2026 INSC 599

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. ____________ OF 2026
(Arising out of SLP (Crl.) 5036 of 2025)

DAUDAYAL ... **APPELLANT (S)**

Versus

THE STATE OF RAJASTHAN & ORS. ...**RESPONDENT (S)**

J U D G M E N T

SANJAY KAROL, J.

" *...arbitrary power is most easily established on the ruins of liberty abused to licentiousness*."

-George Washington[1]

Leave Granted.

Signature Not Verified
Digitally signed by SOURAV PAL
Date: 2026.05.29 18:15:40 IST
Reason:

[1] From George Washington to The States, 8 June 1783, Accessible at: https://founders.archives.gov/documents/Washington/99-01-02-11404

2. This appeal arises from an unfortunate set of circumstances. The appellant-convict has been sentenced to Rigorous Imprisonment of four years for offences under Sections 148, 448, 304 Part II r/w Sections 149, 323, Indian Penal Code, 1860[2] by the Additional Sessions Judge, No.1, Alwar in connection with Sessions Case No.22 of 1967 in terms of judgment dated 8th December 1988. Such findings and sentence were confirmed by the dismissal of his appeal thereagainst being Criminal Appeal No.451 of 1988 in 2021 whereafter he was arrested on 23rd December 2021. He applied for permanent parole on 3rd December 2023 (*not having applied for regular parole*) which was rejected on 18th January 2024 on that very ground. This rejection was challenged before the High Court[3]. The learned Single judge allowed the petition *vide* order dated 5th November 2024 and directed his release on furnishing personal bond of Rs.1,00,000/- and two sureties of Rs.50,000/- each. At this point in time, he had already served three years two months and twenty days out of a total four-year sentence. By 25th November 2024 he had still not been released despite complying with the conditions stipulated in the order of the learned Single Judge. As such, he approached the Division Bench[4] whereby *vide*

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[2] IPC
[3] SB Criminal Writ Petition No.1021/2024
[4] DB Habeas Corpus Petition no.411/2024

order dated 6th December 2024 he was ordered to be released forthwith.

3. Before us, the sum and substance of the appellant-convict's case is that the time in between the order of the learned Single Judge dated 5th November 2024 and the subsequent verification of the sureties which took place on 13th November 2024, and the order of the Division Bench on 6th December 2024 i.e., 24 days, was his illegal detention and consequently he is entitled to compensation.

4. In praying for Rs.8 lakhs as compensation, it has been submitted on behalf of the appellant-convict that State officials who '*take the law in their hands should be made accountable*'. Despite the statutory provision and the order of the Court, the appellant-convict was illegally kept in prison affecting his human rights and, therefore, have violated Article 21 of the Constitution of India. Reliance has been placed on Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which stipulates that any person who has been unlawfully arrested or detained is entitled to compensation. In making such a prayer, reliance is also placed on number of judgments of this Court

inter-alia ***DK Basu v. State of West Bengal***[5], ***Khatri (2) v. State of Bihar***[6] and ***Rudal Shah v. State of Bihar***[7]**.**

5. On the other hand, the State of Rajasthan submits that the order releasing the appellant-convict on parole is in violation of Rule 9 of the Rajasthan Prisoners Release on Parole Rules, 1958[8]. It is further submitted that ***Asfaq v. State of Rajasthan***[9] has observed that the purpose of parole is to maintain family and social ties and as such what happened in the case of the appellant-convict is not illegal detention since the effect of parole is not suspension of sentence. The purpose of there being three stages of parole before the permanent parole is granted is to observe the conduct of the *parolee* outside of jail which has not been followed in this case. Also, as per the State this is a case of erroneous similarity that is tried to be exhibited by the appellant-convict with either innocent persons or an undertrial directed to be released or a person who has been acquitted neither of which is the situation in this case and for that reason none of the judgments relied on, shall be of any aid. Lastly, it has been submitted *"that though there was judicial order to release the petitioner on parole but the same being erroneous and against the Rules, the State was considering challenging the same and therefore, the order*

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[5] (1997) 1 SCC 416,
[6] (1981) 1 SCC 627
[7] (1983) 4 SCC 141

[8] Rajasthan Parole Rules
[9] (2017) 15 SCC 55

for releasing the petitioner on parole could not be timely informed to the Respondent no.2.'

