

**(1983) 08 SC CK 0019**

**Supreme Court of India**

**Case No:** Writ Petition (Criminal) No. 1387 of 1982

Rudul Sah

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

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**Date of Decision:** Aug. 1, 1983

**Acts Referred:**

- Constitution of India, 1950 - Article 21, 32

**Citation:** AIR 1983 SC 1086 : (1983) CriLJ 1644 : (1983) 2 SCALE 103 : (1983) 4 SCC 141 : (1983) 3 SCR 508

**Hon'ble Judges:** Y. V. Chandrachud, C.J; Ranganath Misra, J; A. N. Sen, J

**Bench:** Full Bench

**Advocate:** K. Hingorani, for the Appellant; D. Goburdhan, for the Respondent

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**Judgement**

Y.V. Chandrachud, J.

This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Sessions, Muzaffarpur, Bihar, on June 3, 1968 he was released from the jail on October 16, 1982, that is to say, more than 14 years after he was acquitted. By this Habeas Corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He also asked for certain ancillary reliefs like rehabilitation, reimbursements of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

2. This petition came up before us on November 22, 1982 when we were informed by Shri Goburdhan, counsel for the State of Bihar, that the petitioner was already released from the jail. The relief sought by the petitioner for his release thus became infructuous but despite that, we directed that a Notice to show cause be issued to the State of Bihar regarding prayers 2, 3 and 4 of the petition. By prayer No. 2 the petitioner asks for medical treatment at Government expense, by prayer No. 3 he asks for an ex gratia payment for his rehabilitation, while by prayer No. 4 he asks for compensation for his illegal detention in the jail for over 14 years.

3. We expected a prompt response to the Show Cause Notice from the Bihar Government at least at this late stage, but they offered no explanation for over four months. The Writ Petition was listed before us on March 31, 1983 when Shri Goburdhan restated that the petitioner had been already released from the jail. We passed a specific order on that date to the effect that the release of the petitioner cannot be the end of the matter and we called upon the Government of Bihar to submit a written explanation supported by an affidavit as to why the petitioner was kept in the jail for over 14 years after his acquittal. On April 16, 1983, Shri Alakh Deo Singh, Jailor, Muzaffarpur Central Jail, filed an affidavit in pursuance of that order. Shorn of its formal recitals, the affidavit reads thus :

2. That the petitioner was received on 25.3.67 from Hazaribagh Central Jail and was being produced regularly before the Additional Sessions Judge, Muzaffarpur and on 30.8.68 the learned Judge passed the following order :

The accused is acquitted but he should be detained in prison till further order of the State Government and I.G. (Prisons), Bihar.

(A true copy of the same is attached as Annexure I).

3. That accused Rudul Sah was of unsound mind at the time of passing the above order. This information was sent to the Law Department in letter No. 1838 dated 10.5.74 of the Superintendent, Central Jail, Muzaffarpur through District Magistrate, Muzaffarpur.

4. That the Civil Surgeon, Muzaffarpur, reported on 18.2.77 that accused Rudul Sah was normal and this information was communicated to the Law Department on 21.2.77.

5. That the petitioner, Rudul Shah was treated well in accordance with the rules in the Jail Manual, Bihar, during the period of his detention.

6. That the petitioner was released on 16.10.82 in compliance with the letter No. 11637 dated 14.10.82 of the Law Department.

4. The Writ Petition came up before us on April 26, 1983 when we adjourned it to the first week of August 1983 since it was not clear either from the affidavit filed by the Jailor or from the order of the learned Additional Sessions Judge, Muzaffarpur, which is annexed to the affidavit as Annexure I, as to what was the basis on which it was stated in the affidavit that the petitioner was of unsound mind or the reason why the learned Additional Sessions Judge directed the detention of the petitioner in jail, until further orders of the State Government and the Inspector General of Prisons.

5. The writ petition has come up for hearing once again before us today. If past experience is any guide, no useful purpose is likely to be served by adjourning the petition in the hope that the State authorities will place before us satisfactory material to explain the continued detention of the petitioner in jail after his acquittal.

We apprehend that the present state of affairs, in which we are left to guess whether the petitioner was not released from the prison for the benign reason that he was insane, is not likely to improve in the near future.

6. The Jailor's affidavit leaves much to be desired. It narrates with an air of candidness what is notorious, for example, that the petitioner was not released from the jail upon his acquittal and that he was reported to be insane. But it discloses no data on the basis of which he was adjudged insane, the specific measures taken to cure him of that affliction and, what is most important, whether it took 14 years to set right his mental imbalance. No medical opinion is produced in support of the diagnosis that he was insane nor indeed is any jail record produced to show what kind of medical treatment was prescribed for and administered to him and for how long. The letter (No. 1838) dated May 10, 1974 which, according to paragraph 3 of the affidavit, was sent to the Law Department by the Superintendent of the Central Jail, Muzaffarpur, is not produced before us. There is nothing to show that the petitioner was found insane on the very date of his acquittal. And, if he was insane on the date of acquittal, he could not have been tried at all for the simple reason that an insane person cannot enter upon his defence. Under the CrPC, insane persons have certain statutory rights in regard to the procedure governing their trial. According to paragraph 4 of the affidavit, the Civil Surgeon, Muzaffarpur, reported on February 18, 1977 that the petitioner was normal and that this information was communicated to the Law Department on February 21, 1977. Why was the petitioner not released for over 5 1/2 years thereafter? It was on October 14, 1982 that the Law Department of the Government of Bihar directed that the petitioner should be released. Why was the Law Department so insensitive to justice? We are inclined to believe that the story of the petitioner's insanity is an afterthought and is exaggerated out of proportion. If indeed he was insane, at least a skeletal medical record could have been produced to show that he was being treated for insanity. In these circumstances, we are driven to the conclusion that, if at all the petitioner was found insane at any point of time, the insanity must have supervened as a consequence of his unlawful detention in jail. A sense of helplessness and frustration can create despondency and persistent despondency can lead to a kind of mental imbalance.

7. The concerned Department of the Government of Bihar, could have afforded to show a little more courtesy to this Court and to display a greater awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case. Instead, the Jailor has been made a scapegoat to own up vicariously the dereliction of duty on the part of the higher officers who ought to have known better. This is not an isolated case of its kind and we feel concerned that there is darkness all around in the prison administration of the State of Bihar. The Bhagalpur blindings should have opened the eyes of the Prison Administration of the State. But that bizarre episode has taught no lesson and has failed to evoke any response in the Augean Stables. Perhaps, a Hercules

has to be found who will clean them by diverting two rivers through them, not the holy Ganga though. We hope (and pray) that the higher officials of the State will find time to devote their personal attention to the breakdown of Prison Administration in the State and rectify the grave injustice which is being perpetrated on helpless persons. The High Court of Patna should itself examine this matter and call for statistical data from the Home Department of the Government of Bihar on the question of unlawful detentions in the State Jails. A tabular statement from each jail should be called for, disclosing how many convicts have been in jail for more than 10 years, 12 years, 14 years and for over 16 years. The High Court will then be in a position to release prisoners who are in unlawful detention in the jails and to ask the State Government to take steps for their rehabilitation by payment of adequate compensation wherever necessary.

8. That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, in so far as it lies within our power to do in the exercise of our writ jurisdiction under Article 32 of the Constitution. That article confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right.

9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass appropriate order for the payment of compensation in this Habeas Corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's Counsel has not raised

that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. 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 to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty-thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere.