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WP-17529-2011

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 27th OF APRIL, 2026WRIT PETITION No. 17529 of 2011*AJAY SINGH**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Ajay Gupta - Senior Advocate through Video Conferencing with Shri Rajeev Mishra, learned counsel for the petitioner.

Shri Sumit Raghuwanshi, G.A. for the respondent/State.

Shri Anoop Nair - Senior Advocate with Smt. Divyani Singh - Advocate for the respondent no.2 Airport Authority of India.

Shri Manhar Dixit, Advocate for the respondent No.4.

Shri Shashank Verma - Senior Advocate with Ms. Aditi Shrivastava - Advocate, Shri Shankh Sen Gupta, Advocate - Shri Soham Banerjee and Ms. Nishi Bhankaria - Advocate for the respondent no.5 Company.

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ORDER

The present petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-

i) That the Hon'ble High Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondents no.2, 3 and 4 to install proper machines for the purposes of detection of such kind of contraband and explosive substances and to deploy trained officials with all supporting equipments like chemical detection test kits, proper training, standard operating manuals/procedures and all other necessary instructions.

(ii) The Hon'ble High Court may further be pleased to direct an enquiry by C.B.I. or any other agency into the affairs of purchase



of such ETD machine by Airport Authority of India without analyzing its use and effect in India.

(iii) The Hon'ble High Court may further be pleased to direct the Airport Authority of India to blacklist the said M/s.Smith Detection Asia Pacific PTE Ltd., B-58, Shivalik, Post Office - Malviya Nagar, New Delhi - 110 017 as supplier of such machine.

(iv) The Hon'ble High court may further be pleased to direct that stringent action be taken against the erring officers of Regional FSL, Bhopal for having not acted promptly in reporting that they are not equipped to test MDEA samples and, not carrying out the test for heroin sample — for which they had the facility.

(v) The Hon'ble High Court may kindly be pleased to direct the respondents no.1 to 4 to take stringent action against the erring officers involved in the entire episode for acting casually, callously and irresponsibly.

(v) The Hon'ble High court may kindly be pleased to direct the respondents no. 1 to 4 to pay compensation of Rs.10.00 crores to the petitioner as notional compensation for the illegal detention of 57 days in jail due to illegal, irresponsible and casual acts of their responsible officers of respondents and also towards mental agony, humiliation and loss of reputation caused to the petitioner, his parents and family.

(vi) Any other relief which the Hon'ble High Court may deem fit in the facts and circumstances of the case.

2. It is the case of the petitioner that the petitioner who is a businessman by profession, was leaving for Delhi from Bhopal by Jet Airways Flight enroute Malaysia. During routine security checkup at Bhopal Airport, while scanning the baggage and other goods containing packets of branded Aamchur powder and branded Garam Masala powder by ETD machine, it was found that packets of Aamchur powder which were approximately 750 gms. each in weight contained 1-4% heroine and 10% of



MDEA (Mytheylene Dioxym N-Ethylamphetamine) respectively. Consequently, the petitioner was arrested on the spot by the CISF, Panchnama was made and packets of Aamchur and Garam Masala were seized and sent to chemical examination. Pursuant thereto, an FIR vide crime No.166/2020 was lodged against the petitioner at Police Station Gandhi Nagar, Bhopal for the offence under section 8/21 of the Narcotic Drugs and Psychotropic Substance Act, 1881 (hereinafter referred to as 'the Act'). The investigation was conducted and seized packets of powder were sent to Regional Forensic Laboratory, respondent no.6 on 10.5.2010.

3. It is submitted by learned counsel for the petitioner that the respondent no.6 made delay in testing the seized goods and returned the samples after ten days on the ground of non-availability of facility for testing MDEA. It is further submitted that thereafter the samples were sent to Central Forensic laboratory, Hyderabad for testing the contraband. It is submitted that as per the report of CFL dated 30.6.2010, no contraband substance was found in the seized samples. Thereafter, the petitioner was released on personal bond on 2.7.2010, i.e. after suffering incarceration for remaining in judicial custody for 57 days. Thereafter, closure report was filed by the police before Special Judge, NDPS Act, Bhopal and the petitioner was released on bail vide order dated 2.7.2010. Thereafter, the Expunge Report submitted by the Police was accepted by the Special Court, NDPS Act vide order dated 10.12.2010. It is submitted that due to technical fault of the ETD machine, which was operated by inexperienced and unqualified personnel of the respondent no.2 Authority, petitioner was



illegally arrested and was made to suffer 57 days of incarceration without any fault on his part. It is submitted that ETD machine works on the principles of Ion Mobility Spectrometry and tests aroma/effervescence. It is manufactured in Canada and is not calibrated to test aromatic Indian spices. It is not suitable for Indian conditions. It is further submitted that on the application of father of the petitioner dated 27.5.2010, the CISF and Jet Airways tested the garam masala and aamchur power of other brands in ETD machine, also gave alarm of having contraband substances, which shows that ETD machine and checking system of CISF and Jet Airways are faulty and unreliable. It is submitted that the ETD machine uses swabs for testing and CISF does not have swabs in sufficient quantities. The CISF neither maintain any record nor there is any SOP for using ETD machine. Thus, it is submitted that for the harassment, mental agony tremendous pain suffered by the petitioner during custody for 57 days, strict action be directed against the erring officials of the respondent Authority, proper and authentic machines be installed with SOPs, and appropriate and reasonable compensation may be granted to the petitioner. It is further submitted that CBI enquiry be also directed in the present matter. It is also prayed that the respondent no.5 Company be blacklisted being supplier of such defective machine. To bolster his submissions, reliance has been placed upon Apex court Judgment in the case of *D.K. Basu v. State of W.B., (1997) 1 SCC 416 (paras 41, 44, 54)*, and judgments of Division Bench of this court in the case of *Hardeep Singh Anand Vs. State of M.P., 2008(5) MPHT 172 (para 17)*, *Pooran singh Vs. State of M.P., 2009(2) MPHT 435 (para 8, 13)*, in *Santosh*



Kumar Dohare Vs. State of M.P., in *Cr.A.No.460/2004 (para 22, 24, 25 27)*,
Chandresh Maraskole v. State of M.P., 2022 SCC OnLine MP 5881.

4. Per contra, Shri Nair, learned senior counsel for the Airport Authority of India submits that role and duties of the Airport Authority of India is provided under section 12(2) and 12(3) of the Airport Authority of India Act. It is submitted that the Central Industrial Security Force (which is constituted under the provisions of CISF Act 1968) has been assigned the task of aviation security at Indian airports in accordance. with the decision taken by the Committee of Secretaries, Govt. of India on January 2000. It is further submitted that the Bureau of Civil Aviation Security, hereinafter referred to as 'BCAS' is the regulatory authority for civil aviation security in India. It is headed by an officer of the rank of Director General of Police and is designated as Commissioner of Security (Civil Aviation). It is submitted that BCAS is not made a party to the petition. BCAS have also issued the Protocol for Testing and Certification, X-Ray/ETD screeners which only provide training or guidelines for identification/ detection of explosives items. This course/protocol certifies the screener for identification and detection of prohibited and dangerous items and clearance of baggage to be taken on board. The detection of narcotics/contraband item is an optional feature of ETD. It is further submitted that the AAI is responsible for procurement and maintenance of ETDs and the responsibility for operation and further action is of other agencies i.e. CISF & Airline Operator and AAI has no role in the same. It is further submitted that the respondent No. 2 Airport Authority of India had floated a global tender for "Supply of



Explosive Trace Detector at various airports in India”. The respondent no.5 company was one of the bidder to the said tender. The bid of the respondent no.5 being lowest, was accepted and contract with respect to supply of ETD machines at various airports in India was granted to the respondent no.5 company vide LOI dated 22.1.2007, annexure R/1. Thus, the respondent no.5 was responsible for supply of the equipment, testing, commissioning, training and maintenance during the warranty period.

5. In rebuttal to the petition, learned counsel for the State submitted that the NDPS Act has been enacted in order to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. Section 42 of the Act provides for power of entry, search, seizure and arrest without warrant or authorisation. Section 43 of the Act provides for power of seizure and arrest in public place. It is submitted that the arrest of the petitioner has been made pursuant to the provisions of section 42 and 43 of the Act as the ETD machine has indicated that the substance found in the packets are contraband. Further, it has been submitted that protection is provided under section 69 of the Act to Govt. personnel for action taken in good faith. It is submitted that there is no allegations of malice is alleged against any official of the State Govt., thus, the action taken by the police officials is protected under section 69 of the Act. Further, it is submitted that there was procedural delay in sending the samples to Central Forensic Laboratory for which State officials should not be condemned. As the procedure of arrest is provided under the Act, therefore, the petitioner is not entitled for any compensation. So far as CBI



enquiry is concerned, it is submitted that CBI enquiry is directed only in rarest of the rare cases.

