

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

WRIT PETITION No. 19486 of 2022

BETWEEN:-

GANESH RAM VISHWAKARMA,

.....PETITIONER

(BY SHRI NARENDRA KUMAR SHARMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE SECRETARY, HOME
DEPARTMENT, VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. HIGH COURT OF MADHYA PRADESH,
THROUGH THE REGISTRAR GENERAL,
HIGH COURT OF MADHYA PRADESH
JABALPUR (MADHYA PRADESH)**
- 3. SPECIAL SESSION JUDGE (NDPS)
NARSINGHPUR, DISTRICT NARSINGHPUR
(MADHYA PRADESH)**
- 4. DIRECTOR GENERAL OF JAIL, BHOPAL
(MADHYA PRADESH)**
- 5. SUPERINTENDENT OF JAIL, NARSINGHPUR
DISTRICT NARSINGHPUR (MADHYA**

PRADESH)

6. SHEFALI TIWARI, SUPERINTENDENT OF
JAIL NARSINGHPUR, DISTRICT
NARSINGHPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ROHIT JAIN - GOVERNMENT ADVOCATE FOR RESPONDENTS

NO.1, 4 AND 5)

Reserved on : 09.09.2022
Pronounced on : 30.09.2022

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Vishal Mishra passed the following:

ORDER

This petition has been filed seeking a writ in the nature of mandamus directing the authorities to pay compensation to the tune of Rs.10,00,000/- (Rupees Ten Lakhs) in lieu of the excess sentence given by the respondents.

2. The case of the petitioner is that he was working as a welder and owing to involvement in a criminal case, after trial he was convicted vide judgment dated 16.09.2003, passed in Special Case No.40/2002 for the offence punishable under Sections 21 (c) and 18 (c) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for a period of 10-10 years with fine of Rs.2 lakhs, in default of payment of fine he has to undergo simple imprisonment for 2-2 years. He was again convicted vide judgment dated 05.11.2003, passed in Sessions Trial No.184/1995 for the offence punishable under Section 307 of IPC and sentenced to undergo 3 years rigorous imprisonment and fine of Rs.300/-, in default of payment of fine he has to undergo additional rigorous imprisonment for 3 months. He was again convicted vide judgment dated 14.07.2008, passed in Special Case No.36/2006 for the offence punishable under Section 8/21 of the N.D.P.S.

Act and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.1 lakhs, in default of payment of fine he has to undergo additional simple imprisonment for 1 year.

3. His sentence in Special Case No.40/2002 was over on 05.04.2013. His sentence in Sessions Trial No.184/1995 was over on 01.09.2014. Thereafter, his sentence in Special Case No.36/2006 was started on 01.09.2014 and he was suffering the jail sentence. He preferred a criminal appeal bearing Criminal Appeal No.2081 of 2008 arising out Sessions Trial No.36/2006 and during hearing of the case this Court found that his sentences are found running concurrently from 28.11.2006 and therefore, he has completed the jail sentence so also the default sentence and vide order dated 14.12.2021 this Court has directed the petitioner to be released from jail. The order of this Court dated 14.12.2021 was placed before the Superintendent of Jail, Narsinghpur and a prayer was made to release the petitioner but he was not released. Thereafter, he approached the Additional Sessions Judge, NDPS, Narsinghpur to issue perpetual warrant dated 17.12.2021, but he was not released on bail. The petitioner preferred a petition filed under Section 482 of Cr.P.C. bearing M.Cr.C. No.5513 of 2022 before this Court for releasing him from jail as he has completed the jail sentence. Subsequently, on the report submitted by the Jail Authorities dated 13.02.2022 with respect to sentence of the petitioner that he has not deposited the fine amount of Rs.2 lakhs therefore, he has to undergo 4 years additional simple imprisonment in Special Case No.40 of 2002. Considering the aforesaid the petition was disposed off vide order dated 10.03.2022 with the observation that if the petitioner deposited the remaining fine amount in Special Case No.40 of 2002, then the authorities are directed to release him with immediate effect. The petitioner preferred a Habeas Corpus Petition bearing Writ Petition No.8324 of 2022 pointing out that he has already completed the jail sentence, therefore, he could not remain in jail and the action of the authorities is

violative of Article 20 of the Constitution of India. Vide order dated 04.05.2022 the writ petition was dismissed with liberty to avail the remedy before the appropriate forum. The petitioner again filed a petition under Section 482 of Cr.P.C. being M.Cr.C. No.23792 of 2022, which was allowed vide order dated 29.07.2022 holding that as petitioner has completed default sentence in first case, therefore, he cannot be kept in jail. The respondents were directed to release the petitioner from jail immediately. The order was placed before the Court of Sessions at Narsinghpur by filing an application. On 06.08.2022 the petitioner was released from the Jail.

4. It is submitted that the petitioner has suffered excess sentence from 25.11.2021 to 06.08.2022 without there being any order of conviction, therefore, the same is in violation of Article 21 of the Constitution of India. Learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of Bholu Kumar Vs. State of Chhattisgarh, 2022 LiveLaw (SC) 589 (Criminal Appeal No.937 of 2022) and in view of the judgments passed by several High Courts and the Hon'ble Supreme Court, the petitioner is entitled for compensation. Hence, this petition.