6. In view of the afore-recorded submissions and undisputed facts, the question that arises for consideration pertains to entitlement, if any, and quantum of compensation payable to the appellant-convict by the State for illegal detention.

7. At the outset, we must consider what constitutes illegal detention. It appears that there is not a recognised definition of illegal detention. Detention is defined as an act of officially detaining someone or the act or condition of being officially forced to stay in a place[10]. Illegal is that which is not allowed by law. Reading them together, it can be observed that illegal detention is that act of forcing someone to stay in a particular place, which is not sanctioned by law. Another aspect would be if the detention is in violation of the procedure established by law. In our view, perhaps, it may be termed as follows:

> *"The deprivation of liberty by the State without lawful authority or in violation of provisions of the Constitution is illegal detention."*

It involves actual custody such that the individual is not free to leave. The detention lacks a valid legal basis such as where there is a lack of authorisation, or where any said authority is void/

[10] https://dictionary.cambridge.org/dictionary/english/detention

expired. Even where a law permits detention, it becomes illegal if the procedure followed is not just, fair, and reasonable, including failure to observe essential safeguards. It would also cover situations where the power to detain is exercised arbitrarily, for an improper purpose, or in bad faith.

8. Before proceeding to consider whether all the requirements mentioned above are met or not, we must consider what is the meaning of '*parole*' and also '*permanent parole*'.

The Concise Oxford Dictionary — (New Edition)

> "The release of a prisoner temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behaviour; such a promise; a word of honour."

Black's Law Dictionary — (6th Edition)

> "Release from jail, prison or other confinement after actually serving part of sentence; Conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order."

According to The Law Lexicon [P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words & Phrases, p. 1410], "*parole*" has been defined as:

> "A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole."

According to Words and Phrases [Words & Phrases (Permanent Edition), Vol. 31, pp. 164, 166, 167, West Publishing Co.]:

> "Parole' ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence."

As per a document[11] prepared under the leadership of Dr. Ranbir Singh and G.S Bajpai[12] under the Ministry of Human Resource Development, Government of India, parole is:

> "… temporary release of a prisoner for short period so that he may maintain social relations with his family and the community in order to fulfil his familial and social obligations and responsibilities. It is an opportunity for a prisoner to maintain regular contact with outside world so that he may keep himself updated with the latest developments in the society. It is however clarified that the period spent by a prisoner outside the Jail while on parole in no way is a concession so far as his sentence is concern. The prisoner has to spend extra time in prison for the period spent by him outside the Jail on parole. Parole may be of the following two types, depending upon the purpose behind it – i) Emergency parole under police protection: to cater to the familial and social responsibilities of emergent nature like death/ serious illness/ marriage of a family member or other close relative. ii) Regular parole: to take care of the familial and social obligations and responsibilities of regular nature as well as for the psychological and other needs of the prisoner to maintain contact with the outside world like house repair, admission of children to school/ college, delivery of wife, sowing and harvesting of crops, etc."

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[11] https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001812/M027790/ET/1521116786Bail,ParoleFurloughremission-(2.Upneet.Lalli.pdf

[12] The former and current vice-chancellors of National Law University, Delhi

8.1 Since we are concerned with the State of Rajasthan, we must also refer to the Rajasthan Parole Rules. Rule 9 thereof is extracted as under:

> "9. Parole period - A prisoner, who has completed with remission, if any, 2 [one-fourth] of his sentence and subject to good conduct in the Jail, may be released on 1st parole for 20 days including days of journey to home and back. and for 30 days on 2nd parole provided his behaviour has been good during the 1st parole and for 40 days on third parole provided his behaviour has been good during the second parole. <u>If during the third parole also the prisoner has behaved well and his character has been exceedingly well and if the prisoner's conduct has been such that he is not likely to relapse into crime, his case may be recommended to the Government through the 3 [State Committee] for permanent release on parole on such conditions as deemed fit by the Superintendent Jail and the District Magistrate concerned;</u> the chief condition among thembeing that if the prisoner while on parole commits any offence or abets, directly or indirectly, commission of any offence, he has to undergo the unexpired portion of the sentence in addition to any sentence imposed upon him by reason of such an offence. In cases the permanent release on parole is rejected the prisoner will be eligible for release on parole for 40 days every year subject to the same conditions for the remaining period of his sentence.
>
> [Provided the cases of prisoners who have been sentenced to imprisonment for life, for an offence for which death penalty is one of the punishments provided by law or who have been sentenced to death but this sentence has been commuted under section 433 of Code of Criminal Procedure into one of life imprisonment shall not be placed before the State Committee for permanent release on parole unless he has served 14 years of imprisonment excluding remission but including the period of detention passed during enquiry, investigation or trial. Such prisoners may be released on parole for 40 days every year for the remaining period of their sentence subject to the conditions stated above.]

