

(2006) 12 KAR CK 0058  
Karnataka High Court  
Case No: Writ Petition No. 12606 of 2002

Sri. P.  
Hanumanthappa

APPELLANT

Vs

The Home Secretary,  
The State of  
Karnataka, Home  
Department and  
Others

RESPONDENT

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Date of Decision: Dec. 5, 2006

Acts Referred:

- Constitution of India, 1950 - Article 161
- Criminal Procedure Code, 1973 (CrPC) - Section 428, 429 (2)
- Penal Code, 1860 (IPC) - Section 201, 302, 392
- Protection of Human Rights Act, 1993 - Section 21

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: C.M. Monnappa, M. Mahadevaiah and C.M. Poonacha, for the Appellant;  
Umakantha, AGA for R-1 and 2, Mahesh Wodeyar and Rajashekar Seen for R-3, G.S.  
Visweswara and G.S. Visweswara and Associates for R-4 to 6, Narayana Reddy M. and  
Associates for R-7, Mylaraiah Associates for R-8 and C.R. Patil, for R-3, for the Respondent

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### Judgement

@JUDGMENTTAG-ORDER

D.V. Shylendra Kumar, J.

Writ petition is by a person, who was a prisoner in the Bangalore Central Prisons at Parappana Agrahara, Bangalore, serving life sentence and whose life sentence had been remitted in terms of a Government Order No. HD 164 PRA-98 dated 2.9.1998, which was an order of remission granted by the Governor of the State of Karnataka in exercise of his constitutional powers under Article 161 of the Constitution of India, petitioner had in fact been released in pursuance of this order on 4.4.1998, but had

nevertheless been taken back into custody, made to languish in jail up to 14.8.1999 on which day he was released giving effect to the order of remission only after the petitioner made Herculean efforts to seek for such release by not only representing to various authorities, but also petitioning the National Human Rights Commission to issue directions to the Jail authorities to hold an enquiry about the justification or otherwise for the continued detention of the petitioner. This enquiry resulted in holding that the continued detention of the petitioner was contrary to the remission order dated 2.9.1998 and wherefore the petitioner was to be released immediately. Petitioner is now agitating for payment of damages/compensation claiming a sum of Rs. 5,00,000/- for the illegal detention from 4.9.1998 up to 14.8.1999.

2. This writ petition was admitted on 14.3.2002 and the respondents who are eight in number were issued with notices of the writ petition. 1st respondent is the State of Karnataka, Home Secretary, 2nd respondent is the Director General & Inspector General of Prison, Karnataka State, 3rd respondent by name is B.J. Mallapur, DIG, of Bangalore Central Prisons, Parappana Agrahara, Bangalore at that time now retired from services, 4th respondent is B.S. Abbai and then Sr. Jail Superintendent, 5th respondent is Ranganathaswamy, Writer, Conviction Section at the same Prison, 6th respondent is Sri Shankarnaryanan, Asst. Superintendent, 7th respondent is Sri. D. Sangappa, then Chief Jailer, Bangalore Central Prison now Jail Superintendent, Sub Jail, Tumkur, and the 8th respondent is the then Jailer, Bangalore Central Prisons, at that time, now Jailer at Tumkur Sub-Jail, Tumkar.

3. Writ petitioner has, inter alia, urged that though the petitioner had been granted remission of his sentence of life imprisonment in terms of the order of the State Government and the remission given to the petitioner had not only been intimated to the petitioner but also to the members of his family and that when his wife, children and other relatives had come to receive him from the jail premises and to take him back home on the 4th September 1998; that the respondents 3 to 8 conspired with each other with a common intention to extract money from the petitioner and his relatives [for the wrongful gain for themselves] and the petitioner was continued in detention at the Central Prison, Gandhinagar, Bangalore, till 22.9.1998 demanding a sum of Rs. 25,000/- for his release; that if the demand is not met the petitioner will be made to undergo further detention in the prison, that the respondents - prison authorities kept the petitioner as prisoner in the Central Prison at Gandhinagar, Bangalore, up to 22.9.1998, with the expectation of receiving the illegal gratification and as the petitioner was not in a position to meet this illegal demand the respondent authorities have clandestinely denied him the benefit of the remission order and he was shifted to New Central Prison, Parappana Agrahara, on 22.9.1998 with instructions to undergo entire life sentence, contrary to the release certificate in terms of Annexure-A and thereafter the petitioner had been assigned convict No. 129 at the Parappana Agrahara, Central Prison and was kept under detention, without any authority of law or warrant till 14.9.1999 thereby depriving the petitioner of his remission of the remainder portion of the sentence, causing life

danger, making him undergo untold misery and mental agony etc., this was not only to the petitioner but also to the members of his family and the petitioner apprehending danger to his life had made several representations including National Human Rights Commission and other authorities about the violation committed by the respondents of the order of remission granted by the Governor and the release certificate dated 4.9.1998, copy at Annexure-A, along with the terms of conditional release, the certificate indicates that the conditions imposed on such persons like the petitioner, who had been given remission of remainder portion of their life sentence being remitted subject to the conditions which reads as under:

- 1 That he will not commit any offence punishable by any law.
2. That he will not in any way associate with persons known to be of bad character which leads to dissolute or evil life.
3. That I will live honestly and peaceably and will endeavour to earn an honest livelihood.

The record indicates that the petitioner had undertaken to abide by this condition by affixing his signature which has been counter signed by the Jailer/Chief Jailer on the same day and is one giving effect to the order of the Governor of Karnataka, Order No. HD 164 PRA-98 dated 2<sup>nd</sup> September 1998. It is also the averment in the writ petition that the petitioner had complained about his illegal detention on and after 4.9.1998 to the Lokayuktha at Bangalore, in terms of the complaint dated 20.11.2001 and had prayed for necessary action against the erring prison authorities who were the Officials incharge of the prisoners at the time and a news item had also been carried about this in "Vijaya Karnataka" on 17.11.2001. The petitioner has averred that his continued illegal detention on and after 4.9.1998 up to 14.8.1999 is violative of his fundamental right of freedom; Out the petitioner is required to be suitably compensated for all the sufferings, mental agony, hardship which he himself has undergone and which has been caused to the members of his family as their expectation of his release on 4.9.1998 was snuffed out and he was made to languish in the prison even thereafter, that the petitioner has been deprived of not only his freedom but also his livelihood and earnings, the support of which would have helped the members of the family; that he had been deprived of the same; that the respondents are jointly and severally responsible for having committed the commissions and omissions of detaining the petitioner in illegal custody and without the authority of law, that the petitioner is required to be suitably compensated and in this regard has sought for payment of Rs. 5 lakhs by way of compensation for having not only disobeyed the coders which in itself is one to give effect to the remission order issued by the Governor of Karnataka in exercise of his constitutional power under Article 161 of the Constitution of India, but also in subjecting the petitioner to illegal detention hardship and suffering and has therefore, sought for issue of directions to the 1st respondent-State to hold a proper enquiry as against the erring officials and to recover the amount of compensation

from the erring officials to be paid from the erring officials and for further directions to the State to constitute a State Human Rights Commission on the guidelines of the National Human Rights Commission, which can look into such complaints and take timely measures to prevent the atrocities committed on gullible prisoners and helpless citizens of the State and for issue of further directions to the State to formulate a scheme for rehabilitating the convicted prisoners to enable them to lead a normal life in the Society and also to direct the State to fix wages during the period of sentence and to prevent mal nutrition and for such other reliefs.