5. *Per contra*, counsel appearing for the State has vehemently opposed the contentions and submitted that no such compensation can be extended to the petitioner. On earlier occasion he has preferred a petition under Section 482 of Cr.P.C. before this Court, which was disposed off vide order 10.03.2022 considering the report submitted by the Jail Authorities, as the petitioner is yet to undergo 4 years jail sentence in lieu of non-deposition of fine amount in Special Case No.40 of 2002. The petitioner has preferred a writ petition before this Court in the nature of Habeas Corpus being Writ Petition No.8324 of 2022, which was dismissed as withdrawn on 04.05.2022. No observation with respect to liberty for filing a petition under Section 482, Cr.P.C. was given by the Division Bench of this Court. The same was

dismissed with a liberty to avail the remedy in accordance with law. Exercising the liberty, he again preferred a petition under Section 482 of Cr.P.C., which was not maintainable, once a petition under Section 482 of Cr.P.C. has already been considered and decided by this Court either rightly or wrongly. Filing of subsequent petition under Section 482 of Cr.P.C. by the petitioner for same relief cannot be held to be maintainable. It is submitted that in view of the report dated 13.02.2022 submitted by the Jail Authorities pointing out the fact that he has not deposited the fine amount of Rs.2 lakhs in view of the judgment of conviction and order of sentence dated 16.09.2003 in Special Case No.40 of 2002; therefore, he was required to undergo the jail sentence of 4 years in lieu of non-deposition of the fine amount which was considered by this Court in the earlier round of litigation in M.Cr.C. No.5513 of 2022. Question of maintainability was not considered in the subsequent petition filed under Section 482 of Cr.P.C. in proper perspective. The report submitted by the Jail Authorities was not considered. In such circumstances, filing of subsequent petition under Section 482, Cr.P.C. was itself not maintainable. In view of the aforesaid, he has prayed for dismissal of the petition.

6. Heard learned counsels for the parties.

7. A specific question was put to the counsel for the petitioner that once the earlier petition filed under Section 482, Cr.P.C. was considered and decided on merits by this Court being M.Cr.C. No.5513 of 2022 vide order dated 10.03.2022 how the second petition under Section 482, Cr.P.C. claiming same relief is maintainable. The answer given by the counsel for the petitioner is that in view of the liberty given by the Division Bench of this Court he has preferred a petition under Section 482 of Cr.P.C. but the fact remains that the liberty, which has been extended to the petitioner by the Division Bench was to avail the remedy before appropriate forum. The Division Bench of this Court has observed as under:-

“Learned counsel for petitioner after arguing at length prays for withdrawal of this petition with liberty to avail the remedy before the appropriate forum.

Accordingly, this petition stands dismissed as withdrawn with the aforesaid liberty.”

8. The petitioner was required to challenge the order dated 10.03.2022 passed by this Court in M.Cr.C. No.5513 of 2022 before the appropriate forum. He was also required to challenge the report submitted by the Jail Authorities specifically pointing out the fact that the petitioner has not deposited the fine amount with respect to Special Case No.40 of 2002, therefore, he was required to undergo further 4 years simple imprisonment.

9. Granting liberty to approach appropriate forum does not mean that the petitioner can again file a petition under Section 482 of Cr.P.C. praying for same relief, which was rejected by this Court in earlier round of litigation. It is seen from the record that the learned Single Judge has considered the aspect that while exercising the inherent powers the orders can be passed. But the fact remains that second petition under Section 482 of Cr.P.C. for the same relief was itself not maintainable. The aforesaid aspect lost sight of the learned Single Judge and from the order it appears that the objections were not raised before the Court by the counsel appearing for the State. The learned Single Judge was having no jurisdiction to entertain second petition under Section 482 of Cr.P.C. for the same cause of action and for the same relief, which was already rejected vide order dated 10.03.2022 based upon the report submitted by the Superintendent, Central Jail, Narsinghpur. If the Court is not having any jurisdiction to entertain second petition under Section 482 of Cr.P.C. the order itself is *void ab initio* and on the basis of such orders the petitioner could not have been released. It is not disputed that in pursuance to the order passed in second petition under Section 482 of Cr.P.C. dated 04.05.2022 the release order was prepared by the learned trial court and the petitioner was released on bail. Therefore, he has filed the

present petition seeking compensation pointing out that he was in unlawful custody for certain period. Therefore, the right to personal liberty has been infringed and there is gross violation of Article 21 of the Constitution of India, but the fact remains that till date there is no challenge being made by the petitioner to the report, which has been submitted by the Jail Authorities dated 13.02.2022, which reads as under:-