8.2 Let us also refer to some judgments-

(a) This Court discussed the concept of parole in a case arising out the detention of one Shithal Kumar under the Conservation Of Foreign Exchange and Prevention Of Smuggling Activities Act 1974[13] after he was believed to be involved in the smuggling of gold into the country and taking the proceeds thereof, out of the country in the form of US Dollars with the help of carriers. A.P Sen J., while adjudication an Article 32 petition filed by the detenu's wife titled ***Poonam Lata v. M.L. Wadhawan***[14], held as under:

> "8. ... Historically 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. As a consequence of the introduction of parole into the penal system, all fixed-term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial

[13] COFEPOSA
[14] (1987) 3 SCC 347

liberty or lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody."

(b) In a batch of appeals by the State of Haryana, a co-ordinate Bench while dealing with the extension of certain circulars issued by the State to those who are out on bail, the difference between "*furlough*", "*parole*" and "*bail*" was noticed as follows in ***State of Haryana v. Mohinder Singh***[15]**:**

"*10. The terms bail, furlough and parole have different connotations. Bail is well understood in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the Code. It is granted by the officer in charge of a police station or by the court when a person is arrested and is accused of an offence other than a non-bailable offence. The court grants bail when a person apprehends arrest in case of a non-bailable offence or is arrested for a non-bailable offence. When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is suspended he nevertheless remains a convict. For the exercise of powers under Section 432 it may perhaps be relevant that the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was*

[15] (2000) 3 SCC 394

> *pending at that time. Appeal in that case might have to abate inasmuch as the person convicted has to accept the conditions on which the State Government remits the whole or part of his punishment."*
>
> …
>
> 18. It would be thus seen that when a prisoner is on parole his period of release does not count towards the total period of sentence while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him.

(c) A Constitution Bench in ***Sunil Fulchand Shah v. Union of India***[16], also discussed the meaning of these terms. A.S Anand CJ, in this judgement observed:

> *"24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word "bail" is surety. In Halsbury's Laws of England* [Halsbury's Laws of England, *4th Edn., Vol. 11, para 166.], the following observation succinctly brings out the effect of bail:*
>
> *The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the*

[16] (2000) 3 SCC 409

> *custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.*
>
> *26. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking, an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of this Court in* State of Haryana *v.* Mohinder Singh, *[(2000) 3 SCC 394 : JT (2000) 1 SC 629] to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction."*

9. Having understood the meaning of the word as above; we may at this stage itself deal with one of the contentions of the respondent State. As noticed *supra*, it has been argued that the order of the learned Single Judge is contrary to law since the appellant was never released on the three prior paroles as required by law, and so the question of permanent parole does not arise. We are of the considered view that such a contention must be forcefully negated for the simple reason that the respondent State has never, on its own, challenged the findings of the learned Single Judge. That being the case, it is not open for the respondent State to raise a question regarding the legality of the order at this belated stage.

In our considered view, the principle of "*obey first, appeal later*" ought to have been applied. Going a step further, it is well settled that mere preferring of an appeal would not, by itself, operate as a stay of the order impugned therein. See ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd***.[17].

In fact, this Court has observed:-

> *73) It is the sole discretion of the appellate authority under the Act to decide the appeal based on the facts involved in the appeal, and legal provisions which eventually result in passing a judicial order. No higher court can pass such directions merely on anticipation of an order being passed by an appellate authority. It is only after the order is passed, that the aggrieved person has a legal right to take recourse to a legal remedy available in law against such order by approaching to a higher forum and pray for grant of appropriate relief against such order.*
>
> *74) A fortiori, the Court cannot stay or/and quash the orders in anticipation, before they are passed. We cannot, therefore, uphold such writ/directions issued by the High Court.*

A judicial order or decree remains in operation unless stayed, modified, or set aside; mere filing of an appeal or application would not, by itself, automatically keep the order in abeyance.