4. Though the writ petition was pending for as long as four years before this Court and had been admitted way back in the year 2002 itself, the State has chosen not to file any statement of objections in response to the writ petition. On the other hand, learned HCGP and HCGA who have appeared on behalf of the State from time to time have made efforts to defend the action of the State by oral submissions and with reference to the record.

5. However, statement of objections have been filed in their individual capacity by respondents 4, 5 & 6 who are represented by M/s. G.S. Visweswara Associates, Advocates and on whose behalf Sri. G.S. Visweswara, Sr. Advocate has appeared. The 3rd respondent who is also represented by Counsel Sri. Mahesh Wodeyar, has filed a memo adopting the objections filed on behalf of respondents 4, 5 and 6. This apart a separate affidavit dated 28.6.2006 has been filed by Sri. D. Sangappa - the 7th respondent has sought to justify the action of continued detention of the petitioner on the premise that the petitioner had suffered conviction earlier in three cases as per., Annexure R-1 to the affidavit of D. Sangappa, details of which reads as under:

I, D. Sangappa, S/o Sri. Dyamappa, aged about 56 years, working as Superintendent District Head Quarters Sub jail, Kolar, today at Bangalore, do hereby solemnly affirm and state on oath as follows:

1. I respectfully submit that the petitioner in the above Writ Petition has sought for a direction to the Respondents jointly and severally to pay a compensation amount of Rs. 5,00,000/- together with interest at 18% p.a. from 4.9.1998 for having disobeyed the orders under Annexure-A till the payment, with a direction to the State to hold an enquiry and to recover the same from the erred Prison Authorities and for such other reliefs.

2. I submit that when the above matter was posted on 3.6.2006, this Hon"ble Court was pleased to direct the 2<sup>nd</sup> Respondent to file an affidavit disclosing the detailed facts and under what circumstances, the petitioner has not completed 10 years actual sentence as on 15.8.1998. Hence, the present affidavit is filed. I submit that the 2<sup>nd</sup> respondent has authorised me to file this affidavit on his behalf. I am fully aware of the facts of the case.

3. I respectfully submit that the petitioner was convicted by the Hon"ble JMFC, Shikaripur in C.C. No. 1002/1985 for the offence punishable u/s 380 of IPC on 29.3.1986 to undergo S.I. for a period of one year and to pay a fine of Rs. 500/- in default, to undergo SI for 30 days and he was in judicial custody from 12.9.1985 which is given set off. The date of release in this case works out to 12.9.1986. The default sentence of 30 days cannot be given effect to immediately as per the Provisions of Section 429(2) of Cr.P.C. I submit that in the meanwhile, the petitioner was convicted in other cases by the Hon"ble JMFC, Shikaripur in C.C. No. 1084/1983 and in C.C. No. 1085/1983 on 28.4.1986 for the offences punishable u/s 379 of IPC to undergo S.I. for a period of one year in each case and judicial custody period was given set off from 16.11.1985. The petitioner had to undergo two years S.I. in these two cases. Further, the petitioner was convicted in S.C. No. 46/1985 for the offence punishable u/s 302, 392 and 201 IPC by the Hon"ble Sessions Judge, Shimoga, on 14.1.1987 to undergo life imprisonment and 3 years RI and RI for one year and the substantive sentence to run concurrently.

4. I respectfully submit that the Hon"ble Supreme Court of India in the case of "[Government of Andhra Pradesh and Another Vs. Anne Venkatesware and Others](#)," held that the set off for a period of under trial detention cannot be claimed in instances where a person is under actual detention on conviction. I submit that the date of release in 2<sup>nd</sup> and 3<sup>rd</sup> case by the Petitioner after giving set off is 19.12.1987 and the 4<sup>th</sup> case i.e. life imprisonment has to commence from 19.12.1987. While the petitioner was undergoing imprisonment for life, the petitioner has escaped from the prison out gang on 10.5.1992 and he was recaptured in Davangere on 7.1.1994. Therefore, the total sentence undergone by the petitioner as on the date of the Government Notification dated 15.8.1998 after giving set off of 277 days and 606 days of escaped periods and after deducting the said periods, the petitioner has undergone actual sentence of 9 years 7 months 14 days. Therefore, he was not eligible to release him from the Jail/Prison as on the date of the Government Notification as stated above.

5. I respectfully submit that the petitioner has not undergone 10 years of actual imprisonment as on 15.8.1998 and therefore, he was not eligible for amnesty release within the purview of the Government Order. Therefore, the contention that the respondents erred in detaining the petitioner after 15.8.1998 cannot be accepted at all. The said technical aspect has been referred to the Government to confirm the act of the Department by taking legal opinion from the legal experts vide letter dated 8.1.2002. The copy of the said letter is herewith produced and marked as Annexure-R-1 for the kind perusal of this Hon"ble Court.

6. In view of the reasons stated above, the petitioner is not entitled to any of the reliefs at the hands of this Hon"ble Court under Articles 226 and 227 of the Constitution of India.

Wherefore, I humbly pray that this Hon"ble Court be pleased to dismiss the above writ petition with costs, in the interest of justice and equity.

and has also indicated that the petitioner who was serving life sentence had escaped from prison and has not served sentence for a period of 606 days between 10.5.1992 and 7.1.1994 and excluding this period of 606 days and the sentence which the petitioner was required to serve in the three criminal cases No. 1002/1985, 1084/1983 & 1085/1983, under which he has been sentenced for on year each of imprisonment, and if all these things are taken consideration the petitioner had not served a minimum of 10 years by the time the cases of life convicts who had served more than 10 years of life sentence had been recommended for remission by the order of the Governor and therefore, the petitioner"s case was one not eligible for such recommendation itself and accordingly the petitioner does not earn remission and if he is not one who gets remission in terms of the Government Order dated 2.9.1998, he is a person who is required to serve the remainder portion of his life sentence and he has been rightly taken back in to custody and sent to Central Prisons, Parappana Agrahara, Bangalore, to serve his remaining part of the life sentence; that the action taken is justified and therefore the petition is to be dismissed etc.

