

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 976 OF 2017

Ganesh s/o Annarao Motipawale,
Age : 57 years, Occupation : Labour,
R/o Gopal Nagar, Near Railway Station,
Udgir, District Latur. ... Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai – 32.
2. Inspector General of Prisons and
Correctional Services,
Maharashtra State, Second Floor,
Old Central Building, Pune – 01.
3. The Deputy Inspector General of Prisons,
Central Region, Aurangabad.
4. Superintendent of Central Prison,
Nashik Central Prison, Jail Road,
Nashik – 422 101.
5. Rajkumar s/o Keshavrao Sali,
Age : 53 years,
Occupation : Superintendent,
R/o. Nashik Road Central Prison,
Nashik. ... Respondent

.....
Mr. Ajinkya Reddy for the Petitioner.
Mr. D. R. Kale, A.P.P. for Respondent-State.
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 28.06.2018**

**Date of pronouncing
the Judgment : 18.07.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By way of present petition, the petitioner has prayed that the detention of the petitioner at Nashik Road Central Prison, Nashik for the period between 19.06.2017 to 25.06.2017, during which the jail authorities at Nashik kept the petitioner as U.T. No. 2869 (under trial prisoner), be declared as *ultra vires*, unlawful and illegal, causing gross violation of the fundamental right to life and personal liberty of the petitioner which is guaranteed under Article 21 of the Constitution of India. The petitioner further prays that respondent nos. 1 to 5 may be directed to pay Rs.10,00,000/- (Rupees Ten Lakh only) as compensation to the petitioner for illegally detaining him at Nashik Road Central Prison, Nashik for the period as aforesaid and that the Secretary Home Department, Mantralaya, Mumbai may be directed to appoint an appropriate higher officer not below the rank of the Deputy Inspector General of Prisons, to hold an inquiry for fixing responsibility for the illegalities committed by the jail authorities at

Nashik Road Central Prison, Nashik. The petitioner also prays that respondent no.1 may be directed to pay costs of this petition which is quantified at Rs.25,000/- (Rupees Twenty Five Thousand Only).

3. The petitioner came to be convicted by judgment and order dated 17.05.2014 passed in Summary Trial Case No. 48 of 2011 in the Court of Judicial Magistrate First Class, Udgir, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "N.I. Act") and sentenced to suffer simple imprisonment for one month. He was also directed to deposit amount of Rs.3,50,000/- as compensation to the complainant vide Section 357 (3) of the Criminal Procedure Code and in default, to suffer simple imprisonment for one year. The said order and sentence came to be confirmed by the Additional Sessions Judge, Udgir by judgment and order dated 31.10.2015 passed in Criminal Appeal No. 10 of 2014 preferred by the present petitioner. Being aggrieved, the petitioner preferred Criminal Revision Application No. 239 of 2015 before this Court and this Court (Coram : T. V. Nalawade, J.) by the judgment and order dated 10.01.2017, partly allowed the Revision and reduced the sentence of simple imprisonment for one year in default of payment of compensation to simple imprisonment for six months. However, the substantive sentence of simple imprisonment for one month was maintained. Thus the total period of

imprisonment, including the sentence in default of payment of compensation, came to seven months. It is the contention of the petitioner that since the period of imprisonment commenced from 19.11.2016, he was to be released on 18.06.2017 from Nashik Road Central Prison, however, he came to be released on 25.06.2017 only. He was detained in prison by the jail authorities from 19.06.2017 to 25.06.2017 in absence of any remand warrant from competent court and without any authority to detain him. Aggrieved by his detention between the period from 19.06.2017 till 25.06.2017, which he claims to be *ultra vires*, unlawful and violative of Article 21 of the Constitution of India, the petitioner has preferred this criminal writ petition with prayers as aforesaid.

