2026 INSC 1226

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026

(@ SPECIAL LEAVE PETITION (CRL) NO. 12217 OF 2026)

DEVILAL GOND ..... APPELLANT (S)

VERSUS

STATE OF CHHATTISGARH & ORS. .....RESPONDENT(S)

JUDGMENT

SANJEEV SACHDEVA, J.

1. Leave Granted.

2. Appellant impugns order dated 01.05.2026 of the High Court of Chhattisgarh at Bilaspur in WPCR No. 505 of 2025 to the extent that it awards compensation of only Rs. 2,00,000/- to the Appellant for the illegal detention and the egregious violation of Article 21 of the Constitution of India. Appellant was illegally detained, without any authority of law, for a period of 7 years, 3 months and 21 days.

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Reason:

3. On 07.12.2012, Appellant was arrested in an First Information Report registered for the offence punishable under Section 302 of the Indian Penal Code[1]. Appellant was tried for the offence and by judgment dated 14.08.2013 in Sessions Case No. 14 of 2013, the court of Sessions Judge Distt.-Rajnandgaon (Chhattisgarh) convicted the Appellant under section 302 IPC and sentenced him to undergo life imprisonment.

4. Appellant appealed against the judgment dated 14.08.2013 in Criminal Appeal No. 968 of 2013. By order dated 20.01.2018, the appeal was allowed and the conviction and sentence were set aside and appellant was acquitted of the charges. The High Court in its order dated 20.01.2018 noticed that Appellant was on bail and directed that *"the surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Criminal Procedure Code[2]. The appellant shall appear before the higher Court as and when directed."* The State did not challenge the order and as such the order of the High Court dated 20.01.2018 setting aside the conviction and sentence and acquitting the Appellant became final.

[1] IPC for short
[2] CrPC for short

5. It appears that when the appeal of the Appellant was allowed, setting aside the sentence and conviction, it was not brought to the notice of the Court that Appellant was incarcerated and the High Court was given an impression that the sentence had already been suspended and that is why the High Court directed that his surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months.

6. The order of acquittal dated 20.01.2018 was not given effect to and his detention continued for a further period of 7 years 3 months and 29 days till 19.05.2025, when he was finally released. Appellant thereafter filed the subject Writ Petition being WPCR No. 505 of 2025, seeking compensation of Rs. 50,00,000/- for the prolonged illegal detention of 7 years, 3 months and 29 days after his acquittal.

7. The High Court in the impugned order held as under:

> *"15. In the considered opinion of this Court, the continued detention of the petitioner for more than seven years after his acquittal is wholly illegal, arbitrary, and violative of his fundamental, rights guaranteed under Article 21 of the Constitution of India. The explanation offered by the respondents is insufficient and does, not justify such inordinate delay.*
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> *16. While determining the quantum of compensation, this Court cannot lose sight of the fact that the petitioner was deprived of his personal liberty*

for more than seven years despite having been acquitted by a competent Court, Such: prolonged and unlawful detention strikes .at .the very core of the guarantee under Article 21 of the Constitution of India and reflects a grave and inexcusable failure of the State machinery. The explanation sought to be offered by the respondents, founded upon procedural formalities does not absolve the State of its constitutional obligation to ensure that no individual is deprived of liberty, except in accordance with law. Administrative inefficiency or systemic lapses can never be pleaded as a defence in cases involving infringement of fundamental rights. The right to life and personal liberty under Article 21 is not a mere formality but a substantive and enforceable guarantee, forming the very foundation of a civilized constitutional order. Any infraction thereof, particularly by the State; must invite strict scrutiny and immediate redress.

17. This Court is of the considered view that the present case is not one of mere, negligence but discloses a disturbing degree of apathy and lack of accountability on the part of the authorities entrusted with the duty of safeguarding the liberty of citizens. The failure to verily the status of the petitioner's appeal for years together, despite available mechanisms, demonstrates a callous disregard for human liberty, in such circumstances, the compensation awarded must not only serve as a alleviative to the victim but also operate as a deterrent against recurrence of such egregious violations by the State. The quantum therefore, has to be realistic and. commensurate with the nature and duration of the deprivation suffered. Having regard to the prolonged period of Illegal detention, the violation of the petitioner's fundamental rights, and the need to uphold constitutional values, this Court is of the opinion that a higher compensation is warranted."

8. By the Impugned order dated 01.05.2026, the High Court has awarded only a sum of Rs. 2,00,000/- for the illegal detention of 7 years, 3 months and 21 days and the egregious violation of Article 21 of the Constitution of India. Aggrieved from the said order, Appellant has filed this appeal seeking enhancement of compensation.

9. In the Counter Affidavit filed before this Court, it has been stated on behalf of the State, that this discrepancy was noticed on 15.05.2025, during a records-verification exercise undertaken in respect of appeals filed by convicted prisoners lodged in Central Jail. Thereafter a request was made to the Sessions Judge, Ranjandgaon to issue a supersession warrant with regard to the release of the Petitioner, which was issued on 19.05.2025. Consequently, Appellant was released from custody on the very same day.