6. A separate memo of calculations is placed on record by Sri. G.S. Visweswara, learned Sr. Counsel appearing for respondents 4, 5, & 6 to indicate the details of the cases in which the petitioner had been convicted and had been sentenced, the period of imprisonment that he had undergone and that he is yet to serve etc.

7. However, Sri. Mahadevaiah, learned Counsel for the petitioner, submits that the facts and figures furnished by the learned Counsel for respondents 4, 5 and 6 is not correct nor precise and this calculation and submissions made, based on such calculations are to be rejected.

8. The statement of objections filed on behalf of respondents 4, 5 and 6 is adopted by the learned Counsel for the 3rd respondent also. It is, inter alia, contended that the petition is not tenable whether in law or on facts; that the writ petitioner has not come up with true facts; that he has suppressed the material facts; that the petitioner was a prisoner who has escaped from the prison while serving life sentence; this fact he has not disclosed in the writ petition; that he has also suppressed the fact that he had been convicted in C.C. No. 1002/1985, C.C. No. 1084/1983 and C.C. No. 1085/1983 and had been sentenced to undergo S.I. for a period of one year in each of these three cases; that the writ petitioner having not placed these facts on record, petition is to be dismissed only for the reason of suppression of material facts etc. However, it is not denied that the petitioner who was a person convicted and sentenced for life imprisonment and such other lesser sentence which were to run concurrently in criminal cases in Sessions case No. 46/1985 in terms of the order dated 14.1.1987 on the file of the Court of District and Sessions Judge, Shimoga, but he was also required to serve R.I. for three years in

three other cases referred to above and therefore the averments in the writ petition are not tenable; that the petition does not have merit for the relief sought for. It is also urged that the Governor of Karnataka on the occasion of Golden Jubilee Celebrations on the eve of Indian independence, in principle had taken a decision to restrict life term imprisonment to 10 years in the case of prisoners who have already undergone 10 years of actual imprisonment; that such decision had not in any way granted any remission of sentence in the other three cases referred to above wherein the petitioner had been convicted and sentenced and notwithstanding the remission the petitioner was still required to undergo three more years of imprisonment and it is for this reason that the petitioner had been taken back to custody notwithstanding his release on 4.9.1998. The period of escapement from prison is also indicated in the statement of objections and it is urged that the 606 days period when the petitioner was out of prison is to be excluded in computing the period of 10 years of imprisonment that he had undergone to become eligible for earning the remission etc; that in this regard before recommending the case of the petitioner, the authorities had lost sight of the provisions of Section 432 of Cr.P.C. which requirement had not been complied; that the opinion of the Presiding Judge had thereafter been obtained who had opined that the different sentences cannot run concurrently unless it had been specifically so ordered earlier and therefore, also the impugned action is justified. It is also urged that the petitioner had not undergone the life sentence as the total duration of his imprisonment fell short of 10 years, if it is to be computed by excluding the period of escapement from prison and the period of additional three years required to serve for the sentences in the three different criminal cases and therefore the petitioner could not be released. The allegation of demand illegal gratification is denied; that it is false and baseless and if such a demand should have been made, the petitioner would have complained against about it earlier and would not have come up with a plea of illegal demand in the present writ petition. It is also urged that though the petitioner was released on 14.8.1999, the petitioner having approached the Court only in the year 2002 that itself belies the false claim of the petitioner both with regard to the illegal gratification and the merits of the case. It is urged that the release order issued by the Government was subject to imprisonment in other three cases and the condition that it is available only for life convicts who had been sentenced for a period of more than 10 years.

9. Paragraph 11 and 12 of the statement of objections filed in this regard filed by the respondents 4, 5 & 6 and also relied by the 3rd respondent reads as under:

11. As on 4.9.1998, the petitioner had not served sentence of 10 years and farther it is to be submitted that he had escaped from the prison. It is to be further submitted that there was conviction in three other cases to undergo Simple Imprisonment for one, in each case. In these circumstances, the Petitioner was not released on 4.9.1998. The respondents were informed that there was some error in the Order dated 4 9.1998 and the matter was under review. In these circumstances, the

petitioner was not released on 4.9.1998 as he had to undergo further one year imprisonment in each case for a further period of three years. The Government Order was subject to the other imprisonments in other cases and also was subject to actual serving of the sentence for a period of more than 10 years.

12. No doubt, under Annexure-A, the petitioner was directed to be released, but this Order was subject to the petitioner serving sentence in other three cases for a period of three more cases and under these circumstances there is no illegal detention of the petitioner, as alleged.

10. It is also urged that the allegation the petitioner was asked to serve the remainder portion of the life imprisonment was not correct and on the contrary, because of his conviction in three other cases and the petitioner having not disclosed this fact and also the factum of escapement from prison for a period of 606 days, the allegation that he had been illegally detained up to 14.9.1999 the date on which he was actually released subsequently is denied as incorrect. The allegation of the petitioner being subjected to physical and mental torture are also denied. It is urged that none of the constitutional rights of the petitioner had been infringed; that the material placed by the petitioner before the Court are all not trustworthy and therefore pleaded for dismissal of the writ petition with costs.

11. Sri Uma Kanth, learned AGA, who has appeared on behalf of the State - respondents 1 and 2, towards the far end of the hearing of this case and who has made his submissions has also sought to place on record an additional affidavit sworn to by Sri. D. Sangappa- the 7th respondent and purporting to be in addition to his earlier affidavit already available on record, which has been referred to above and has requested to treat this affidavit as part of the statement of objections on behalf of the 2<sup>nd</sup> respondent.

12. There are as many as 15 Annexures annexed to this affidavit which are said to be extracts of the records/correspondence that has taken place between the jail authorities and the learned judges who had tried and convicted the petitioner in the criminal cases referred to earlier in this order. Though in the first affidavit sworn to by Sri. D. Sangappa, the 7th respondent in the writ petition, it is mentioned that the affidavit was being filed in response to the directions issued by the Court in terms of the order dated 3.6.2006, calling upon the 2<sup>nd</sup> respondent to file an affidavit disclosing the detailed facts and circumstances to indicate that the petitioner had not completed 10 years of imprisonment as on 14.8.1998 and the affidavit was filed in compliance of the same, in the additional affidavit it is indicated that not all facts had been properly revealed in the first affidavit and therefore the additional affidavit!