6. Refuting the submissions made by the petitioner, learned counsel for the respondent No.5 raised a preliminary objection to the effect that petition at the instance of power of attorney, by which the executant is authorised to litigate civil suit on behalf of the Executor. Thus, the present petition filed on behalf of the power of attorney holder is not maintainable. Secondly, it is submitted that there is delay of one year in filing the present petition. Further, it is submitted that the answering respondent is merely a supplier of the Explosive Trace Detector, 'ETD' equipment under the contract entered into with respondent no.2. Airport Authority of India. Under the Contract, the obligation of the answering Respondent was to supply and install the said equipments as specified in the Contract. That the Contract also envisaged testing, commissioning and handing over the installation which was successfully completed on 22.09.2007 in the airport in question. It is stated that all the obligations of the answering respondent contained under Clause 4.1 of Specific conditions of the Contract including training the staff of AAI and its nominees was fulfilled by the answering respondent. It is further submitted that the defects liability period came to an end on 22.09.2009 as the Commissioning Certificate was issued on 22.09.2007, annexure R/4. It is denied that the ETD equipment is faulty and/or not giving correct results. There is nothing against the ETD machine in the closure report filed by the police. It is submitted that once the petitioner has admitted the factual position that result of the ETD equipment is indicative in nature



and being a primary method has to be confirmed by chemical detection kit, nothing survives against the Answering respondent and the instant petition is not maintainable qua the answering respondent. Reliance has been placed on the judgment of the Apex court in the case of *Ex-Armymen's Protection Services (P) Ltd. v. Union of India, (2014) 5 SCC 409 (para 16)*, *Union of India Vs. Rajasthan, (2017) 2 SCC 599 (para 12)*.

7. Heard learned counsel for the parties and perused the record.

8. Primarily, the contention of the petitioner is that because of ill-action of the respondent authorities, the petitioner has suffered illegal incarceration, which is infringement of his fundamental right of liberty enshrined under Article 21 of the Constitution of India. It is submitted that any act of the State violating the liberty of a citizen of India has to be dealt with in a stringent manner. The petitioner has knocked the doors of the constitutional court. Therefore, the respondent authorities are answerable to justify their action, which, in turn, they could not justify the action. The respondents, in their return, have submitted that the ETD machines were installed under the protocols of the Bureau of Civil Aviation Security (BCAS), annexure R/2, and after due tender invited by the Airport Authority of India. However, it was required for the employer, the Airport Authority of India or BCAS to see that the machines which are installed at the place to determine the explosive/ narcotic substance are perfect in the sense that no innocent person should be kept under suspicion and that too, result into an illegal custody.

9. It is submitted that any arrest on the basis of presumption and



without recording any reasons is not acceptable and therefore, the period of incarceration of 57 days has to be dealt with rigorously allowing compensation of Rs.10 Crores. The petitioner has relied on the judgments of the Hon'ble Apex Court to the effect that when it was found by the Hon'ble Apex Court in the case of *D.K. Basu (supra)*, and by this court in *Hardeep Singh Anand (supra)*, *Santosh Kumar Dohare (supra)*, *Pooran Singh (supra)* and *Chandresh Marskole (supra)*, that the custody of the person was unjustified against the settled principle of law, in appropriate cases, compensation has been granted apart from giving liberty to the affected person to initiate proceeding for malicious prosecution.

10. It is further submitted that the person can be arrested only on a strong belief and substance that the person is possessing any substance which is prohibited under the law. It is further submitted that from the final report submitted as annexure P/2 that on 7.5.2010, the Sub-Inspector of CIFS along with the employee of the Jet Airways has submitted an application to the police station that the petitioner Ajay Singh was found to be in possession of the packets, which may contain 1-4% heroin and MEDA 10%, which has been examined and found in the X-ray and ETD machine. On the basis, the panchanama was prepared, the samples were collected and under section 8/21 NDPS Act, the petitioner has been arrested.