10. In the affidavit, it is further stated that the Jail Superintendent, Central Jail, Durg, has as far back as in the year 2018, addressed communications dated 03.04.2018 and 18.06.2018 to the concerned Panel Lawyer, Legal Aid, seeking the status of the Appellant's Criminal Appeal; however on account of an unfortunate gap in the communication and coordination mechanism between the jail and the concerned quarters at the relevant time, the

information regarding the outcome of the appeal did not reach the jail authorities pursuant to the said communication. It is further stated that a subsequent inquiry conducted by the office of the Deputy Inspector General (Prisons), upon examination of statements of the officials of Central Jail, Durg and the material on record that the lapse occurred on account of a bona fide and unfortunate gap in the communication and verification mechanism, and not on account of any mala fide or oblique motive.

11. The explanation given on behalf of the State for the illegal detention of 7 years, 3 months and 21 days shows complete remissness on the part of all Authorities. There appears to be lack of coordination and institutional dysfunction. Appellant lost his prime youth on account of the apathy and lack of promptitude on the part of the authorities. His prime period of life cannot be restored, however only solace to him can be to recompense him in monetary terms, which should be enough to make amend for the prolonged incarceration.

12. Article 21 of the Constitution guarantees *'Right to Life'*. It mandates that *'No person shall be deprived of his life or personal liberty except according to procedure established by law.'* In the case of the Appellant, there

has been a clear contravention of the Constitutional Guarantee of the Fundamental Right of *'Right to Life'* of the Appellant.

13. The Justice J.S. Vemra, Judge Supreme Court of India in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 held as under:

> *"10. In view of the decisions of this Court in Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] , Sebastian M. Hongray v. Union of India [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] , Bhim Singh v. State of J & K [1984 Supp SCC 504 : 1985 SCC (Cri) 60] , Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , Saheli : A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] and State of Maharashtra v. Ravikant S. Patil [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution 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. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which*

compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

11. In Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, CJ., dealing with this aspect, stated as under : (SCC pp. 147-48, paras 9 and 10)

> *"It is true that 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, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court 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. The instant case is illustrative of such cases ....*
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> *... The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this 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 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

(emphasis supplied) (SCR pp. 513-14)

12. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was actually controversial" and "Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes". This observation may tend to raise a doubt that the remedy under Article 32 could be denied "if the

claim to compensation was factually controversial" and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

13. Reference may also be made to the other decisions of this Court after Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] . In Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] it was indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In Sebastian M. Hongray v. Union of India (II) [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in Sebastian M. Hongray-(II) [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] apparently following Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , but without indicating anything more. In Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed

the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and Sebastian M. Hongray [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] . In Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In State of Maharashtra v. Ravikant S. Patil [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the award of compensation by the High Court for violation of the fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld. However, in none of these cases, except Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] anything more was said. In Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] reference was made to the State's liability for tortious acts of its servants without any reference being made to the decision of this Court in Kasturilal Ralia Ram Jain v. State of U.P. [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in Saheli [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] is, therefore, more in accord with the principle indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] .

14. In this context, it is sufficient to say that the decision of this Court in Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the

doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] is, therefore, inapplicable in this context and distinguishable.

15. The decision of Privy Council in Maharaj v. Attorney-General of Trinidad and Tobago (No. 2) [(1978) 2 All ER 670] is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of 'redress' which a person is entitled to claim under Section 6, and may well be 'the only practicable form of redress'. Lord Diplock who delivered the majority opinion, at page 679, stated:

"It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundoo v. Attorney General of Guyana [(1971) AC 972 : (1971) 3 WLR 13] . Reliance was placed on the reference in the sub-section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of sub-section (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this."

Lord Diplock further stated at page 680, as under:

"Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone."

(emphasis supplied)

Lord Hailsham while dissenting from the majority regarding the liability for compensation in that case, concurred with the majority opinion on this principle and stated at page 687, thus:

> *"... I am simply saying that, on the view I take, the expression 'redress' in sub-section (1) of Section 6 and the expression 'enforcement' in sub-section (2), 'although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer a right of damages where they have not hitherto been available, in this case against the State for the judicial errors of a judge."*

Thus, on this principle, the view was unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

17. It follows that 'a claim in 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. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise

of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

19. This view finds support from the decisions of this Court in the Bhagalpur Blinding cases : Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] and Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503] wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] Misra, CJ. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and

which is likely to arise in future ... there is no reason why we should hesitate to evolve such principle of liability ...". To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case [(1991) 4 SCC 584] with regard to the court's power to grant relief.

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

21. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

> *"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."*

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

14. Justice Dr. A.S. Anand, concurring with the view of Justice J.S. Verma in Nilabati Behera (supra) held as under:

> ***"34.*** *The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under*

Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. *This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the*

citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

15. The Supreme Court in *Nilabati Behera (supra)* relying on earlier decisions of the Supreme Court inter alia in *Rudul Shah (supra), and Sebastian M. Hongray (supra)* spelt out clearly the principles on which the liability of the State arising in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It held that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution 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, which may be available as a defence in private law in an action based on tort.

16. The Supreme Court referred to *Rudul Shah (supra)* wherein it was held that this Court could grant compensation for deprivation of a fundamental right. A caveat was placed that 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, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. The question arising for consideration in *Rudul Shah (supra)* was whether in the exercise of its

jurisdiction under Article 32, this Court could 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.

17. It further held that The right to life and personal liberty guaranteed under Article 21 would lose much of its substantive significance if the jurisdiction of the Supreme Court were confined merely to directing the release of persons subjected to unlawful detention. An effective means of preventing violations of this fundamental right and ensuring compliance with the constitutional mandate of Article 21 is to impose monetary liability upon those responsible for such violations. Institutional apathy and administrative inefficiency resulting in egregious infringements of fundamental rights cannot be effectively remedied through any other judicial measure. The award of compensation therefore serves as a measure of redress for unlawful acts committed by State instrumentalities operating in the name of public interest and seeking to shield their misconduct behind the authority and power of the State.