13. Firstly I do not find any such directions issued by this Court on 3.6.2006 calling upon the 2<sup>nd</sup> respondent to file an affidavit as is sought to be stated in paragraph 2 of the affidavit of Sri. D. Sangappa, - the 7th respondent.



14. On the other hand the order passed by this Court on 3.6.2006 reads as under:

Realist this matter on 17.6.2006, at the request of learned AGA to enable him to get the original records and to make his submissions.

15. Moreover I find that the said D. Sangappa himself is arrayed as 7th respondent in the writ petition and is a person against whom allegations of bribery charges are made in the writ petition. It is rather surprising that the 2<sup>nd</sup> respondent - a responsible officer of the State Police Department heading the Prisons establishment and being the Director General of Prisons should have chosen to place any version on his behalf through the affidavit of a sub-ordinate official who is himself facing serious allegations in the writ petition.

16. Efficacy of an affidavit is based on the person sweating to the affidavit, affirming a statement as one within his personal knowledge and to which he is privy. If the 2<sup>nd</sup> respondent was required to file an affidavit or is desirous of placing any fact before the Court, he should have placed it by himself and not through the assistance and not through an affidavit sworn to by the 7th respondent.

17. Be that as it may, the significance as I notice of filing the affidavit is only for the purpose of demonstrating that the petitioner in fact had not completed 10 years of imprisonment, which was the requirement for recommending the case of any life convict for either earning remission or passing remission order by the State Government to the understanding of these respondents.

18. While the tenability of the contention in terms of the statutory provisions and in the light of the order of remission issued in the name of the Governor and Government of Karnataka in exercise of his constitutional powers under Article 161 of the Constitution of India could have been examined and which I find would still not meet the test of law, the respondents having not established their bona fides cannot rely upon such a legal contention to get over the petition averments regarding allegation of demand for bribe. If such is the situation these affidavits have no significance at all in the context of defending the writ petition.

19. If one should peruse the first affidavit of D. Sangappa dated 28.2.2006 and the additional affidavit Swum to and sought to be placed before the Court along with index dated 4.12.2006, which are only for the purpose of justifying the action on behalf of the respondents for taking back the released prisoner i.e., the petitioner into custody and detaining him further thereafter on the premise that he had not served 10 years of life imprisonment and if so the action taken is justified. If the respondents could have established their bona fides in putting forth such contentions, perhaps there would have been some justification in the defence irrespective of the fact whether it was tenable or not tenable in law but in spite of giving repeated opportunities the respondents have not been able to demonstrate their bona fides in taking action as they have done based on the reasoning sought to be given with other material that they have sought to place in terms of these two

affidavits.

20. In fact the only original record that has been placed before the Court is the register called "Enroute Prisoners Admission Register" wherein figures the name of the petitioner as prisoner No. 223 with father's name religion and identification marks indicated that he is the resident of Naranahalli Hanchegramma, Honnahalli Taluk, Shimoga, that he is an agriculturist, illiterate. The endorsement towards the end of the page wherein occurs the details of the prisoners from Nos. 219 to 224, that the petitioner figuring as No. 223 and dated 4.9.1998 reads as raider:

indicating that all these prisoners have been released on 4.9.1998 pursuant to the Government order dated 2 9.1998 issued on the occasion of the "Golden Jubilee Independence Celebrations" of the 50th year of independence. The record if at all indicates the petitioner has been released on 4.9.1998.

However, what is sought to be pointed out by the learned Govt. Advocate as also Sri. G.S Visweswara, learned Sr. Counsel, who has appeared for respondents 4 to 6 in their individual capacity is an endorsement, which reads in the column corresponding to prisoner No. 223 which reads as under:

21. If at all if one should go by this endorsement, only shows that the petitioner was nevertheless not released notwithstanding the common endorsement dated 4.9.1998 with all the prisoners have been released subject to the condition and have been released prematurely.

22. This affirms the version of the petitioner that though he had been released he has been continued in detention, but the endorsement by itself does not reveal or indicate about any bona fides of the decision about the petitioner being either not released or taken back into custody.

23. Sri. Mahadevaiah, learned Counsel for the petitioner, Sri. G.S. Visweswara, learned Sr. counsel appearing for respondents 4, 5 and 6 and the series of learned Government Pleaders and Government Advocates who have appeared for other respondents from time to time and Sri. Uma Kanth, learned AGA who has appeared as the last in the series have all been heard at great length prior to passing this order.

24. During the course of hearing of the petition it had become necessary for the Court to record the developments and particulars as the matter was not getting over and the learned Counsel for the respondents would seek for further time on one premise or the other. Orders passed on 19.8.2006, 29.8.06, 3.11.06, 24.11.06, 27.11.06, 29.11.06 & on 4.12.06 reads as under-

DVSKJ:

19-8-2006

Writ petition by a person who was serving life sentence and who was a beneficiary of a remission order of the government in exercise of its power u/s 432 CrPC read with Article 161 of Constitution of India.

The grievance of the petitioner is that though the petitioner was a beneficiary of the government order dated 2-9-1998 to secure freedom from the balance portion of his sentence, having been remitted by the government, being a prisoner who had served 10 years of his sentence; that the benefit was not extended but denied to the petitioner, as he was unable to meet the illegal demands made by the respondents 3 to 8 and was incarcerated again to be released on 14-8-1999, that too after the petitioner had complained against his non-release not only to the government but also to the Human Rights Commission etc.

Writ petition is in such context seeking for award of damages in a sum of Rs 5.00 lakh for the wrongful detention of the petitioner from 2-9-1998 upto 14-8-1999.

Statement of objections has been filed on behalf of the respondents, the respondents have denied the petition averments. Respondents have stated that the release of the petitioner on the day was a mistake; that the petitioner was not entitled to the benefit of the order inasmuch as the petitioner had not served a sentence upto ten years; that excluding certain period during which the petitioner had escaped or was out of prison, the period does not add upto ten years and therefore the respondents had rightly taken back the petitioner to custody and had continued his prison term though they had in terms of the order dated 2-9-1998, about to release the petitioner.

Submission of Sri Mahadevaiah, learned Counsel for the petitioner, who has also perused certain records placed before the court by Sri Prakash, learned Government Pleader, is that the records vindicate the stand of the petitioner; that the defence mat the petitioner not having served for a period of ten years on the date of the government order dated 2-9-1998 is only an afterthought; that it is neither tenable nor borne out from the records and therefore the petitioner should be extended the relief in toe writ petition.

Sri Prakash, learned GP, seeks a week's time to place before the court such records which can indicate that the prison authorities had realized fair mistake well in advance of the proceedings that had been initiated and at any rate before the release of the petitioner. Unless the respondents are able to show from records that the mistake had been realized even before the release of the petitioner, version of the respondent appears to be not prima facie acceptable and the petitioner's allegations are prima facie made good List next week for further hearing to enable the learned government pleader to place before the court such records which can throw light on this aspect of the matter.