4. The learned counsel for the petitioner submits that the excess detention of the petitioner between 19.06.2017 to 25.06.2017 is beyond any authority and thus *ultra vires*, which has caused gross violation of the personal liberty of the petitioner which is guaranteed by Article 21 of the Constitution of India. It is settled law that the protection of Articles 14, 19 and 21 of the Constitution of India is also available to the prisoners like the petitioner. It is also settled law that the imprisonment would be unlawful the moment its lawful justification is withdrawn. It is the duty of the State to provide for a system to see that no prisoner is detained even a minute beyond the

term and if such incidence occurs even by mistake, the State has to pay suitable compensation. The approach of the jail authorities at Nashik Road Central Prison was mechanical, superficial and without application of mind. Respondent nos. 2 to 4 are solely responsible for the illegal detention of the petitioner. As they are the officers of respondent no.1-State, the State must repair the damage caused by them to the petitioner due to his illegal detention from 19.06.2017 to 25.06.2017 at Nashik Road Central Prison.

5. The learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the following cases:

1. ***Rudul Sah vs State of Bihar and Another***, reported in **(1983) 4 SCC 141**,
2. ***Bhim Singh, MLA vs State of J & K and Others***, reported in **(1985) 4 SCC 677**,
3. ***Niraj Ramesh Jariwala and Others vs Mahadeo Pandurang Nikam and Others***, reported in **2014 (3) Mh.L.J. (Cri.) 484**,
4. ***Veena Sippy vs Narayan Dumbre and Others***, reported in **2012 (2) Mh.L.J. (Cri.) 677**,
5. ***K. S. Muthuramalingam vs State, represented by the Inspector of Police, District Crime Branch, Commissioner Office, Coimbatore and Another***, reported in **2010 (2) Madras Weekly Notes (Criminal) 302 (DB)** and

6. Judgment dated 07.01.2014, delivered by Division Bench of this Court at its principal seat at Mumbai in ***Criminal Application (L) No. 399 of 2013 in/with Writ Petition No. 499 of 2012 (The State of Maharashtra vs Shri. Sagar Balu Ubhe)***.

6. The learned APP, on the other hand, invites our attention to the reply affidavits filed on behalf of respondent nos. 4 and 5. He submits that the petitioner has suppressed the fact that he was accused in one more case bearing STC No. 17 of 2013 which was filed under Section 138 of the N.I. Act. On 07.04.2017, a letter was received by the jail authority from the JMFC Court at Udgir, instructing therein to produce the petitioner before the said court on 10.04.2017 in STC No. 17 of 2013. The said letter was replied by the jail authority on 10.04.2017, mentioning therein that due to non availability of police escort the convicts/prisoners, including the present petitioner, cannot be produced before the said court. After the above mentioned communications, the jail authority had sent a letter by speed post on 17.06.2017 to the JMFC Court, Udgir, informing therein that the petitioner has undergone his sentence which was awarded in STC No. 48 of 2011 and he was to be released on 17.06.2017, 18.06.2017 being holiday i.e. Sunday. It was also requested to communicate the jail authority as to whether the petitioner is required in STC No. 17 of 2013. On the same day i.e. on 17.06.2017, instructions as to whether the petitioner should be

released or not, were also sought on telephone by one Mr. Madhav Kamaji Khaarge, Jailor Gr.II, which was answered by the concerned clerk of the said court. The concerned clerk of the said court also informed Mr. Khaarge, Jailor Gr. II that the petitioner was required in STC No. 17 of 2013 and he should not be released. Thereafter, on 22.06.2017, a messenger was sent to the JMFC Court at Udgir to obtain instructions in writing from the said court. Thereupon the JMFC Court at Udgir addressed a letter to the jail authority mentioning therein that the present petitioner was released on bail in STC No. 17 of 2013 on 24.05.2013, however, thereafter the petitioner did not appear in the said case and therefore the production warrant was issued. It was also mentioned in the said letter that the present petitioner was not in MCR and therefore, the remand warrant could not be issued as per the demand of the jail authority. Entry of the said letter dated 23.06.2017 received from the JMFC Court at Udgir was made in the inward register of the jail on 25.06.2017 and immediately thereafter, the petitioner was released from jail with understanding that he should remain present on 26.07.2017 before the JMFC Court, Udgir. In completing the above formalities the above mentioned period lapsed and there was no intention of the jail authority to illegally detain the petitioner in jail. It is only due to the procedural part of the office that the time of six days was consumed.