18. In Bhim Singh (supra), where there was illegal detention in police custody of the petitioner therein, it was held to constitute violation of his rights

under Articles 21 and 22(2) and exercising its power under Article 32, this court directed the State to pay monetary compensation to the petitioner therein for violation of his constitutional right.

19. The Court further examined and clarified the decision in *Kasturilal* (supra), wherein the Supreme Court had upheld the State's plea of sovereign immunity in respect of tortious acts committed by its servants. It held that such immunity was confined to the realm of tortious liability and was distinct from the State's liability for violations of fundamental rights. Under the constitutional framework, the doctrine of sovereign immunity has no application to such violations and cannot be invoked as a defence against constitutional remedies under Articles 32 and 226. These provisions empower constitutional courts to award compensation for the infringement of fundamental rights, particularly where monetary compensation constitutes the only practicable means of enforcing those rights. Relying on *Maharaj v. Attorney-General of Trinidad and Tobago* (supra), the Court further held that an order directing the payment of compensation for the violation of a protected right constitutes a form of 'redress' to which the aggrieved person is entitled and may, in certain circumstances, be the 'only practicable form of redress'.

20. The Supreme Court held that a claim for compensation under public law arising from the violation of human rights and fundamental freedoms guaranteed by the Constitution is a recognised remedy for the enforcement and protection of such rights. A claim founded on the principle of strict liability and pursued through constitutional proceedings for the enforcement of fundamental rights is distinct from, and additional to, a claim for damages under private law in respect of the tort arising from such violation. Since the doctrine of sovereign immunity is incompatible with the constitutional guarantee of fundamental rights, it cannot be invoked as a defence in proceedings seeking constitutional remedies. This principle provides the basis for awarding monetary compensation for the infringement of fundamental rights by the State or its servants while purporting to exercise their official powers, particularly where compensation represents the only practicable form of redress and enforcement of the violated rights is sought through the public law remedies available under Articles 32 and 226 of the Constitution.

21. Reliance was also placed on the decisions of the Supreme Court in the *Bhagalpur Blinding Cases*, namely *Khatri (II)* (supra) and *Khatri (IV)* (supra), as well as *Union Carbide Corporation* (supra), to affirm that the Court is not powerless in the face of violations of fundamental rights. The expansive

powers conferred upon the Supreme Court under Article 32, which is itself a fundamental right, impose a constitutional obligation upon it to devise appropriate remedies and innovative mechanisms necessary to secure complete justice and enforce the fundamental rights guaranteed by the Constitution. These powers include the authority to award monetary compensation in appropriate cases where such compensation constitutes the only effective means of redress. The Court further recognised that Article 142 also serves as an enabling provision in this regard.

22. It was held that adopting a contrary interpretation would render the Court powerless to remedy violations of fundamental rights and reduce constitutional guarantees to mere illusions. For the constitutional guarantee that life and personal liberty shall not be deprived except in accordance with law to have real and meaningful effect, there must be an effective mechanism for enforcing that right whenever it is violated. The nature and form of relief, however, must be determined in accordance with what is appropriate to the facts and circumstances of each case.

23. It has been further held that this remedy in public law has to be more readily available when invoked by the have-nots, who do not possess the

wherewithal for enforcement of their rights in private law, though with a caveat that its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

24. Refence was also made to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which stipulates that anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation.

25. Justice Dr. A.S. Anand, concurring with the view of Justice J.S. Verma in *Nilabati Behera (supra)* held that public law proceedings serve a different purpose than the private law proceedings. The award of monetary compensation as exemplary damages by the Supreme Court under Article 32 or by the High Courts under Article 226, for an established violation of the fundamental and indefeasible right guaranteed under Article 21 of the Constitution, constitutes a public law remedy founded on the principle of strict liability for the infringement of the citizen's guaranteed basic and indefeasible rights.

26. The objective of public law is not merely to regulate and restrain the exercise of public power, but also to assure citizens that they are governed by

a legal system committed to safeguarding their interests and protecting their rights. Accordingly, when a court grants compensation in proceedings under Article 32 or Article 226 of the Constitution for the enforcement or protection of fundamental rights, it exercises its public law jurisdiction to penalise the wrongdoer and impose liability for the public wrong upon the State, which has failed to discharge its public duty to protect the fundamental rights of citizens.

27. Such compensation must not be construed in the same manner as damages awarded in a civil action under private law. Rather, it represents a broader public law remedy through which monetary redress is provided for the violation arising from the State's failure to discharge its public duty to safeguard fundamental rights. The compensation thus awarded assumes the character of exemplary damages imposed upon the wrongdoer for breach of a public law obligation. This remedy operates independently of the aggrieved person's right to seek compensation under private law through a tort action before a court of competent jurisdiction and/or to initiate criminal proceedings against the offender under the applicable penal law.