Furnish copies of this order both to the learned Counsel for toe petitioner as well as learned government pleader.

DVSKJ

29-08-2006

Sri Veerappa, learned AGA submits that the records are still not yet received and requests the matter to be taken up on 2-9-2006.

Can on 2-9-2006 for further hearing.

Learned AGA to ensure availability of the records before the court on 2-9-2006.

DVSKJ:

3.11.2006

Sri Mahadevaiah, learned Counsel for the petitioner has drawn attention of the court to a report of the Inspector General of Police (Prisons) namely, Vijay Sasanur, dated 18-9-1999 submitted to the Secretary of the Department of Home Affairs, Government of Karnataka, inter alia, indicating the circumstances under which the petitioner had been taken back into custody after his initial release on 4-9-1998 and had been subsequently released only on 14-8-1999 as per the recommendation of the very Officer to the Government and after pointing out the various lapses and mistakes committed by the different Jail authorities and submits that this is proof enough of the petitioner's allegation that the petitioner has been illegally detained on and after 4-9-1998 till his release on 14-8-1999; that it was due to the malafide action on the part of the respondents and at any rate it is an illegal action on the part of the State and therefore the petitioner should be awarded suitable compensation in the present petition.

2. This report was in the context of a complaint that the petitioner had filed before the Human Rights Commission and on the notice issued by the Human Rights Commission to the State and in response to that, for the purpose of placing the version of the State, the report had been called for from the Officer concerned.

3. While Sri Ramesh Kumar, learned Government Pleader appearing for the State and the statutory authorities seeks two weeks time to get clarification on the report and as to whether the recommendation of the Officer who has filed the report had been acted upon and it is only for that reason the petitioner had been released admitting his continued the detention on and after 4-9-1998 was an illegal one, Sri. Naik, learned Counsel for respondent Nos. 4 to 6 would submit that the petitioner was required to serve some more sentences even beyond the remission accorded in favour of life convicts; that the mistake was realised by the concerned Jail Officials about the erroneous release and therefore he had been rightly taken back to custody to ensure that the petitioner served the other sentences which were still required to be served etc.,

4. Sri Muniraju, learned Counsel appearing for respondent No. 8 submits that the petitioner had been convicted for different offences in different cases and one such conviction was of the year 1996; that apart from the life sentence, he had to serve

the other sentences and this would commence only after the completion of the life sentence and therefore taking back the prisoner to serve out other sentences even after he obtained remission on life sentence is Justified etc.,

5. Submission of both learned Counsel Sri Naik and Sri. Muniraju, proceeds on the premise that sentences imposed on the petitioner were to run one after the other and not concurrently. The very submission appears to be fallacious and not based on legal principles.

6. Mr. Mahadevaiah, learned Counsel for the petitioner, however would submit that all sentences were to run concurrency and the petitioner had served out all sentences and in fact all such offences and sentences had been taken note of while recommending the case of the petitioner for remission and on the premise that he had already served more than ten years and had become eligible for remission accorded to the petitioner on the occasion of the Golden Jubilee Independence Day Celebrations of the country.

7. That appears to be the position even as per the report referred to above and if the version of the report is to be accepted, then no further proof of petition averments are required and that the incarceration on and after 4-9-1998 is not Justified in law. If the detention would become without the authority of law, then the question will be as to whether the petitioner can claim any compensation for such incarceration even in writ jurisdiction.

8. It is also submission of Sri, Mahadevaiah, learned Counsel for the petitioner that the petitioner is not keen on claiming damages from any individual respondent but it is the State which is required to compensate the petitioner for the omissions and commissions which are committed by the Government servants; that they are made as parties by name as respondents only for urging that action should be taken against such erring officials also etc.,

9. If one goes by the report, the only question that survives for further consideration will be on the quantum of damages to be awarded in favour of the petitioner if the law as has developed on consequence of illegal detention is to be applied to the present case.

10. However, Sri. Ramesh Kumar, learned Government Pleader requests two weeks time to respond to the subsequent development with regard to the report after taking instructions from his client

11. List for further hearing after two weeks.

12. Sri Ramesh Kumar, learned Government Pleader to keep available the record on the next date of hearing.

DVSKJ:

24-11-2006

Though the writ petition, which is in the context of allegation of illegal detention of the petitioner and the reason attributed for the same being the inability on the part of the petitioner to satisfy the illegal demands made by the respondent is being heard since considerable length and several orders were passed by this Court on 19.8.2006, 29.8.2006 and on 3.11.2006 ie., on the last occasion the matter was adjourned only to enable the learned Govt. leader to keep available the records and to make his submissions. Even today the learned HCJP is not ready in the case and the records are not available with the learned HCJP.

It is only a reflection of the careless manner in which the case is defended on behalf of the State and its officials, learned HCJP requests the matter to be taken up tomorrow to keep the records available.

List on Monday the 27th November 2006 for further hearing as requested.

DVSKJ:

27-11-2006

Sri Umakanth, learned Additional Government Advocate appearing on behalf of respondents 1 and 2 seeks permission to make further submissions in addition to the submissions already made by Sri Ramesh Kumar, learned Government Pleader and seeks adjournment of the case by two weeks for such purpose.

I do not find justification to keep extending time to conclude the matter just because respondents deem it their privilege to engage one counsel after the other.

Though in terms of the order dated 24-11-2006, the respondent State had been specifically directed to keep the records available before the court, it is submitted that the records are not available even today also. It only shows the non co-operative and irresponsible attitude on the part of the respondents 1 and 2. Such conduct is while not appreciated, definitely deserves deprecation by this Court Respondents 1 and 2 directed to keep available the record at least by 29-11-2006 as Sri G.S. Visweswara, learned Senior Counsel appearing on behalf of respondents 4 to 6 seeks two more days time to put the foots in a tabulated form indicating the actual sentences imposed on the petitioner, as to when exactly the life sentence began and as to within what period he would have completed 10 years serving life sentence excluding 606 days said to have been the period during which he had escaped from the prison etc.,

Respondents 1 and 2 imposed cost of Rs. 1,000/-for carelessness in not keeping the record available. Though the case is heard in part on several occasions, the record was made available earlier, it is surprising that it should have been taken back even before the case is concluded and the respondents are feeling shy of producing the record now inspite of the order passed by this Court Cost of Rs. 1,000/- to be deposited to the credit of the High Court Legal Aid Committee and receipt to be placed before the court on 29-11-2006 along with the records on the said date.