11. It is found that the petitioner was arrested when he was about to fly from Bhopal to Delhi in Flight No.S2 791 (Jet Light), seat No.1F. It is found that in the X-ray machine, a packet containing orange colour powder was found. On query made to the passenger, it was informed that it contains a



garam masala, which was bought as a packet and along with other documents, ETD reports, boarding pass, statements, photos, passport and everything was seized. It was reported that after checking it in the ETD machine, the packet may contain a contraband heroine or an MEDA, which are prohibited NDPS substances. It is also stated in the final report that on 7.5.2010, the scientist of FSL mobile unit Dr. Dixit came to the police station but could not identify the material to be contraband articles and orally instructed to get that examined from the Regional Forensic Science Laboratory. On 9.5.2010, such samples were deposited in the RSFL.

12. Through letter dated 19.5.2010, the RFSL Bhopal has returned those samples holding that the RFSL Bhopal does not have standard sample of MDEA, therefore, it be sent for examination to CFSL Hyderabad and no report has been given. On 20.5.2010, the said samples were sent to CFSL Hyderabad with a covering letter for quantitative examination. The CFSL, Hyderabad, has written a letter stating that there is no facility of quantitative examination of MDEA in the CFSL Hyderabad. Thereafter, again by letter dated on 24.5.10, a request was made to do the qualitative examination of the samples. Thereafter, a letter was sent by Senior Police Superintendent Bhopal, to the Director CFSL Hyderabad to do the examination on priority basis. On 1-7-2010, the examination report of CFSL was received, according to which it was found that the samples collected from the house of the petitioner and from Rawaldas True Mart, do not contain the said contraband articles.

13. It is observed that said report is scientific based and should be



given more weightage than the ETD result and accordingly, on the basis of the final report submitted, the petitioner was absolved. From the above observation made during the investigation reported in the final report, it is clear that the petitioner was arrested on 7-5-2010 and thereafter he was made to remain in custody till he was released on 2-7-2010 on the basis of the suspicious material found in his possession. However, that suspicion was made on the basis of X-ray machine and ETD machines.

14. It is submitted by learned counsel for the respondent No.5 manufacturer of ETD machine that such report is only indicative and does not give a specific detailed report in regard to the material seized from the person. It is further relied by the counsel for the respondent that clause 3.11.1 and 4.11.1 of tender document does contain the stipulation that it is indicative and that the ETD machines have been installed with the clear stipulation that percentage rate of its giving false alarm is less than 2%, meaning thereby that it may also fail sometimes.

Clause 3.11.1 and 4.11.1 of the Tender document reads as under :-

3.11 Guarantee and defects liability period

3.11.1 The contractor shall guarantee that all equipment shall be free from any defect due to the defective materials and bad workmanship and that the equipment shall operate satisfactorily and that the performance and efficiencies of the equipment shall be not less than the guarantee values.

The guarantee shall be valid for a period of: -

1) 24 months from the date of issue of Commissioning certificate jointly by AAI & the representative of the firm or 30 months from the date of supply of EXPLOSIVE TRACE DETECTOR at site, whichever is earlier.

Any part found defective during guarantee period shall be replaced/ rectified by the Contractor without any charges whatsoever. The services of the contractor's personnel, if requisitioned during this period, for such work, shall be made available free of any cost to the Authority.

4.11 Detailed Particular Specifications.



4.11.1 Any specification better than the specification mentioned below shall also be acceptable. The Explosive Trace Detectors are designed to detect nanogram (ng) level of explosive traces. The swipe or vapour mode shall be used for collection of samples and analysis. The equipment shall meet the minimum specifications as given below : The specifications are applicable for both marked and unmarked explosives.