28. The Supreme Court and the High Courts, as guardians of citizens' civil liberties, possess not only the power and jurisdiction but also the constitutional obligation to grant relief under Articles 32 and 226 of the Constitution to victims, or the heirs of deceased victims, where a flagrant violation of the fundamental rights guaranteed under Article 21 has been established. In such circumstances, the courts may direct the State to compensate for the harm caused by its officers through the infringement of the citizen's fundamental rights, irrespective of the availability of alternative remedies by way of civil suits or criminal proceedings. The State, in turn, retains the right to recover the compensation from the responsible officials and to initiate such appropriate legal proceedings against them as may be permissible under law. However, the exercise of jurisdiction under Articles 32 and 226 to grant such relief is warranted only where the infringement of fundamental rights has been established and, having regard to the facts and circumstances of the case, no other appropriate form of judicial redress is available.

29. Punishing the wrongdoer is a well-founded principle of justice, and it is in furtherance of this objective that courts, while exercising their writ jurisdiction, have fashioned appropriate relief by awarding compensation to

victims. In doing so, the courts consider not merely the interests of the individual applicant and the respondent, but also the broader public interest, with the aim of ensuring that public authorities and officials refrain from unlawful conduct and faithfully discharge their public duties, particularly where the fundamental right guaranteed under Article 21 of the Constitution is involved.

30. As the law continues to evolve, there is a corresponding need to develop distinct procedures and principles governing public law remedies. It is therefore necessary to delineate the circumstances in which such procedures and principles may appropriately be invoked. While exercising their jurisdiction under Articles 32 and 226, courts must adopt a firm yet cautious approach, ensuring that these constitutional remedies are not misused as indirect substitutes for civil proceedings seeking relief under private law.

31. In *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416, this court analysed how similar infractions of fundamental rights were approached by other jurisdiction and held as under:

> *"47. A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement*

of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.

48. The informative and educative observations of O'Dalaigh, C.J. in State (At the Prosecution of Quinn) v. Ryan [1965 IR 70] (IR at p. 122) deserve special notice. The Learned Chief Justice said:

> *"It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at nought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires."*
>
> *(emphasis supplied)*

49. In Byrne v. Ireland [1972 IR 241] Walsh, J. opined at p. 264:

> *"In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed."*
>
> *(emphasis supplied)*

***** ***** *****

51. In Simpson v. Attorney General [1994 NZLR 667] (Baigent case) the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violates the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided, Hardie Boys, J. observed:

> *"The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment, indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised State. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning."*
>
> *(emphasis supplied)*

52. The Court of Appeal relied upon the judgments of the Irish Courts, the Privy Council and referred to the law laid down in Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] thus:

> *"Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] , the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to "forge new tools", of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. (at p. 2912 of Cri LJ) may be noted : (SCC p. 768, paras 33 and 34)*
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> > *'The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. ... The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.' "*

53. Each of the five members of the Court of Appeal in Simpson case [1994 NZLR 667] delivered a separate judgment but there was unanimity

of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.

54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given

case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

32. In *D.K. Basu (*supra), this court after analysing the law laid down by this court and also various other jurisdictions ultimately held that it is now a well-established principle across several jurisdictions that monetary compensation constitutes an appropriate, effective, and, in certain circumstances, the only adequate remedy for an established violation of a citizen's fundamental right to life by public officials. In such cases, the State bears vicarious liability for the acts of its officials. The citizen's claim is founded upon the principle of strict liability, against which the defence of sovereign immunity is unavailable. Accordingly, the State is obligated to pay compensation to the victim, while retaining the right to recover the amount from the official responsible for the violation.

33. In determining the quantum of compensation, the primary consideration must be its compensatory rather than punitive character. The object is to provide relief to the victim and alleviate the harm suffered, rather than to punish the wrongdoer. The imposition of appropriate punishment for the offence, independently of the payment of compensation, falls within the jurisdiction of the criminal courts before which the offender is prosecuted.

The State is legally obligated to ensure that the offender is prosecuted in accordance with law.

34. Furthermore, the award of compensation in the exercise of public law jurisdiction does not prejudice or extinguish any other remedy available to the victim or the legal heirs of a deceased victim, including the institution of a civil suit for damages arising from the tortious acts of State officials. The amount of compensation must be determined in light of the specific facts and circumstances of each case, and no uniform formula can be prescribed for its assessment.

35. Thus, compensation awarded under public law for an established infringement of a citizen's fundamental rights is an additional remedy that supplements, rather than replaces, the conventional remedies available under law. In an appropriate case, the compensation paid by the State pursuant to a court's order may be adjusted against any damages subsequently awarded to the claimant in civil proceedings concerning the same injury.

36. An issue similar to the present case, came up before this Court in S.L.P. (Crl) 11244/2025 titled Sohan Singh @ Bablu vs State of MP. The Petitioner therein had been illegally detained for a period of 4 years and 7 months after

having completed the sentence. The explanation given by the State was similar that the supersession warrant was not received in the office of the Superintendent, Jail. This court by Judgment dated 08.09.2025 directed the State to pay to the petitioner therein an amount of Rs. 25,00,000/- (Rupees twenty five lakhs only) as compensation for the unlawful detention of over 4 years. This court also directed the High Court of Madhya Pradesh to entrust a responsible officer to ascertain if there were any other convicts still languishing in jail having completed the entire period of sentence.