This Court has further held :

***Karnataka Housing Board v. C. Muddaiah*, (2007) 7 SCC 689**

> **32.** We are of the considered opinion that <u>once a direction is issued by a competent court, it has to be</u>

[17] (2005) 1 SCC 705

> obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

***Prithawi Nath Ram v. State of Jharkhand*, (2004) 7 SCC 261**

> "**8.** If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. …"

***Mohd. Iqbal Khanday v. Abdul Majid Rather*, (1994) 4 SCC 34**

> "**18.** …Greater respect should have been shown to court and if he was aggrieved by the order, he should have taken prompt steps to invoke the appellate procedures. The appellant could not ignore the order and plead the difficulties of implementation at the time contempt proceedings are initiated. …"

10. Now, we turn to the issue we have been asked to decide. The appellant contends that the twenty-four-days he remained in custody even after the order of the learned Single Judge, were without the authority of law and, therefore, he is entitled to

compensation. Prior to coming to the question of compensation itself, we may make an attempt to understand the writ of *habeas corpus* itself.

10.1 Although the origins of this writ are slated to be in Assize of Clarendon, 1166, its guaranteed nature came with the Magna Carta 1215 which, in its Clause 39[18] provided as under:

> "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land."

Legislative recognition came with the Habeas Corpus Act of 1679 in England and with the Regulating Act of 1773, in India.

10.2 The power to issue writs under Articles 32 and 226 of the Constitution of India have been termed to be a part of the basic structure of the Constitution. In other words, this power to one of those constituents to the Constitution, that are in effect inalienable and indispensable to the letter and spirit of the Constitution. Let us understand the meaning, import and extent of this writ through various judicial pronouncements.

10.2.1 Lord Halsbury in ***Cox v. Hakes***[19] propounded:

[18] https://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/Clause_39
[19] (1890) LR 15 AC 506 (HL)

> " For a period extending as far back as our legal history, the writ of habeas corpus has been regarded as one of the most important safeguards of the liberty of the subject. If upon the return to that writ it was adjudged that no legal ground was made to appear justifying detention, the consequence was immediate release from custody. If release was refused, a person detained might …make a fresh application to every judge or every Court in turn, and each Court or Judge was bound to consider the question independently and not to be influenced by the previous decisions refusing discharge. If discharge followed, the legality of that discharge could never be brought in question. No writ of error or demurrer was allowed…"

10.2.2 This Court in the Constitution Bench judgment of ***Ghulam Sarwar v. Union of India***[20] speaking through K Subba Rao CJ., observed**:**

> **6.** This leads us to the consideration of the scope of a writ of habeas corpus. The nature of the writ of habeas corpus has been neatly summarized in *Corpus Juris Secundum*, Vol. 39 at p. 424 thus:
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> > "The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the court or Judge awarding the writ shall consider in that behalf."
>
> Blackstone in his Commentaries said of this writ thus:
>
> > "It is a writ antecedent to statute, and throwing its root deep into the genius of our common law…. It is perhaps the most

[20] 1966 SCC OnLine SC 18

> important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I."
>
> This writ has been described by John Marshall, C.J., as "a great constitutional privilege". An eminent Judge observed "there is no higher duty than to maintain it unimpaired". It was described as a magna carta of British liberty. Heavy penalties are imposed on a Judge who wrongfully refuses to entertain an application for a writ of habeas corpus. The history of the writ is the history of the conflict between power and liberty. The writ provides a prompt and effective remedy against illegal restraints. It is inextricably intertwined with the fundamental right of personal liberty. "Habeas corpus" literally means "have his body". By this writ the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon jurisprudence."