7. The learned APP further invites our attention to the second affidavit filed by respondent no.5 to submit that the present petitioner was lodged in Nashik Road Central Prison, Nashik on 19.11.2016 as convict no. 37323 and his entry came to be recorded in the register maintained by the jail authority, in which it was specifically mentioned that the petitioner is a convict in offence under N.I. Act. The petitioner completed his sentence on 18.06.2017 which was Sunday. Therefore, one day prior to his completion of sentence i.e. on 17.06.2017, an entry also came to be recorded in the register to the effect that the present petitioner is released in earlier matter as convict no. 37323, however, since warrant was issued against him by the JMFC Court, Udgir in another pending case STC No. 17 of 2013, he is kept in jail by changing his convict number as UT No.2869.

8. We have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned APP for the respondent-State. With their able assistance, we have perused the memo of the petition, grounds taken therein, annexures thereto and also the reply affidavits.

9. Though the petitioner came to be convicted in summary criminal case no. 48 of 2011 by the Judicial Magistrate First Class, Udgir for the offence punishable under Section 138 of the N.I. Act

and sentenced to suffer simple imprisonment for one month and to pay compensation of Rs.3,50,000/- to the complainant, in default of payment of compensation to undergo simple imprisonment for one year and though the above sentence was confirmed by the Additional Sessions Judge, Udgir by order dated 31.10.2015 in criminal appeal no. 10 of 2014 and in terms of the undertaking given by the petitioner in the pending criminal revision application no. 239 of 2015 before this Court, the petitioner had surrendered himself before the learned Judicial Magistrate First Class, Udgir on 19.11.2016 to undergo the sentence, this Court (Coram: T.V. Nalawade, J.), by order dated 10.01.2017, was pleased to partly allow the criminal revision application no. 239 of 2015 and reduced the sentence of imprisonment in default of payment of compensation from one year to six months and maintained the substantive part of the sentence of one month. In view of the said order dated 10.01.2017 passed by this Court, period of imprisonment of the petitioner in summary criminal case no. 48 of 2011 was seven months in total, including the sentence in default of payment of compensation.

10. During pendency of the aforesaid criminal revision application no. 239 of 2015, the petitioner had surrendered himself on 19.11.2016 before learned Magistrate at Udgir and thus, the petitioner ought to have been released on 18.06.2017 from Nashik

Road Central Prison, Nashik. The same is also not disputed by the respondents herein.

11. It is also not disputed by the petitioner that he is accused in one more case bearing STC No. 17 of 2013 which is also filed under Section 138 of the N.I. Act. As per the reply affidavit filed by respondent no.4, on 07.04.2017, learned Judicial Magistrate First Class, Udgir had sent a letter addressed to the jail authority instructing therein that the petitioner be produced before the said court on 10.04.2017. Though the petitioner was not produced before the said court on the said date due to non-availability of police escort, without there being any further correspondence from the said court, respondent no.4 had sent a letter to the JMFC Court, Udgir by speed post on 17.06.2017 stating therein that the petitioner was to be released on 18.06.2017 in STC No. 48 of 2011. It is the further case of respondent no.4 that on 17.06.2017 itself, one clerk of the said court Mr. V.G. Gaikwad informed the jail authorities that the petitioner was required in STC No. 17 of 2013 and he should not be released. However, without there being any order passed by the Judicial Magistrate First Class, Udgir and communicated to respondent no.4/jail authority in writing, respondent no.4 has illegally detained the petitioner in jail. On further communication, the learned Judicial Magistrate First Class, Udgir informed respondent no.4 that the present petitioner came to be released on bail in the said pending

STC No. 17 of 2013 on 24.05.2013. However, thereafter the petitioner did not appear in the said case and accordingly the production warrant came to be issued on 20.03.2017. It has also been mentioned in the said letter issued by the Judicial Magistrate First Class, Udgir that the present petitioner was not in MCR and therefore, remand warrant could not be issued as per demand of respondent no.4.