List on 29-11-2006 for further hearing. Copy of this order may be furnished free of cost to all counsel for the parties.

DVSKJ:

29-11-2006

A memo of calculations of the details of the cases and sentences imposed where wider the petitioner had been convicted and particulars of trial period, period of imprisonment underwent, are already prepared in a tabulated form and filed on behalf of the respondents 4 and 5.

Sri. G.S. Viswesara, learned Senior Counsel appearing on behalf of respondents 4 to 6 submits, in the light of the facts as borne out the recommendation of the petitioner's case for remission can be demonstrated to be not justified in law and that it was a mistake.

Sri Umakanth, learned Additional Government Advocate, who is presently appearing on behalf of respondents 1 and 2, seeks some more time for full preparation and presentation on perusal of full records and seeking full instructions from his clients, and submits that the matter may be taken on 4-12-2006.

List on 4-12-2006 for further hearing.

DVSKJ

4-12-2006

Arguments concluded list for orders on 5-12-2006.

learned Govt Advocate has placed before the court a register called Enroute Prisoners Admission Register, which has a noting of the release of the petitioner as on 4-9-1998.

25. While Sri. Mahadevaiah, learned Counsel appearing for the petitioner, has vehemently urged that the detention of the petitioner on and after 4.9.1998 was illegal, not justified in law, that the respondents very conduct of releasing him on 14.8.1999 subsequent to the enquiry end report of the Sri. B.G. Mallapur, DIG Prisons, a copy of which report dated 13.8.1999 Annexure-2, para 9 which reads as under:

and accepting the same the petitioner having been released, and wherein it had been indicated that the continued detention of the petitioner was illegal and accepting the said report having released him on 14.9.1999, are all facts borne out from the records of the respondents; that no further proof of illegal detention is required; that the petitioner is entitled for claiming compensation and for being compensated due to his illegal detention; that Courts have already suitably compensated for such acts of illegal detention and has placed reliance on the following authorities.

1. Laxman Naskar (Life Convict) v. State of W.B. and Anr., 2000 CriLJ 4017
1. [State of Punjab and others Vs. Joginder Singh and others,](#)
3. [Rudul Sah Vs. State of Bihar and Another,](#)
4. Nijaguniah G.S. and Anr. v. State of Karnataka and Ors. 1977(1) Kar.L.J. 176
5. Ravi and Anr. v. State of Karnataka 1987 Cri.L.J. 2017
6. Abdul Munaf Choudhari v. State of Karnataka and Ors. 2003 (4) KCCR. 306
7. Smt. Suman Kanji Hodar v. State of Maharashtra and Ors. 1991 Cri.L.J. 2896
8. Mohd. Harun v. State of U.P 1991 Cri.L.J. 1083
9. [Champabai and Another Vs. State of Karnataka and Others,](#)
10. Smt. Soubhagya v. The Chief Secretary, State of Karnataka and Ors. ILR 2001 Kar. 1626
11. [Ajab Singh and Another Vs. State of Uttar Pradesh and Others,](#)
12. Geeta and Anr. v. Lt. Governor and Ors. 2000 ACJ 189
13. [Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,](#)
14. Arvinder Singh Bagga v. State of U.P AIR 1993 SC 117
15. Sheela S. Yerpude v. Home Department, Mumbai and Ors. 299S CriLJ. 2224
16. [Sheela S. Yerpude Vs. Home Department and Others,](#)

26. While there is no statement of objections filed on behalf of the 1st respondent - State of Karnataka, in the counter filed on behalf of the respondents 4, 5 and 6, what is essentially contended is that the petitioner has not come up with true facts; that then is suppression of facts; that the petitioner was not a person who had actually undergone 10 years of sentence as on 15.8.1998 in respect of sentence of life imprisonment imposed on him; that the petitioner was not eligible for the amnesty release on 15.8.1998 and therefore the petition is required to be dismissed. It is only this stand that is sought to be reiterated in the affidavit of Sri. D. Sangappa, purporting to be on behalf of the 2<sup>nd</sup> respondent who in turn is averred is acting on behalf of the State being the senior most police officer in the State in charge of prisons department. In the affidavit on his behalf the endeavour is to demonstrate that the petitioner in fact had not undergone 10 years of actual imprisonment as on 15.8.1998 and therefore was not eligible for amnesty release within the purview of the government order. It is to support this stand that the further report dated 8.1.2002 of the Director General and Inspector General of Prisons has been placed along with this affidavit as Annexure-R-1. What is essentially contended is that the report substantiates the stand of the respondents that the petitioner in fact had not undergone 10 years of actual imprisonment by 15.8.2002; that it was only 9 years 7



months and 14 days and for demonstrating this tact various calculations and supporting legal provisions and authorities are referred to in this report. This is essentially an exercise to get over the earlier report which had indicated in terms of the interim report dated 13.8.1999 submitted by Sri. B.G. Mallapur, DIG of prisons and the further report of Inspector General of Police & Inspector General of Prisons, Sri. Vijay Sasnur dated 18.9.1999 submitted to Secretary, Home Department, Vidhana Soudha, Bangalore, where under the reports clearly indicated some of the officials In-charge of the prison for dereliction of duty and negligence. It is obvious that the subsequent report seeks to avoid any farther enquiry into the conduct of such officials by absolving them from scrutiny by preventing any further scrutiny into their conduct etc. The additional affidavit of the said Sri. Sangappa sought to be placed before the Court towards the fag end of the hearing by Sri. Uma Kanth, learned AGA appearing for respondents 1 and 2 on the day on 4.12.2006 is also only to reiterate this very stand of the petitioner not having under gone 10 years of imprisonment by 15.8.1998, if his earlier convictions and sentences ought to be given effect to consecutively and if the sentence of life imprisonment were to commence only after the petitioner had fully served the three different sentences imposed on him under the three earlier conviction orders of the Court of Munsiff & JMFC, at Shikaripur in CC. No. 1002/1985 dt. 29.3.1986, C.C. No. 1084/1983 dt. 28.4.1986 & C.C. No. 1085/1983 dated 14.1.1987. Along with this affidavit Annexures-R-2 to R-16, copies of various documents and correspondence have been placed. The three warrants Annexures - R-2, R-3 & R-4 issued in the name of the petitioner addressed to the Superintendent of Jail at Shimoga, also indicates that the petitioner was in judicial custody from 16.11.1985 to 28.4.1986. A copy of the letter dated 5.8.1998 marked as Annexure R-8 from Additional Director of Police and Inspector General of Prisons addressed to the Secretary of Department of Home & Transport, Vidhana Soudha, Bangalore, gives the list of prisoners, who had suffered more than 10 years of imprisonment in respect of sentence of life imprisonment and so far as the petitioner is concerned it is indicated that he has suffered the imprisonment for a total period of 11 years 4 months and 5 days by that time and his conduct was satisfactory. I notice that the entire jugglery is for adding up the sentences and the period of imprisonment under the judgment of the Sessions Court sentencing him to life imprisonment and other small sentences not to run concurrently and the three sentences in the three different cases referred to above by the Court of Munsiff and JMFC, Shikaripur, is to arrive at the inference that the petitioner had not under gone 10 years of imprisonment vis-a-vis the life imprisonment to which he was sentenced by the Sessions Court and that he was not eligible for remission in terms of the Government order issued by the Governor in exercise of his constitutional power under Article 161 of the Constitution of India. Here again I notice that accepting of facts even as presented by the respondents there is no shortfall of this duration of 10 years imprisonment in accordance with the computation made by Sri. B.G. Mallapur, DIG, Prisons, who has also computed the period of imprisonment served by the petitioner towards his sentence of life