10.2.3 P.N. Bhagwati J., (as he then was) writing for a Constitution Bench in ***Kanu Sanyal v. Distt. Magistrate***[21], observed:

> "4. It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is

[21] (1973) 2 SCC 674

illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint"…"

10.2.4 H.R. Khanna, J., in his famous dissent in ***ADM, Jabalpur v. Shivakant Shukla***[22], held as under:

> "**567.** The writ of *habeas corpus ad subjiciendum*, which is commonly known as the writ of habeas corpus, is a process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. By it the High Court and the Judges, of that court, at the instance of a subject aggrieved, command the production of that subject, and inquire into the cause of his imprisonment. If there is no legal justification for the detention,. the party is ordered to be released. Release on habeas corpus is not, however, an acquittal, nor may the writ be used as a means of appeal (see *Halsbury's Laws of England*, Vol. 11, Third Edition, p. 24)."

[22] (1976) 2 SCC 521

10.2.5 In ***Sunil Batra (2) v. State (UT of Delhi)***[23], V.R. Krishna Iyer J., in his trademark flair observed as follows:

> "2. …The constitutional imperative which informs our perspective in this habeas corpus proceeding must first be set out. The rule of law meets with its Waterloo when the State's minions become law-breakers and so the court, as the sentinel of the nation and the voice of the Constitution, runs down the violators with its writ and secures compliance with human rights even behind iron bars and by prison warders. This case is at once a symptom, a symbol and a signpost vis-à-vis human rights in prison situations. When prison trauma prevails, prison justice must invigilate and hence we broaden our "habeas" jurisdiction. Jurisprudence cannot slumber when the very campuses of punitive justice witness torture."

10.2.6 In ***Union of India v. Paul Manickam***[24]**,** the Court termed this writ as a facet of the due process of law in the following terms**:**

> **"7.** The writ of habeas corpus called by Blackstone as the great and efficacious writ in all manner of illegal confinement, really represents another aspect of due process of law. As early as 1839 it was proclaimed by Lord Denman that it had for ages been effectual to an extent never known in any other country.…"

10.3 When the question is as to when a writ of habeas corpus may lie, a reference may be made to ***Halsbury's***

[23] (1980) 3 SCC 488
[24] (2003) 8 SCC 342

Laws of England[25] as quoted in V.G. Ramchandran's Law of Writs by V.Sudhish Pai[26] which reads:

> "The writ of habeas corpus is available as a remedy in all cases of wrongful deprivation of personal liberty. Detention or imprisonment which is incapable of legal justification is the basis of jurisdiction in habeas corpus. It is a process for securing liberty of the subjects by affording an effective means of immediate relief from unlawful or unjustifiable detention, whether in prison or in private custody."
>
> *(emphasis supplied)*

11. Having perused the judicial pronouncements as above, we now move to the main issue at hand i.e., the question of compensation. The respondent State has opposed the appellant's reliance on some of these judgments by contending that they pertained to people under unlawful detention by the State which the appellant was not since he was in fact in prison under the due process of law and so these judgments are distinguishable on facts. We do not find merit in this submission for the para referred to by us above from ***Halbury's Laws of England*** makes abundantly clear that *habeas corpus* would be maintainable against any form of detention. Once parole had been granted and sureties produced to the satisfaction of the concerned court, the non-release becomes illegal detention. That apart, reference to these judgments is to establish clearly that payment of compensation is an acceptable and recognised public law remedy.

[25] 4th Edition Vol.11
[26] 7th Edition Vol. II

[See: ***Sube Singh v. State of Haryana***[27]] There can be no qualms with this position. A few judgments of this Court are ubiquitous with compensation under public law, and so, naturally, we must discuss those first.

11.1 ***Rudul Sah v. State of Bihar & Anr.***[28]

The petitioner was ordered to be released by the Sessions Court Muzaffarpur on 3rd June 1968, but he was released only in 1982 after a lapse of 14 years. The Court under Article 32 ordered the grant of compensation totalling to Rs.35000/- and also observed that the petitioner was free to file a civil suit for damages. The relevant observations are as follows:

> "**9**. 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. ...
>
> **10**….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 of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be

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[27] (2006) 3 SCC 178
[28] (1983) 4 SCC 141

> 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."

11.2 ***Sebastian M. Hongray v. Union of India***[29],

A writ of *habeas corpus* was filed seeking the production of two persons namely Shri C Daniel and Shri C Paul. The corpus could not be returned. The Court granted Rs.1,00,000/- each to the wives of the two above-named persons on account of torture, agony and mental oppression suffered by them.

