 and thereafter super-session warrant/ release warrant was issued on 01.06.2012 without there being any explanation. Even the report of the District and Sessions Judge does not contain the explanation as to why the release warrant was issued after so much delay.

11. Thus, it is clearly established that the petitioner remained in jail illegally for a period of 3 years 11 months 5 days which has resulted in violation of the fundamental right guaranteed under Article 21 of the Constitution of India i.e. protection of life and personal liberty.

12. In the case of Pooran Singh (supra) the Division Bench of this Court has held that a survey of the cases referred above goes to show that it is now well settled that

the defence of sovereign immunity is not available when the State or its officers, acting in the course of employment, infringe a person's fundamental right of life and personal liberty as guaranteed by Article 21 of the Constitution of India and the State can be directed in a writ jurisdiction under Article 32 and 226 to repair the damage done to the victim by paying appropriate compensation.

13. In view of the aforesaid and the fact that the petitioner was kept in illegal detention for almost 4 years the State Government is directed to pay him the compensation of Rs.3 lakhs within a period of 2 months from the date of receipt of certified copy of the order.

14. In order to prevent similar victimization of prisoners by the jail authorities and the Courts, since 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 is the responsibility of the Court to which the appellate judgment or order is certified under Section 425 of the Criminal Court Rule, in such a situation Jail Authorities/ State Government cannot be held guilty for not releasing the petitioner on time. Admittedly, the super-session warrant/ release warrant was issued on 01.06.2012 as is evident from the report of the District Judge Chhindwara along with warrant dated 01.06.2012 which has been annexed.

15. In view of the aforesaid, this Court directs the Registrar (Vigilance), Madhya Pradesh High Court, Jabalpur to immediately hold an inquiry and submit a report within a period of two months to the Registrar General as to why the modified

warrant was not issued from the Court of First Additional Sessions Judge, Chhindwara after passing of the judgment in Cr.A. No.845/2005 on 29.05.2006. If any person is found responsible for the lapse, suitable action permissible in the law may also be taken against him.

16. With the aforesaid directions/observations, the petition is **allowed**.

17. No order as to costs.

(S.A. DHARMADHIKARI)

JUDGE

DPS