- i. Model : Desktop Model, Trolley mounted
- ii. Detection Capacity — : Detect explosives such as RDX, PETN, TNT, Dynamite, SEMTEX, C4, HMX and Ammonium Nitrate etc, with programmable Detection Capability
- iii. Detection Technology : Based on the latest technology in explosive detection.
- iv. Sensitivity : Capable of detection Explosive minimum of 100 ng in operational/laboratory conditions,
- v. Selectivity : < 2% typical false alarm rate.
- vi. Analysis Time : Approximate 10 Sec per sample.
- vii. Sample collection : a) Surface wipe for trace particle/using Filter/vacuum pump unit.
b) Air collection for vapour
- viii. Warm up time : Approx. 20-30 minutes,
- ix. Power : 220 V, 50 Hz, 30w, Auto Sensing. 12 volt DC.
- x. Detection mode : Explosive mode optional: narcotic
- xi. Signal processing : a) Variable integration time.
b) Plasmagram component.
c) Recognition of multiple explosives in particulate/vapour mode.
- xii. Weight : Less than 40 Kg
- xiii. Calibration : Automatic Calibration.

Therefore, it is submitted that it is not the Company who had claimed that it is the final proof of the substance, it is only indicative in nature. The authorities are required to deal the matter absolutely in accordance with law and the strict protocols of contraband or any prohibited material found in possession of any person at the airport. Therefore, the Company is not liable for any action or orders by this court.

15. The respondent Airport Authority of India has submitted that to find out that prima facie the person contains prohibited substance, the BCAS has issued circular R/2 for procuring ETD. Pursuant to said circular, tenders were floated, the contractors were invited, the bid of respondent No.5



Company was found to be lowest and accordingly, it has been selected and the contract has been executed with the respondent no.5 company. It is submitted that the Airport Authority of India is not responsible for security check. It is by the protocols of the Bureau of Civil Aviation Security annexure R/4. Therefore, Airport Authority of India is directly not involved in the security check. Bureau of Civil Aviation Security has not been impleaded as a party.

16. The State Government in its reply has submitted that under section 42 and 43 of the NDPS Act, the person found with suspicious contraband may be arrested for the reasons to believe that such packets contain the prohibited substance. The procedure is prescribed under section 42 and 43 of NDPS Act. It is submitted that any act done by the authorities in good faith cannot be subject to any challenge before any court of law under section 69 of the Act. It is not the case that the deliberate attempt has been made by the Investigating Officer to infringe the fundamental right of the petitioner. It is submitted that the quick actions have been taken by the State Investigating Officer to get the sample examined by the scientific method through mobile unit and thereafter RSFL and CSFL. Therefore, the time consumed in getting the report was not in the hands of the State Investigating Officer.

17. The Hon'ble Apex Court in the case of *D.K.Basu (supra)* has held as under :-

41. Some punitive provisions are contained in the Penal Code, 1860 which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations



(a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Penal Code, 1860. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

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.

18. Division Bench of this Court in the case of *Hardeep Singh (supra)* has held as under :-

"17. During the five years of delay in the trial from 15.3.1999 to 6.5.2004 caused by the State, the appellant's liberty was not affected in as much as he was not under imprisonment but was on bail. Hence, the appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the appellant was handcuffed without a valid justification and his dignity as a human being had been affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking- timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In the facts and circumstances of the case, we award a compensation of Rs. 70,000/- (Rupees seventy thousand only) to the appellant. This compensation will be without prejudice to any claim that the appellant may make in a civil Court for damages.

19. Division Bench of this Court in the case of *Pooran Singh (supra)* has held as under :-

8. The liability of the State to pay compensation for deprivation of the fundamental right of life and personal liberty is a new liability in public law created by the Constitution and not vicarious liability or a liability in tort. For this reason, this new liability is not hedged in by the limitations, including the doctrine of sovereign