11.3 ***Bhim Singh v. State of J & K***[30],

The appellant was a legislator in the State of J&K. For certain reasons, he was suspended from the Assembly and when the High Court stayed the suspension, he was on his

[29] (1984) 3 SCC 82
[30] (1985) 4 SCC 677

way back to Srinagar when he was again stopped, detained and taken to an undisclosed location. A writ of *habeas corpus* had to be filed to ensure his production. The Court deprecated in fairly strong terms and awarded Rs.50,000/- as compensation to him. O. Chinappa Reddy J. held as under:

> "When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs 50,000 within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh."

11.4 ***Nilabati Behera v. State of Orissa***[31],

This case was instituted by an aggrieved mother whose son was taken into police custody wherein he met the most unfortunate off- ends. The letter addressed to this Court was treated as a writ petition. Since it was undisputed that the police authorities had taken him into custody and also that he was eventually found pretty much in the state of being a discarded piece of trash on the railway track, the liability of the State of Orissa was obvious. The total amount

[31] (1993) 2 SCC 746

awarded was Rs.1,50,000/-. In doing so, the Court speaking through **J.S. Verma J.** (as he then was) acknowledged the wide powers under Article 32 and also made reference to Article 9(5) of International Covenant on Civil and Political Rights, 1966. Dr. A.S. Anand (as he then was) in the said case observed 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."

11.5 ***Sohan Singh @ Bablu v. State of Madhya Pradesh***[32]

In a recent order, this Court was confronted with a situation where a person who was convicted for an offence had in fact completed the sentence of 4 years and 7 months awarded to him before his actual and eventual release in June of last year. The Court granted Rs.25,00,000/- compensation for violation of rights under Article 21.

11.6 ***S. Nambi Narayanan v. Siby Mathews***[33],

The appellant was a Scientist at ISRO where, upon charges of alleged espionage, he was arrested and suffered custody for almost 50 days. Eventually, his arrest came to be criticised by the CBI in its closure report. The NHRC, keeping in view the facts also awarded interim compensation to him. The proceedings travelled up to this Court, when the High Court of Kerala, overturning the findings of the learned Single Judge refused action against the State authorities on account of delay. A three-judge

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[32] Special Leave to Appeal (Crl.) 11244/2025
[33] (2018) 10 SCC 804

Bench of this Court awarded Rs.50,00,000/- as compensation.

12. Having considered instances of award of compensation as above, as also the discussion preceding that we are of the considered view that the appellant is entitled to compensation for the twenty-four days of illegal custody suffered by him at the hands of the respondent State. The liberty of an individual is not a trivial matter. The State cannot continue curtailing the same in the face of a court order, on account of its slow bureaucratic processes of taking decisions whether to file appeals in a particular matter or not. If such a view is agreed to by us, it would amount to the liberty of a person being placed sub-par to the decision whether or not to file an appeal which is purely an administrative call. That cannot be countenanced. We may only observe that in ***Baradakanta Misra v. Bhimsen Dixit***[34], it has been observed by a Bench of three Judges that merely because a certificate of appeal had been sought from the High Court against an order and the same was pending, the binding character of the High Court order does not lose its lustre. This would squarely apply in this case. Once the detenue has been ordered to be released, the same has to be followed no matter what. The only scenario in which it would not be so done was if a superior Court has granted stay in the matter. Just because a person had been

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[34] (1973) 1 SCC 446

convicted does not mean that his rights weigh less on the scales of justice. We say so for the reason that the due process of verification of sureties had already taken place and despite the same there is an unexplained delay. This Court is oblivious of the fact that such official processes do require some time however, it is incumbent upon the State to ensure its processes do not negatively impact an individual who has secured his liberty.

We award compensation to the tune of Rs.11,00,000/- (Eleven lakhs Only). Amount to be deposited directly into the bank account of the appellant, details of which shall be furnished by the learned counsel for the appellant to the learned counsel for the State.

Appeal is allowed. Pending application(s) if any shall stand disposed of.

……………………………….…..J.
(SANJAY KAROL)

……………………………..………J
(AUGUSTINE GEORGE MASIH)

New Delhi;
May 29, 2026