12. The court, on fulfillment of the conditions as detailed in clause (a) or (b) of Sub-section (1) of Section 267 of the Code of Criminal Procedure, may make an order requiring the officer in charge of the prison to produce such person before the court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence. In the facts of the instant case, the petitioner was already released on bail in the said another case bearing STC No. 17 of 2013 and as such, even if any order is communicated to the jail authorities, the petitioner should have been given an understanding on 18.06.2017 while releasing him in the case bearing STC No. 48 of 2011 as per the final order passed by this Court in criminal revision application no. 239 of 2015, directing him to remain present before the learned Judicial Magistrate First Class, Udgir in pending STC No. 17 of 2013. The same is also evident from the subsequent communication from the learned Magistrate, Udgir to respondent no.

4 to the effect that since the present petitioner was not in MCR, the remand warrant could not be issued as per demand of respondent no.4. In view of the aforesaid peculiar facts, it is clear that the petitioner was detained illegally without any authority from the 19.06.2017 to 25.06.2017.

13. We do not find any substance in the second reply affidavit filed by respondent no.5 stating therein that the present petitioner came to be released in the earlier matter bearing STC No. 48 of 2011 on 18.06.2017 itself and since the case bearing STC No. 17 of 2013 was pending against him, he was not released from jail. In absence of any remand warrant issued by the concerned court, any convict could not be detained in jail after completion of his term of sentence. Thus, illegal detention of the petitioner is apparent of the face of record.

14. In the case of **Niraj Ramesh Jariwala** (supra) relied upon by learned counsel for the petitioner, the Division Bench of this Court (Coram: A. S. Oka & S.S. Shinde, JJ.), by referring various decisions of the Supreme Court, has made the following observations in para nos. 14 to 17:

“14. Now the other issue is regarding grant of compensation. In the case of *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746, the issue regarding grant of compensation in a public law remedy was considered by the Apex Court. In Paragraphs 17

and 22, it was held thus:-

"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* 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."

"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* 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 and others* in that line have to be understood and *Kasturilal* 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."

15. In the case of *Suber Singh v. State of Haryana*, (2006) 3 SCC 178, in Paragraph 46, the Apex Court held thus:-

"46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226.

However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action."

16-17. Lastly, on this aspect, it will be necessary to make a reference to the decision of the Apex Court dated 9th September, 2011 in the case of *Raghuvansh Dewanchand Bhasin v State of Maharashtra & Another* in Criminal Appeal No.1758 of 2011 [2013 (1) Mh.L.J. (Cri.) (S.C.) 247]. In Paragraph 19 of the said decision, the Apex Court held thus:-

"The power and jurisdiction of this Court

and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation." (emphasis added)

15. In the case of ***Veena Sippy*** (supra) relied upon by learned counsel for the petitioner, the Division Bench of this Court (Coram: A.S. Oka & A. V. Potdar, JJ.), by referring various decisions of the Supreme Court, in the facts of the said case, has made the following observations in para nos. 17 to 21:

17. Now, the second question before us is whether the Petitioner is entitled to the compensation and if it is held that the Petitioner is entitled to be compensation, what should be the amount of compensation. Before we deal with this question, it must be reiterated here that we have found that the Petitioner appearing in person was illegally detained without complying with the mandatory directions laid down by the Apex Court in the case of *D. K. Basu* (supra). The Petitioner had visited the police station for obtaining a copy of the F.I.R. which she was expecting to be registered on the basis of the complaint lodged by her on earlier day. In none of the affidavits and in particular the affidavits of Respondent Nos.1 and 2, the words allegedly used by the Petitioner have been set out. Neither in the

affidavits nor in the entry made in the station diary, the words allegedly uttered by the Petitioner have been set out. The Petitioner who is a woman was detained overnight in police lock-up in connection with alleged offence which was bailable and punishable only with the fine of maximum amount of Rs.1200/-. This is a case where the gross violation of Article 21 is proved on the face of it and it is incontrovertible. The illegal detention of a woman in the Azad Maidan police lock up in this fashion shocks the conscience of this Court.