37. Pursuant to the directions issued by this Court in *Sohan Singh @ Bablu, (supra)* and to prevent any future reoccurrence of similar nature, the High Court of Madhya Pradesh on 20.11.2025 issued the following directions:

> *"1. the copy of certificate prepared under Section 429 of BNSS read with Rule 315 of the of Criminal Courts - Rules and Orders along with copy of judgment of Hon'ble High Court or the copy of judgment/order of the Hon'ble Supreme Court, as the case may be, (in case the same is received by the High Court), be sent simultaneously to the email ID of the concerned District/Sub-Jail where the convict(s) is detained, the email ID of the concerned District Establishment and the email ID of the concerned District Legal Aid Services Authority for their information and compliance on the same day when the judgment or order is pronounced or when the copy of judgment/order is received, as the case may be;*

2. *the concerned trial court be required to submit before the Hon'ble High Court, the compliance report in pursuance of aforesaid certificate of the Hon'ble High Court or the judgment/order of the Hon'ble Supreme Court of India and the said compliance report shall invariably, accompany with the certificate of concerned District Jail/Sub-Jail, where the convict(s) is detained mentioning specifically that the official record of the concerned jail has been amended/revised as conformable to the judgment or order so received and/or the convict has been released (in case of acquittal of the convict) on the same day itself;*

3. *the concerned office of the District Legal Aid Services Authority (DALSA) through its Secretary be required to submit the compliance report before the Hon'ble High Court as to submission of intimation of certificate or the copy of judgment/order with the concerned jail on the same day itself;*

4. *the compliance report alongwith such certificate of the concerned jail of the concerned trial court and compliance report submitted by DALSA be placed in the concerned court file of the Hon'ble High Court for record and reference purpose;*

5. *the periodical jail inspection reports/certification in writing, preferably on monthly basis, be summoned from all the Principal District & Sessions Judge/PDJ s of all District Establishments of the State of Madhya Pradesh in the light of Rule 716 of Chapter 31 of Criminal Courts - Rules and Orders inter-alia covering the following specific points of certification:-*

   A. *Date of making the physical inspection in all the jail of the District?;*

B. Whether there exists any convict still languishing in jail having completed the entire period of sentence?;

C. Whether the convict(s) is/are currently undergoing sentence according to the sentence warrant/supersession warrant which is in operation for the time being?

6. the periodical jail inspection reports/ certification in writing, preferably on weekly basis, be summoned from all the Secretaries of the District Legal Aid Services Authority (DALSA) through the M.P. State Legal Services Authority, Jabalpur inter-alia covering the following specific points of certification:-

A. Date of making the physical inspection in all the jail of the District?

B. Whether there exists any convict still languishing in jail having completed the entire period of sentence?;

C. Whether the convict(s) is/are currently undergoing sentence according to the sentence warrant/supersession warrant which is in operation for the time being?

7. the Secretaries of the District Legal Aid Services Authority (DALSA) be required strictly to pay personal visits to the concerned jail to ensure that there exists no convict(s) who is/are still languishing in jail having completed the entire period of sentence during the inspection which he/she shall conduct on weekly basis;

8. the aforesaid periodical jail inspection reports/certification in writing from all the Principal District & Sessions Judge/PDJs of all District Establishments of the State of Madhya Pradesh and the Secretaries of the District Legal Aid Services Authority (DALSA) be required to be submitted with the office of Registrar (J-I), High Court of Madhya Pradesh, Jabalpur by the end of first week of each month (in case of monthly inspection for PDJ s) or by the end of

each week (in the case of weekly inspection for Secretaries/DALSA) henceforth;

8. *the DE (Registrar) be instructed to circulate the aforesaid directions to all the District Courts across the State of Madhya Pradesh through the Principal District & Sessions Judge to comply _with the aforesaid directions;*

9. *the Member Secretary, M.P. State Legal Services Authority, Jabalpur be instructed to circulate the aforesaid directions amongst all the District Legal Aid Services Authority (DALSA) across the State of Madhya Pradesh through the Chairman, District Legal Aid Services Authority to comply with the aforesaid directions;"*

38. The High Court of Madhya Pradesh has also launched an Online Criminal Justice Ecosystem. The Online Criminal Justice Ecosystem is an integrated platform for Police, Courts, Prisons, Prosecution, Forensics & Hospitals. It facilitates sharing of online criminal justice data among all stakeholders. These systems help in improving efficiency and transparency and provide speedy justice to citizens. It digitises and streamlines the bail processing workflow and all related activities under criminal justice system. The Online Criminal Justice Ecosystem has been launched to *inter alia* ensure immediate sharing of information between the various stake holder. Be it the Police, Courts, Prisons, Prosecution, Forensics or Hospitals, it facilitates

transmission of data, case diaries, medical & forensic reports and court orders in a prompt and secure atmosphere ensuring timely service and compliances.

39. Apart from putting in place sufficient safeguards to prevent such reoccurrence, reasonable compensation has to be awarded to the Appellant. It may be noticed that there is at present no legislative mechanism in place to determine the compensation to be awarded to such victims.

40. Reference may be had to the judgment of the Delhi High Court in *Babloo Chauhan @ Dabloo versus State (NCT of Delhi) 2017 SCC OnLine Del 12045*. The Division Bench of the High Court of Delhi held as under:

> *"Remedies for wrongful incarceration*
>
> *11. The third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution in India. The report of Prof Bajpai refers to the practice in the United States of America (USA) and the United Kingdom (UK). He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.*
>
> *12. As far as India is concerned, there is no exclusive legislation on the topic. The decisions in Khatri v. State of Bihar, (1981) 1 SCC 627; Veena Sethi v. State of Bihar, (1982) 2 SCC 583 : AIR 1983 SC 339; Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : AIR 1983 SC 1086; Bhim Singh v. State of Jammu and Kashmir, (1985) 4 SCC 677 and Sant Bir v. State of Bihar,*

(1982) 3 SCC 131 : AIR 1982 SC 1470, are instances where the Supreme Court has held that compensation can be awarded by Constitutional Courts for violation of fundamental right under Article 21 of the Constitution of India. These have included instances of compensation being awarded to those wrongly incarcerated as well. But these are episodic and are not easily available to all similarly situated persons.