immunity, which ordinarily apply to State's liability in tort. This view is strongly supported by the decision of the Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago*, [1978] 2 All ER 670. Section 1 of the Constitution of Trinidad and Tobago recognizes amongst other "the right of the individual of life, liberty, security of person and the right not to be deprived thereof except by due process of law". Any person alleging contravention of this right and other human rights and freedoms recognized under sections 1 and 2 can apply under section 6 for redress to the High Court which is empowered to issue appropriate orders, writs and directions for enforcement or securing the protection of provisions of the aforesaid sections. The appellant in the case was a barrister and was committed to seven days imprisonment by a judge of the High Court which committal was set aside by the Privy Council in appeal on the ground that particulars of the specific nature of the contempt were not told to the appellant and the judge had thereby failed to observe a fundamental rule of natural justice. The appellant had in the meantime applied for redress under section 6 on the ground that he was deprived of his liberty without due process of law. This application was dismissed by the High Court, but appellant again came up in appeal, to the Privy Council. The Privy Council held that section 6 of the Constitution impliedly allowed the High Court to award compensation as that may be the only practicable form of redress in some cases. The Privy Council also held that as the appellant's committal was in violation of the rules of natural justice, he was deprived of his liberty without due process of law in contravention of section 1 of the Constitution and was entitled to claim compensation from the State under section 6 thereof. In meeting the argument that a judge cannot be made personally liable for anything done or purporting to be done in the exercise or purported exercise of his judicial functions, LORD DIPLOCK speaking for the majority observed: "The claim for redress under section 6(1) for what has been done by a judge is a claim against the State for what has been done in the exercise of judicial power of the State. This is not vicarious liability : it is liability of the State itself. It is not a liability in tort at all : it is a liability in public law of the State, not of the judge, which has been created" by sections 6(1) and (2) of the Constitution. As to the measure of compensation LORD DIPLOCK said: "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. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration."

13. A survey of the cases referred above goes to show that it is now well settled that the defence of sovereign immunity is not available when the State or its officers, acting in the course of employment, infringe a person's fundamental right of life and



personal liberty as guaranteed by Article 21 of the Constitution and the State can be directed in a writ jurisdiction under Articles 32 and 226 to repair the damage done to the victim by paying appropriate compensation. We, therefore, having regard to the fact that petitioner was kept under illegal detention for almost five years in prison, direct the State Government to pay him compensation of rupees three lac within two months from today. We have awarded this amount as compensation feeling that the amount is just and proper. While doing so, as held by the Supreme Court in the case of D.K. Basu (Supra), we have not taken into account the punitive element as the objective is to apply balm to the wounds of petitioner and not to punish the transgressor. We, however, make it clear that if the petitioner feels dissatisfied with the amount awarded, he will be at liberty to resort to traditional remedies and the compensation awarded in the present case will be adjusted against any amount awarded to him by way of damages in civil suit.

20. Division Bench of this Court in the case of *Santosh Kumar*

Dohare (supra) has held as under :-

"22. However, before parting with this judgment, this Court would like to take note of a disturbing feature of this case. As already held, the appellant no.2 Bhure @ Balram Jatav, has remained in jail for a period of near about 12 years and appellant no.3 Shripal is in jail for the last near about 15 years. It is unfortunate, that there is no provision under the Law to compensate the victim of false/malicious implication, after his acquittal in the Trial or in an appeal. However, this Court cannot lose sight of the fact, that Article 21 of the Constitution of India, protects the life and liberty of the citizen of India. Article 21 of the Constitution of India reads as under :

“21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

24. A Division Bench of this Court in the case of Hardeep Singh

Anand Vs. State of M.P. reported in (2008) 5 MPHT 172 has held

as under :

“13.....In Rudul Sah v. State of Bihar and Anr. : 1983CriLJ1644 , the Supreme Court has taken a view that one of the effective ways in which violation of fundamental rights under Article 21 of the Constitution can reasonably be prevented, is to direct the State to pay compensation to the person whose rights under Article



21 of the Constitution is affected. In the language of the Supreme Court (Para 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 prevented and the 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 civilization 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.

14. In fact, in *State of Maharashtra and Ors. v. Ravikant S. Patil* : (1991)2SCC373 , the Supreme Court referring to the *Rudul Sah v. State of Bihar* 1983 Cri LJ 1644 (supra) upheld the award of compensation of Rs. 10,000/- by the High Court of Bombay to an under-trial prisoner who had been handcuffed and taken through the streets in a procession by the police during investigation. We are, thus, of the view that the appellant is entitled to compensation for violation of his fundamental rights guaranteed under Article 21 of the Constitution to speedy trial and not to be handcuffed without valid justification.

15. The next question is how much compensation the appellant is entitled? In *D.K. Basu v. State of West Bengal* : 1997CriLJ743 , the Supreme Court, after examining the liability of the State to its citizens for infringement of their fundamental right laid down the principle for assessment of compensation to be paid by the State as under (para 55):



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 tortuous 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 interrogation 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.