imprisonment after taking the earlier sentence imposed by the Court of JMFC, Shimoga, consecutively and the term of life sentence commenced only after such earlier sentences are served but by setting off the period during which the petitioner was in judicial custody i.e., from 16.11.1985 to 28.4.1986 in respect of which all the three sentences imposed on the petitioner by the Court of Munsiff and JMFC at Shikaripura.

27. The attempt on the part of the respondents to show that the petitioner in fact has not served 10 years of imprisonment under the sentence of life imprisonment, if his earlier sentence were to have run consecutively is by not setting off the period of judicial custody of the petitioner in respect of each of the sentence, though it is so indicated under the warrants at Annexures R-2 to 4 appended to the Additional affidavit of Sri. Sangappa and thereby creating an illusion that the period of imprisonment undergone by the petitioner fell short of 10 years of imprisonment for becoming eligible for recommendation to grant remission of remainder portion of the life imprisonment. Here again respondents were given opportunity to demonstrate their bona fides in taking up the defence they had sought to set up before the Court. While no original records other than the Transitional Manual record was placed before the Court, only copies of the other correspondence and documents were sought to be placed before the Court to substantiate the stand of the respondents. The reluctance on the part of the respondent to place any other original records particularly, in the light of the petition averments that non-release of the petitioner notwithstanding the release certificate and the order of the Government was due to the tact that the petitioner was unable to meet the illegal demands made by the respondent to pay them Rs. 25,000/- only lends support to the version of the petitioner and leaves the denial of these allegation either in the affidavits or through submissions on behalf of the respondents as a mere denial without any supportive evidence on record. Even factually, the stand that the petitioner had not undergone imprisonment for a period of 10 years in respect of sentence of life imprisonment is neither correct nor substantiated and the computation of the period in the report of the DIG, B.G. Mallapur, is one in accordance with the statutory provisions, particularly in the light of the provisions of Section 428 of Cr.P.C providing for set off, the period during which the convict was in judicial custody against the sentences imposed on him.

28. But the stand taken by the respondents is also legally not tenable for the reason that in terms of the very recommendation made by the Director General of Police and Director General of Prisons in Karnataka, the report is that the petitioner is a person, who had already served more than 10 years of imprisonment in respect of sentence of life imprisonment. If the Government has acted on this report and the Governor of Karnataka in exercise of his constitutional power under Article 161 of the Constitution of India has remitted the remainder portion of the sentence of life imprisonment and that order is given effect to and the petitioner was released, it was never open to the respondents as is sought to be urged in the affidavits, to

re-arrest the person on the premises that either he has not completed the period of 10 years of imprisonment in respect of the sentence of life imprisonment that had been imposed on him or on the premise that he was required to serve the sentence imposed by the Court of Munisiff and JMFC, Shikaripur, in the three different criminal cases referred to earlier.

29. Even in terms of Annexure R-2 to 4 warrants had been issued in the name of the petitioner for serving the sentences when he was already in judicial custody itself. These warrants take effect to immediately and when once they take effect to, even during the year 1986, the period of one year is over long back and can never be an issue in the year 1998 when a recommendation is made for remission of the remainder of the life imprisonment being served by convicts on whom sentence of life imprisonment had been imposed. The stand of the respondents whose action is conflicting is contradictory to their own versions. While one version is that to give effect to the clarification by the Magistrate, the petitioner was taken back or that he was never released as he was not eligible for remission, the other version of the respondents, is that he was sent to the Central Prison at Parappana Agrahara to serve the earlier sentence etc. The effort is not merely clumsy, but without bona fides and it is not tenable to contend that the non-release was justified.

30. The Jail Authorities have no permission or authority to sit in judgment over an order of remission granted by the Governor in exercise of his constitutional power under Article 161 of Constitution of India, irrespective of the fact that the respondents might have actually committed a mistake in recommending the name of the petitioner as a person eligible for such remission. Even assuming for the sake of arguments that the petitioner was not eligible for such remission when once the order of remission is passed by the Governor and the release order / release certificate issued to the petitioner, it was not permitted in law for the respondents to re-arrest or to detain the petitioner any further in prison by giving untenable flimsy reasons. The entire conduct on the part of the respondents is clearly one totally lacking bona fides in justifying either on facts or in law. The legal position is quite clear in terms of the decision of the Supreme Court in the case of [Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs \(Prevention\), Ahmedabad and another](#), and in the case [Ranjit Singh Vs. Union Territory of Chandigarh and another](#), . It is for this reason the defence sought to be urged on behalf of the respondents is liable to be rejected and the petition allowed.

31. The very record by the respondents which had been placed before the Court earlier, a copy of which had been perused by the learned Counsel for the petitioner and who had been permitted to take out copies of the same and such copies having been placed by the learned Counsel for the petitioner clearly indicates that the respondents had acted on the interim report dated 13.8.1999 given by the said DIG of Prisons, Sri. Mallapur, which is as under:

Annexure-R-2

32. Though some of the authorities relied upon by the learned Counsel for the petitioner are the decisions rendered in the context of situations of illegal detention leading to custodial death etc., there cannot be any doubt or ambiguity that a person who has been deprived of his freedom, without the due authority of law, who has been subjected to incarceration, particularly, for as long a period as one year and in the light of the specific petition averment that such illegal detention was for the reason that the petitioner had not been able to meet the demand of illegal gratification of Rs. 25,000/- made on the petitioner which allegation or charges; the respondents have not been able to purge themselves by either showing their bona fides in continuing the petitioner in the jail on and after 4.9.1998 or having placed any supporting material indicative of their bona fide action whether legally tenable or otherwise for taking the course of action to justify his detention on and after 4.9.1998, it is inevitable that a person like the petitioner who has suffered such agony, hardship and lost his freedom on and after 4.9.1998 notwithstanding a remission order issued in his favour by the Governor of Karnataka in exercise of his constitutional power under Article 161 of the Constitution of India, has to be suitably compensated.