13. There is at present in our country no statutory or legal scheme for compensating those who are wrongfully incarcerated. The instances of those being acquitted by the High Court or the Supreme Court after many years of imprisonment are not infrequent. They are left to their devices without any hope of reintegration into society or rehabilitation since the best years of their life have been spent behind bars, invisible behind the high prison walls. The possibility of invoking civil remedies can by no stretch of imagination be considered efficacious, affordable or timely. Further, this has to invariably await the final outcome of the case which may take an unconscionably long time.

14. Section 436-A CrPC (introduced with effect from 23-6-2006) permits release on personal bond of under trial prisoners who have completed up to one half of the maximum period of imprisonment for that offence. Its object is laudable but its effective implementation is still a challenge. In any event, it is not an answer to the hardship undergone by an innocent person who is declared as such after spending more than a decade in jail.

15. As far as compensating the victims of crime is concerned, Sections 357 and 357 A to C of the CrPC provide for compensation to the victim of crime. The effective implementation of these provisions hinges upon the concerted efforts of legal services authorities and governments. As far as compensating "persons groundlessly arrested", Section 358 CrPC offers

some token relief. This provision however fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship. Particularly poignant is the plight of the spouse, children and aged parents of the prisoner who are unable to find legal redress for their losses. The Delhi High Court has on more than one occasion stepped in to order provision of shelter, educational and health needs of the children whose parents, either or both, are in jail serving sentence.

16. There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration. Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependants of the prisoner, or these have to be dealt with in separate legislations or schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups. Specific to the question of compensating those wrongfully incarcerated, the questions as regards the situations and conditions upon which such relief would be available, in what form and at what stage are also matters requiring deliberation. This is a task best left in the first instance to the body tasked with advising the government on the legislative measures needed to fill the obvious gap.

17. The Court, accordingly, requests the Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India."

41. Prof Dr. G S Bajpai, (then the Registrar and now the Vice Chancellor of the National Law University Delhi) was appointed as Amicus Curiae by the

Court in Babloo Chauhan (supra). He in his report titled *'On Wrongful Incarceration Default in Payment of Fine Suspension of Sentence'* as noticed in *Babloo Chauhan (supra)* referred to the practice in the United States of America (USA) and the United Kingdom (UK). He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regards. He specifically referred to the Mechanism of Awarding Compensation in US State Laws.

42. After considering the Report and noticing that there was no statutory mechanism in place in India, the Court requested the requested the Law Commission of India to undertake a comprehensive examination of the issues highlighted. Pursuant to the directions by the Delhi High Court in *Babloo Chauhan (supra),* the Law Commission of India in its Report No. 277 titled *"Wrongful Prosecution (Miscarriage of Justice): Legal Remedies"* dated August 2018, extensively examined the issue of miscarriage of justice resulting in wrongful prosecution, incarceration and/or conviction. The Report discussed the international perspective on addressing the issue of miscarriage of justice; delving into the current scenario - remedies as

available under the existing laws - identifying the standard of miscarriage of justice in the Indian context; and concluded with the recommendations of the Commission in terms of a legal framework to address the issue.

43. The 277th Report of the Law Commission considered the International Perspective and also recommendations of the United Nations Human Rights Committee, which had, after discussing Article 14 of the International Covenant on Civil and Political Rights, required the State Parties to enact legislation ensuring that compensation as required by the said provision could be paid and that the payment is made within a reasonable period of time. The Report notices that a total of 168 State parties, including India, had ratified the ICCPR. However, all countries had not converted their commitment into Law.

44. The Report examined the legal framework put in place by various countries for remedying such miscarriage of justice by compensating the victims of wrongful convictions, providing them pecuniary and/or non-pecuniary assistance. The establishment of State's responsibility of compensating the said victims and also lay down other substantive and procedural aspects of giving effect to this responsibility - quantum of

compensation - with minimum and maximum limits in some cases - factors to be considered while deciding the right to compensation as well as while assessing the amount, claim procedure, the institution set up etc. The Report examined the Legal Frameworks of United Kingdom, Germany, United States of America, Canada, New Zealand and Australia. The Committee noted that in the absence of a legal framework or even guidelines for the award of compensation, the ex gratia compensation payments have been noted to be 'arbitrary' and generally very modest, marred by lack of transparency, making it difficult to establish any formal or informal tariff of compensation payable.

45. The 277th Report takes into account the 'Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons' formulated by the Federal and Provincial Miniters of Justice in 1988 in Canada. The Guidelines lay down the prerequisites for eligibility for compensation. The 277th Report notices the same as under:

> *"3.34 As per the said Guidelines, the prerequisites for eligibility for compensation are as follows:*
>
> *(i) the wrongful conviction must have resulted in imprisonment, all or part of which has been served;*

(ii) compensation should only be available to an individual who has been wrongfully convicted and imprisoned as a result of a Criminal Code or other federal penal offence;

(iii) the conviction has been reversed, outside the normal appeal process, on the basis of a new or newly discovered fact;

(iv) the new fact shows that the applicant is factually innocent i.e. the applicant did not commit the crime, and that there has been a miscarriage of justice; and

(v) when all available appeal remedies have been exhausted.