During the five years of delay in the trial from 15-3-1999 to 6-5-2004 caused by the State, the appellant's liberty was not affected inasmuch as he was not under imprisonment but was on bail. Hence, the appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the appellant was handcuffed without a valid justification and his dignity as a human being had been seriously affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In the facts and circumstances of the case, we award a compensation of Rs. 70,000/-(Rupees seventy thousand only) to the appellant. This compensation will be without prejudice to any claim that the appellant may make in a civil Court for damages.”



25. Being dissatisfied by the order passed by a Division Bench of this Court in the case of Hardeep Singh Anand (Supra), the petitioner therein, filed S.L.P. before the Supreme Court. The Supreme Court by order dated 5-12- 2011 passed in the case of Hardeep Singh Vs. State of Madhya Pradesh (Cr.A. No. 2250/2011) observed as under:

“16. Coming, however, to the issue of compensation, we find that in light of the findings arrived at by the Division Bench, the compensation of Rs.70,000/- was too small and did not do justice to the sufferings and humiliation undergone by the appellant. In the facts and circumstances of the case, we feel that a sum of Rs.2,00,000/- (Rupees Two Lacs) would be an adequate compensation for the appellant and would meet the ends of justice. We, accordingly, direct the State of Madhya Pradesh to pay to the appellant the sum of Rs.2,00,000/- (Rupees Two Lacs) as compensation. In case the sum of Rs.70,000/- as awarded by the High Court, has already been paid to the appellant, the State would naturally pay only the balance amount of Rs.1,30,000/- (Rupees One Lac thirty thousand).”

27. Thus, it is clear that where a person has not remained in incarceration for a longer time, then the quantum of compensation amount would be on a lesser side but where a person has remained in jail for a period of more than 12 years or if a person is still in jail i.e., for more than 15 years, then for violation of fundamental rights of the accused, the State must compensate the victim. The Supreme Court in the case of Anita Thakur (Supra) has also held that for patent and 19 Criminal Appeal No.460/2004 [Santosh Kumar Dohare (dead), Bhure and another Vs. State of M.P.] incontrovertible violation of fundamental rights, the remedy of compensating the victim of police misconduct, is available. Thus, it is held that as it has been found that the appellant was prosecuted with deliberate and malafide intention, so that the complainant may settle his scores, and the police also joined hands with the complainant so that it can gain popularity by fake and imaginary encounters with the miscreants, then the State must compensate the appellants for the utter violation of their fundamental rights as for no reason, they were compelled to remain in jail for such a long time.

21. Division Bench of this Court in the case of *Chandresh Maraskole (supra)*

has held as under :-



"72. As far as the question relating to compensation is concerned, one view is that the Appellant be relegated to seek remedy under private law by an action in tort against the state. The other is that he be compensated for violation of his fundamental right to a fair and unbiased trial. In Rudul Sah v. State of Bihar, the Supreme Court was seized of a case where the Petitioner (under Art. 32) was kept in jail for 14 years after he had served his sentence and was awarded compensation by the Supreme Court where in paragraph 10, the Supreme Court held, ".....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" . This was perhaps one of the earliest cases where the Supreme Court had an occasion to deal with right of a person whose fundamental right has been infringed by state action.

79. In view of what we have held hereinabove, the fact that the Appellant has spent more than thirteen years awaiting justice and, in the facts and circumstances unique to this case, we award the Appellant a compensation of Rs. 42,00,000/- (rupees forty two lakhs), which shall be paid by the State within ninety days from the date of this order. Thereafter, it shall attract an interest of 9% per annum till the date of payment. This does not preclude the Appellant in proceeding against the State for an action in tort for malicious prosecution. If he succeeds in the same, the amount of compensation paid to the Appellant in compliance of this order shall be adjusted accordingly. The record of the Trial Court shall be preserved for a period of three years from the date of this order. A copy of the entire Trial Court record shall be provided to the Appellant free of cost if he so demands. The District Legal Services Authority concerned shall accord all such assistance to the Appellant as required, to enable him to prosecute his claim before the Court of appropriate jurisdiction, if the Appellant so desires to pursue such a remedy.

22. From the above enunciation of law, it is crystal clear that the provisions of Cr.P.C. /BNSS provides that in case the person is maliciously prosecuted or confined to custody infringing his right of liberty then he may invoke criminal prosecution. Equally, the person is required to be suitably compensated for infringement of the fundamental right to life of a citizen by a public servant and the State is vicariously liable for their acts. 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 emphasize is to be on the compensatory and not on a punitive element. The object is to apply a 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 the 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 victim or the heirs of the deceased victim with respect to the same matter for the torturous 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 traditional remedies and not in derogation of them.