18. As far as prayer for compensation is concerned, a reference will have to be made to the decision of the Apex Court in the case of *Neelabati Behera (Smt) V/s. State of Orissa and Others*, 1993 (2) SCC 746. The Apex Court dealt with a claim of compensation in public law on account of the violation of the fundamental rights. In paragraph Nos.17 and 18 of the decision, the Apex Court has held thus:

"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 the 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 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* 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, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G. P. Singh, at pages 44 to 48." (emphasis added)

In paragraph Nos.20 and 22 of the said decision, it is held thus:

"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, wherein 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.**"

"22. The above discussion indicates the principle on which the Court's power under Article 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* 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* and others in that line have to be understood and *Kasturilal* 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." (emphasis added)

Subsequently, there is a decision of the Apex Court in the case of *Suber Singh Singh V/s. State of Hariyana & Ors.*, 2006 (3) SCC 178. In paragraph No.46 of the decision, the Apex Court has summarized the law on the availability of public law remedy for seeking compensation. Paragraph No.46 reads thus:

" In case where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of an magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action."

There is a recent decision of the Apex Court dated 9th September, 2011 in the case of *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra & Anr* (Criminal Appeal No.1758 of 2011). The Apex Court has again made a reference to the law on the aspect of taking recourse to public law remedy for grant of compensation. In paragraph No.9 of the decision, the Apex Court has observed thus:

"9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the

community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. In deed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other hand, the social need that law shall not be flouted by the insolence of offence. There are dangers in any choice." Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of the absconding."

In paragraph No.19, the Apex Court has proceeded to observe thus:

"The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well- established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation." (emphasis added)

19. Hence, we hold that the Petitioner can seek compensation on the ground of violation of fundamental right under Article 21 of the Constitution.

20. The present case is a case of patent and uncontroverted violation of Article 21 of the Constitution of India. Now, the question is as to what should be the compensation. The Petitioner appearing in person has placed reliance on the decision of this Court in the case of *Nirmal Bhavarlar Jain* (supra). This was a case where allegation was made of

illegal detention in violation of the directions contained in the decision of the Apex Court in the case of *D.K. Basu* (supra). This was a case where the Petitioner before the Division Bench of this Court was illegally detained on 8th September, 2000 and was enlarged on bail on 16th September, 2000. In this case where the Petitioner was unlawfully detained in the year 2000 for a period of eight days was granted compensation of Rs.1 lac together with interest at the rate of 8% per annum from the date of illegal detention. In the case of *Chandrabhan Rama Dhengle vs. Indirabai Chandrabhan Dhengle & Ors.* 1998 (1) Mh.L.J. 235 which was a case of illegal detention of the Petitioner for a period of 63 days in the year 1995, this Court directed payment of compensation of Rs.50,000/- to the Petitioner. In the case of *Prema Bangar Swamy V/s. State of Maharashtra & Ors.* 2004 (2) MH. L. J 993, where an accused was illegally detained for the period of 2 years and 9 months after the Petitioner was acquitted, the Division Bench directed payment of compensation of Rs.2 lacs. We must state here that the Petitioner in person has relied upon an interim order passed by this Court in First Appeal arising out of a decree passed in a suit. The decree was passed in a suit filed by a retired Judge of the Apex Court wherein he claimed compensation on account of act of defamation. Considering the evidence on record, the Trial Court passed a decree for payment of damages of Rs.100/- crores. While admitting the Appeal and while considering the prayer for grant of stay, this Court directed the Appellant-Defendant to deposit a sum of Rs.20/- crores in the Court and to furnish Bank Guarantee for rest of the decretal amount as a condition of grant of stay. However, this Court directed investment of the amount of Rs.20/- crores till the disposal of the Appeal. The interim order of this Court has been confirmed by the Apex Court. The order of this Court passed in First Appeal arising out of a money decree passed by a regular Civil Court after adjudication cannot be the basis to determine compensation payable to the Petitioner.