3.35 The considerations for determining the quantum of compensation under the Guidelines include both non-pecuniary and pecuniary losses:

(i) Non-pecuniary losses

a) Loss of liberty and the physical and mental harshness and indignities of incarceration;

b) loss of reputation which would take into account a consideration of any previous criminal record;

c) loss or interruption of family or other personal relationships.

(ii) Pecuniary Losses

a) Loss of livelihood, including of earnings, with adjustments for income tax and for benefits received while incarcerated;

b) loss of future earning abilities;

c) loss of property or other consequential financial losses resulting from incarceration.

3.36 In assessing the aforementioned amounts, the inquiring body is required to consider the following factors:

(i) Blameworthy conduct or other acts on the part of the applicant which contributed to the wrongful conviction:

(ii) due diligence on the part of the claimant in pursuing his remedies.

3.37 Additionally, reasonable costs incurred by the applicant in obtaining a pardon or verdict of acquittal should he included in the award for compensation. Compensation for non-pecuniary losses should not exceed $ 100,000. It is to be noted that these Guidelines are not regarded as binding legislation; and just as they do not create any legal right to compensation, they also do not create any legal bar to compensation, payment of compensation remains at the discretion of the Crown, In this manner, reportedly, many of the awards of compensation that have been made in the last 20 years departed in some manner or the other from the criteria proposed by the Guidelines.

3.38 In addition to the above, a wrongfully convicted person, in Canada, also has the option to pursue a civil cause of action, such as a claim in tort for malicious prosecution, negligent investigation, prosecutorial misconduct, or false imprisonment, or a claim for breach of rights protected under the Canadian Charter of Rights and Freedoms……..”

46. After noticing the legal framework in India already in place and the judicial precedents, the Commission recommended amending the then existing legal framework. In respect of award of compensation, the

Commission recommended that the compensation should include both pecuniary and non-pecuniary assistance to effectuate the rehabilitation of these victims of wrongful prosecution into society. While pecuniary assistance will be in terms of monetary award as may be determined by the Special Court; non-pecuniary assistance will be awarded in the form of services such as counselling, mental health services, vocational/employment skills development, and such other similar services. Non-pecuniary assistance shall also include a specific provision for removing disqualifications attached to a prosecution or conviction - particularly affecting wrongfully accused person's chances of finding employment in public and private sectors; getting admission in an educational institution. The Commission further recommended that the factors to be taken imo consideration while determining the amount of ,compensation can be broadly categorised as 'financial' and 'other factors' including inter alia seriousness of the offence, severity or the punishment, the length of incarceration, loss or damage to health, psychological and emotional harm; status of the victim in the society, harm to reputation, loss of opportunities (of education, livelihood), loss of income/ earnings, loss or damage to property.

47. Compensation for wrongful incarceration embodies the principles of restorative justice by seeking to address, to the extent possible, the physical, psychological, social, and economic harm suffered by an individual as a consequence of unlawful imprisonment. It facilitates the victim's rehabilitation and reintegration into society by providing financial assistance to mitigate the loss of livelihood, damage to reputation, emotional distress, and disruption of family and social relationships resulting from the wrongful deprivation of liberty. Beyond its monetary value, the award of compensation represents a formal acknowledgment by the State of the injustice suffered by the individual and reinforces the principle that the unlawful deprivation of personal liberty cannot be treated as an inconsequential consequence of the administration of justice. It also affirms the State's responsibility to uphold constitutional guarantees and protect the fundamental rights of every citizen, particularly the right to life and personal liberty under Article 21 of the Constitution.

48. Furthermore, compensation serves an important deterrent function by promoting accountability within law enforcement agencies and the criminal justice system. The imposition of financial liability upon the State for established violations of fundamental rights encourages greater diligence,

procedural fairness, and adherence to legal safeguards at every stage of investigation, arrest, detention, and prosecution. It also underscores the need for effective institutional mechanisms to identify and rectify errors that may lead to miscarriages of justice. Although monetary compensation cannot fully restore the lost years of liberty or erase the adverse consequences of wrongful incarceration, it provides a meaningful form of redress, reinforces public confidence in the administration of justice, and encourages the development of a more accountable and rights-oriented legal system.

49. In the present case, the Appellant was arrested in 2012 for an offence under section 302 IPC. He was convicted by the Sessions Court on 14.08.2013 and sentenced to Life Imprisonment. He was ultimately acquitted by the High Court on 20.01.2018. The order of acquittal was not appealed against by the State and became final. He was released on 19.05.2025 i.e. after 7 years 3 months and 29 days of the order of acquittal.

50. Appellant was arrested in 2012. In his appeal filed before the High Court (CRA No. 968 of 2013) he has stated his age as about 22 years. In this petition filed in June 2026, has stated that he is aged 36 years. He was acquitted on 20.01.2018, when he was about 28 years of age and was released

on 19.05.2025 at the age of about 35. This implies that when he was arrested he was 21 years of age and when he was released he had attained the age of 35 years. Admittedly, in the prime of his youth from the age of 28 years to 35 years he was wrongfully confined. He lost the hey days of his youth being incarcerated.