23. When the present case in hand is tested on the principle laid down by Hon'ble Apex Court, it is found that as the ETD machine was indicative and found that substance possessed by the petitioner in the packets are prohibited narcotic substance then it was incumbent upon the Authority to produce the petitioner with the material before the Investigating Agency immediately to further find out the truth. If the possession of the suspicious material was *prima facie* believed to be prohibited, then it should have to be



investigated and prosecuted accordingly. Therefore, from the above discussion, it is found that it was not the act of the respondent Airport Authority of India or the manufacturer of the machine which culminated into illegal custody of the petitioner because the ETD machine was installed as per the protocol of BCAS, which is not under challenge, and the ETD machine was installed with certain stipulation which gives a benefit of doubt to the manufacturer of ETD machine that it may fail sometimes and the results are always indicative, which is required to be corroborated with cogent investigation and examination.

24. From the observation made in the final report, it is clear that though the arrest was made with reasonable apprehension but the person could have been released within short span of time if the State machinery had been equipped with proper chemical examination of the contraband. In the present case the mobile unit has been found to be useless. The Regional Forensic Lab also found to be not having the facility of qualitative and quantitative examination of contraband, which has been alleged to be mixed with the masalas. Thus, it is for the State to understand that why such infrastructure and deployment of highly qualified persons have been made in RFSLs, when they cannot give any opinion in lack of equipments. When cases like in hand are sent for the investigation/examination to RFSL, no opinion was given and finally when the samples were sent to CFSL it was found that it does not contain contraband, which took about 57 days of petitioner's life suffered in jail for no fault on his part.

25. The preliminary objection is taken by the respondent no.5



Company that the petition has been filed by the petitioner through the Power of Attorney and Power of Attorney contains that the power has been given to the father by the petitioner to prosecute the State machinery for compensation by filing a suit.

26. As the matter has been pending since 2011 before this court and now in 2026 only on the ground of technicality, this court does not find it appropriate to relegate the petitioner to avail remedy of civil suit. However, the petitioner is at liberty to file appropriate civil suit in the light of dictum of Hon. Apex Court for damages or wrongful act against the wrongdoer. The Power of Attorney Holder is father of the petitioner is definitely affected by the illegal act of the respondents by which the petitioner was kept in illegal custody, therefore, petition is found to be maintainable.

27. Therefore, in the considered opinion of this court that because of the lethargy and not having the standard laboratories in the State of M.P., the petitioner had to suffer incarceration for 57 days. Therefore, as per the dictum of Hon'ble Apex court, the State is vicariously liable for the act of the respondent authority for keeping him in prison for 57 days and ultimately found to be on a faulty basis. Therefore, applying the principle of the law laid down by Hon'ble Apex court finding it to be most suitable case for illegal confinement, infringing the fundamental right of life and liberty of the petitioner, this court finds it appropriate to award compensation to the tune of Rs.10 Lacs to the petitioner, Ajay Singh, who remained in custody for 57 days, to be paid by the State Govt. within a period of three months from the date of production of certified copy of this order. The application along with



certified copy of this order shall be filed before the District Collector, who, in turn, shall forward the matter to the competent authority of the State for payment of the amount.

27. Writ under Article 226 of the Constitution of India as it is a public law remedy, the court can issue direction to the State to take necessary steps to prevent such illegal confinements of any other citizens in the State of M.P. From perusal of the record it is found that the delay has been caused only because the State machinery was not equipped for examination of the stuff seized from the petitioner, therefore, the State is directed through its Chief Secretary to take immediate steps to counter such lethargy and the deficiency of the laboratories. The Chief Secretary of the State is directed to get the inspection done of all the RFSLs within the period of one month from the date of intimation of this order. The Chief Secretary is further directed to provide all necessary equipments and personnel to RFSLs for scientific examination of all the prohibited substances, so that no other innocent can be kept in illegal confinement, for not having sufficient means to examine the prohibited substance.

28. With the aforesaid, petition is disposed of.

(DEEPAK KHOT)
JUDGE