33. In this regard, I am not impressed by the submissions of the learned AGA; that the petitioner himself is an habitual offender, that he was a prisoner serving life sentence; that the prisoner had also while serving life sentence escaped from prison and it is neither warranted nor justified to compensate such a person even if there should be an illegal detention.

Though no doubt learned AGA has not conceded there was illegal detention and on the other hand had defended the action as justified in law, the submission that the petitioner is not a person, who deserves compensation is out right rejected as it is a violation of the petitioner's fundamental right of freedom under the provisions of Article 21 of the Constitution of India, which guarantees that no person should be deprived of his life or personal liberty without following due procedure. Once the detention is held to be without any authority in law, it becomes illegal and there is no escape from the consequences of such illegal detention, be that of a criminal or any other person. Respondents being responsible for such illegal detention have to meet the liability to suitably compensate the petitioner. It is for this reason, I hold that the petitioner should be suitably compensated and this petition is to be allowed. If so quantum of compensation is the only next question.

34. While the petitioner has sought for compensation of a sum of Rs.5 lakhs, only defence on the part of the respondents is that the respondents are not liable to pay any compensation as sought for by the petitioner, that their action is justified.

35. Sri. Mahadevaiah, learned Counsel for the petitioner has fairly submitted that though the petitioners had impleaded several persons i.e, respondents 3 to 7, he is not seeking compensation from any of them individually, but it is the responsibility of the State to compensate the petitioner and it is the duty of the State to proceed

further in the matter by holding of such enquiry as it deems fit and fix the liability on any one of them or more of them.

36. Life and liberty cannot be valued or measured in terms of money. No amount of compensation is sufficient compensation for a person who has been deprived of his freedom. The quantum of compensation cannot be measured or restricted to the possible earning capacity of the petitioner. Freedom is a very precious commodity. It is only a person who has lost freedom who appreciates and realises the value of freedom. A person who continues to enjoy freedom will never be able to appreciate how precious a commodity freedom is !

37. The petitioner has claimed compensation of Rs.5 lakhs with interest at 18% from the date of illegal detention. I am of the view that ends of justice will be met if a lumpsum compensation of Rs. 3 lakhs is awarded in favour of the petitioner and the compensation amount is to be paid by the 1st respondent - State within six weeks from today failing which it shall carry interest at the rate of 10% from this date on the compensation amount.

38. Respondent - State having acted in a most irresponsible manner, not even filing a statement of objections for answering the issues raised in a responsible manner and in fact having given the impression that the respondents have deliberately withheld filing a proper counter and having not even established their bona fides in taking the legal contentions that were not even tenable, I am of the view State deserves to be mulcted with costs. Accordingly the respondents are levied with costs of Rs. 10,000/- to be paid by the State. It is also made clear that it is open to the State to fix the liability on any of the erring officials for the illegal detention of the petitioner and to apportion the compensation payable by the State amongst them and to recover the same after such enquiry as the State deems fit to hold. Liberty reserved for the same.

39. Before parting with this case, I have to refer to the other reliefs that have been sought for in the writ petition, such as for issuance of directions to the State to ensure that nutritious food is made available to the jail inmates and prisoners and for formulating the schemes to rehabilitate the convicted persons who have under went sentence of imprisonment and when they come out after serving the jail sentence etc.

40. Insofar as the directions for providing nutritious food is concerned, I find it ironic to notice the situation, particularly in a country where majority of the population lives with food which is not sufficiently nutritious and are under nourished, to make a special mention of the prisoners would sound rather unrealistic. It is not that the prisoners should not be fed properly but a specific direction by this Court to the Inspector General of Police to provide nutritious food to the prisoners, will undoubtedly appear to be rather unrealistic when the State has not been able to meet such needs and requirements of the citizens of the State in general. No special

mention can be made of the prisoners but it is observed that prisoners are also human beings and they should be treated in a humane manner and provided with food according to their requirement.

41. So far as the directions for formulating the schemes towards rehabilitation, it is not as though State has not thought of such measures and such steps being taken in formulating such measures and such schemes having been put in place, I am of the opinion that no special directions are required to be issued. But it is observed that it is the responsibility of the State to take care of all the citizens including the unfortunate ones, who have served jail sentences and who may find it rather difficult to face life, even after regaining their freedom. Suitable steps can always be taken by the State and it is necessarily for the State, to Act on its own without the need for any goading by the Courts.

42. It is hoped that the State would usher in such schemes and programmes, which would be in the interest of the society at large and the prisoners who have been sentenced for imprisonment in particular.

43. Insofar the directions for constitution of a State Human Rights Commission on the guidelines of National Human Rights Commission and similar to that of other Human Rights Commission constituted as per Section 21 of the Protection of Human Rights Act, 1993 and given effect to by many other States, I am of the view that it is necessary to issue such directions to the State Government, as it is obvious that the State is dragging its foot in giving effect to this provision and in constituting a State Human Rights Commission.

44. It is no doubt true that the Human Rights Commission will examine the grievance of such complaints, violation of the rules and may provide for suitable relief and suggest remedial measures, as in fact it happened in the case of the very petitioner but for whose directions, perhaps the case of the petitioner would not have drawn the attention that it deserves and resulted in his release from the prison. The very existence of an institution of this nature, will act as a deter against erring officials and it may provide relief even before any person is compelled to file a complaint before the Human Rights Commission. The very existence of any institution if it can reduce the commission of atrocities and human rights violations it is very desirable and it is very necessary that the State Government bestows its attention in this regard and takes steps to establish a State Human Rights Commission at the earliest.

45. State to give effect to the provisions of Section 21 of the Protection of Human Rights Act, 1993, and to constitute a State Human Rights Commission at the earliest and at any rate to ensure that such a Commission will be in place within a period of 6 months from the date of this order. I am given to understanding that the State is in fact active in this regard and it is hoped that this order and directions will act as a catalyst and activate the State to put in place a State Human Rights Commission at

the earliest.

46. The compensation amount of Rs. 3,00,000/- with interest as also the costs of Rs. 10,000/- awarded in favour of the petitioner, to be deposited before the Registrar of this Court within 6 weeks from the date of this order. The amount go deposited may be released to the petitioner through his counsel on proper identification to the petitioner. The registry shall issue a cheque/pay order in the name of the petitioner and it may be handed over to the petitioner through his counsel.