21. In this Writ Petition under Article 226 of The Constitution of India,

we cannot record evidence to quantify the amount of compensation. Notwithstanding the grant of compensation in this public law remedy, the Petitioner can always take recourse to regular remedy available for claiming compensation over and above what is granted by this Court. The Petitioner claimed compensation of Rs. 1/- crore in the written submissions. The said prayer cannot be considered as she has not amended the petition where the claim of Rs.10,00,000/- has been made. Considering the aforesaid decisions, even the claim of Rs.10,00,000/- appears to be on the higher side. In the present case we are dealing with the illegal detention of a woman for a period of one day in the year 2008 for commission of a bailable offence punishable with maximum fine of Rs.1,200/-. Though the Petitioner was arrested in connection with commission of an offence which was admittedly bailable, the Petitioner was not even made aware of her right to be released on bail. The Petitioner's mother was not even informed about the arrest. As stated earlier, without informing the Petitioner about the arrest and without drawing even the arrest panchanama, she was kept in the Azad Maidan police lock up. In the Petition, she has alleged that she was kept in one room along with 40 other persons. She has alleged that the toilet and bath room in the lock-up has no doors. She has alleged that she was suffocated as there was no fresh air in the lock up. These factual assertions which are found in the paragraph Nos.43 to 49 of the Petition have not been disputed in any of the affidavits filed on record. The Petitioner who is a women had to spend a night in the police lock up along with 40 persons in inhuman conditions. Considering the aforesaid circumstances, we deem it fit to quantify the compensation payable in the present case at Rs.2,50,000/- with interest thereon at the rate of 8% per annum from 5th April, 2008 i.e. the date from which she was illegally detained. The State Government will have to pay the compensation. We quantify the costs payable to the Petitioner at Rs.25,000/- as the Petitioner had to appear before this Court atleast on 22 occasions. It is always open for the State Government to recover the compensation and costs amount from the erring officers after fixing

their liability.”

16. In the case of ***K. S. Muthuramalingam*** (supra), relied upon by the learned counsel for the petitioner, the Division Bench of Madras High Court, in identical set of facts, held that mere pendency of Production for Trial warrant is not enough to keep the prisoner in prison beyond the date of expiry of sentence/remand and the pendency of P.T. warrant cannot be equated with remand nor construed to be authorization for detaining a person beyond period for which he was remanded or committed to undergo imprisonment.

17. In view of the above discussion, considering the period of illegal detention, we deem it fit to quantify compensation payable in the present case at Rs.5,000/- (rupees five thousand only) with interest at the rate of 8% per annum from the date from which the petitioner was illegally detained i.e. from 19.06.2017 to 25.06.2017 and also the costs of the petition to be payable to the petitioner at Rs.5,000/- (rupees five thousand only). The learned counsel for the petitioner has also left the issue of quantum of compensation at the discretion of this Court as deem fit and appropriate. He submitted that the petitioner is not behind the quantum, but he is keen about said violation of his fundamental rights. It is always open for the State

Government to recover the amount of compensation and the costs from the erring officer after fixing liability. We make it clear that we have not expressed any opinion on merits of the departmental proceedings initiated against the erring officer/s. We accordingly proceed to pass the following order:

ORDER

- I. Criminal writ petition no. 976 of 2017 is hereby allowed in terms of prayer clause "D".
- II. We direct the respondents to pay compensation of Rs.5,000/- (rupees five thousand only) together with interest at the rate of 8% per annum and also to pay costs quantified at Rs.5,000/- (rupees five thousand only) to the petitioner.
- III. We make it clear that it is open for the State Government to initiate proceedings for fixing liability and recovery of the amount of compensation and costs from the erring officer/s.
- IV. Rule is made partly absolute in the above terms. The criminal writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)