“उपरोक्त विषय एवं संदर्भ में कृपया निवेदन है कि दंडित बंदी गणेश राम विश्वकर्मा पिता विश्राम विश्वकर्मा, निवासी ग्राम गौरा, थाना बाड़ी, तहसील बरेली, जिला रायसेन (म.प्र) के प्रकरणों की जानकारी चाही गई है। अभियुक्त गणेश राम विश्वकर्मा पिता विश्राम विश्वकर्मा, केन्द्रीय जेल नरसिंहपुर में परिरुद्ध रहकर सजा भुगत रहा है। उक्त बंदी का सजा भुगताये जाने के संबंध में विवरण निम्नानुसार है।

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2	f}rh; çdj.k	सत्र प्रकरण क्रमांक 184/1995, अपराध धारा 307 भा.द.वि. में माननीय न्यायालय अपर सत्र न्यायाधीश, सोहागपुर के पारित निर्णय दिनांक 05.11.2003 को 03 वर्ष सश्रम कारावास एवं अर्थदंड 300/- न देने पर 03 माह अति. सश्रम कारावास की सजा से दंडित किया गया । उक्त प्रकरण की 03 वर्ष सश्रम कारावास की मूल सजा दिनांक 01.09.2014 को समाप्त की गई, अर्थदंड की राशि माननीय न्यायालय के समक्ष जमा की जा चुकी है ।
3	rrh; çdj.k	विशेष प्रकरण क्रमांक 36/06, धारा 8/21 N.D.P.S. Act में माननीय न्यायालय श्री आर.के.नागपुरे, विशेष न्यायाधीश, N.D.P.S. Act नरसिंहपुर के पारित निर्णय दिनांक 14.07.2008 को 10 वर्ष सश्रम कारावास एवं अर्थदंड 1,00,000/- न देने पर 01 वर्ष अति. साधारण कारावास की सजा से दंडित किया गया । f}rh; çdj.k dh ey I tk I ektr mijka fo'ksk çdj.k Øekad 36@2006 ea 10 o"kz I Je dkjkokl dh I tk fnukad 01-09-2014 I s çkjMk dh xb] fdUrqekuuh; U;k;ky; Jh t I or fl g ;kno fo'ksk U;k;kek'k N.D.P.S. Act ujfl gij }kjk tkjh fjkbl vknsk fnukad 17-12-2021 ds ikyu ea fo-ç-Ø- 36@06 ea fnukad 17-12-2021 dks fjk fd;k x;k A çFle çdj.k ds vFkhM dh jkf'k 2]00]000@& ds

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02&02 o"lz vfr- I kkkj.k dljkokl dh I tk frukad 17-12-2021 I sçkjkk dh xbz gA”

10. From the perusal of the aforesaid it is apparently clear that with respect to Special Case No.40/2002, which is at Serial no.1 for offence registered under Sections 21 (c) and 18 (c) of the N.D.P.S. Act the petitioner was convicted on 16.09.2003 and he was required to undergo 10-10 years R.I. along with Rs.1+Rs.1 = Rs.2 lakhs fine for each offence and in lieu of the fine amount he suppose to undergo 2-2 years simple imprisonment. The report shows that in default of depositing the fine amount his jail sentence for remaining four years starts from 17.12.2021. Virtually there is no challenge to the report dated 13.02.2022. In such circumstances, on the basis of an order which has been passed by the learned Single Judge without any jurisdiction to entertain the petition under Section 482 of Cr.P.C. as the same is *void ab initio* and in pursuance to the same the petitioner has been released by the learned trial court, no relief regarding compensation claimed by the petitioner can be granted to him. Therefore, the petition seeking the relief of compensation is dismissed because the petitioner is yet to undergo the remaining sentence of 4 years in lieu of default of fine amount.

11. As far as passing of the order dated 29.07.2022 passed in M.Cr.C. No.23792 of 2022 is concerned, this Court exercises suo moto powers to recall the order dated 29.07.2022 passed in M.Cr.C. No.23792 of 2022 as the second petition under Section 482 of Cr.P.C. seeking the same relief was itself not maintainable and there was no liberty granted by the Division Bench of this Court in Writ Petition No.8324 of 2022 for filing the petition under Section 482 of Cr.P.C. The liberty was only to approach the appropriate forum. The petitioner was required to challenge the order passed by this Court dated 10.03.2022 in M.Cr.C. No.5513 of 2022 along with

report dated 13.02.2022. In view of the aforesaid, the order dated 29.07.2022 passed in M.Cr.C. No.23792 of 2022 is unsustainable being without jurisdiction, is hereby set aside.

12. The petitioner is directed to surrender before the trial court or before the concerning Jail Authorities with immediate effect. In case, if he fails to surrender then the learned trial court is directed to issue warrant of arrest against the petitioner.

13. In case, the petitioner deposits the fine amount as imposed by the learned trial court in Special Case No.40 of 2022 within a period of 1 month from the date of this order, the order passed by this Court may not be given effect regarding issuance of arrest warrant to the petitioner. Petitioner if willing to deposit the fine amount, he is required to appear before the concerning court and file an undertaking to the aforesaid effect within a period of seven days from the date of receiving the copy of this order. After depositing the fine amount the entire sentence of the petitioner stands undergone by him.

14. Accordingly, the writ petition stands disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

taj.