51. Not only was there Loss of liberty but Appellant also had to undergo physical and mental harshness and indignities of incarceration for an unjustifiable period of over 7 years and 3 months. For this prolonged unjustified period there was loss of consortium besides loss of livelihood and earning. Appellant also lost out on advancement opportunities in terms of education, skill development and future earning abilities.

52. In the facts and circumstances of the present case, the compensation awarded to the Appellant must be commensurate with the gravity of the injustice suffered and the enduring consequences it has had on his life, livelihood, dignity, and prospects for the future. The object of compensation in cases of wrongful incarceration ought not to be confined to providing merely symbolic or nominal monetary relief; rather, it must serve as a meaningful remedial measure capable of assisting the victim in rebuilding his

life and restoring, to the extent possible, the opportunities and independence of which he has been deprived. The period of wrongful incarceration may have far-reaching consequences, including the loss of livelihood and earning capacity, disruption of family and social relationships, impairment of future prospects, and the considerable difficulty of reintegrating into society after release. These consequences cannot be adequately addressed through an award that fails to account for the practical and long-term challenges confronting the Appellant.

53. Accordingly, the compensation awarded must be of such a nature and magnitude as would enable the Appellant to regain his financial independence, acquire the means of sustainable livelihood, and establish himself as a self-sufficient individual capable of standing on his own feet. Such compensation must afford him a genuine opportunity to rebuild his life with dignity and to overcome, at least in some measure, the material disadvantages occasioned by the wrongful deprivation of his liberty. It must also reflect the State's recognition of the injustice suffered by him and its obligation to provide an effective remedy for the violation of his rights. While no monetary award can fully compensate for the loss of liberty, time, and opportunities that can never be restored, the inadequacy of monetary compensation cannot be an excuse

for denying the Appellant a remedy that is practical, effective, and proportionate to the harm suffered.

54. In these circumstances, ensuring that the Appellant is placed in a position to regain his self-sufficiency and rebuild his life is not an act of charity or benevolence on the part of the State; it is the bare minimum required to meaningfully redress the wrong inflicted upon him. The State, having failed to protect the Appellant from such injustice, must extend a remedy that goes beyond a mere formal acknowledgement of the violation and addresses its tangible consequences. Any lesser approach would risk rendering the right to compensation illusory and would fall short of the constitutional commitment to justice, fairness, and human dignity. Therefore, an award of compensation sufficient to enable the Appellant to stand on his own feet and lead a life of dignity is essential to doing substantial justice in the present case.

55. In view of the above, the Appeal is disposed of in the following terms:

(i) The impugned order dated 01.05.2026 is modified and the amount of compensation is enhanced to a sum of Rs. 30,00,000/- (Rupees thirty lakhs only) towards all kinds of heads: pecuniary and non-pecuniary; and

(ii) Respondent State of Chhattisgarh shall, within a period of four weeks, in the manner as specified hereinafter, pay the said amount of Rs. 30,00,000/- (Rupees thirty lakhs only) to the Appellant, after adjusting the amount, if any, paid pursuant to the impugned order; and

(iii) The amount shall be paid by way of RTGS/NEFT/IMPS directly to the Bank, where the Appellant has a savings bank account; and

(iv) The Bank to which the amount is remitted shall transfer a sum of Rs. 5,00,000/- to the savings bank account of the Appellant; and

(v) The balance amount shall be deposited by the Bank in an interest bearing fixed deposit account with an auto renewal facility to be opened in the name of the Appellant; and

(vi) The Bank shall not permit any joint name to be added in the fixed deposit account of the appellant i.e. the fixed deposit account of the appellant shall be an individual account and not a joint account; and

(vii) The original fixed deposit receipt (FDR) shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by the Bank to the Appellant as well as the Secretary, District Legal Services Authority of District Mohla Manpur, Ambarbagh Chowki, Chhattisgarh; and

(viii) The monthly interest accrued on the fixed deposit shall be credited by Electronic Clearing System (ECS) in the savings bank account of the appellant; and

(ix) No loan, advance, withdrawal or pre-mature discharge shall be allowed on the fixed deposit without the prior permission of the Secretary, District Legal Services Authority of District Mohla Manpur, Ambarbagh Chowki, Chhattisgarh; and

(x) The Secretary, District Legal Services Authority of District Mohla Manpur, Ambarbagh Chowki, Chhattisgarh may grant permission in case appellant requires the amount for some medical emergency or creation of a long term revenue generating asset;

(xi) The Secretary, District Legal Services Authority of District Mohla Manpur, Ambarbagh Chowki, Chhattisgarh shall supervise and ensure compliance of the directions issued herein; and

(xii) A direction is issued to all the High Courts to consider issuing directions in line with the directions issued by the High Court of Madhya Pradesh pursuant to the order of this Court in *Sohan Singh @ Bablu, (supra)* and also to consider setting up a Criminal Justice Ecosystem akin to the Online Criminal Justice Ecosystem set up by the High Court of Madhya Pradesh.

56. Copy of this Judgment shall be forwarded to the Registrar Generals of all the High Courts for placing the same before the respective Chief Justices for their consideration. Copy of this Judgment shall also be forwarded to the Secretary, District Legal Services Authority of District Mohla Manpur, Ambarbagh Chowki, Chhattisgarh for necessary compliance.

…….J.
[AUGUSTINE GEORGE MASIH]

…….J.
[SANJEEV SACHDEVA]

New Delhi;
November 16, 2026