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WP-11135-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 28th OF JULY, 2026

WRIT PETITION No. 11135 of 2025

RAHUL ATARIA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Ankur Maheshwari - Advocate for the petitioner.

Shri Sohit Mishra Ga appearing on behalf of Advocate General.

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ORDER

The present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of an appropriate writ declaring the action of respondent No.4 in illegally arresting and detaining the petitioner in connection with Crime No.52/2025 registered at Police Station Kailaras, District Morena, for offences punishable under Sections 308(7) and 3(5) of the Bharatiya Nyaya Sanhita. The petitioner has further prayed for grant of compensation of Rs.5,00,000/- on account of illegal detention besides initiation of departmental proceedings against the erring police officer.

2. Learned counsel appearing for the petitioner submitted that the entire action of respondent No.4 is wholly arbitrary, illegal and contrary to the mandate of the Bharatiya Nagarik Suraksha Sanhita, 2023 as well as the constitutional guarantee of personal liberty under Article 21 of the



Constitution of India. It is submitted that the petitioner is serving as a Police Constable and came to be implicated during investigation merely on the basis of the disclosure statement of a co-accused. Thereafter, respondent No.4 arrested the petitioner on 12.02.2025 in connection with Crime No.52/2025 for offences punishable under Sections 308(7) and 3(5) of the Bharatiya Nyaya Sanhita. Learned counsel submits that even assuming the allegations contained in the FIR to be correct, the offence under Section 308(7) BNS is specifically shown as a bailable offence under the First Schedule of the Bharatiya Nagarik Suraksha Sanhita. Therefore, the police officer had no authority to keep the petitioner behind bars after his arrest. It is argued that Section 47(2) of the Bharatiya Nagarik Suraksha Sanhita casts a mandatory obligation upon the arresting officer to inform an accused arrested in a bailable offence that he is entitled to be released on bail and that he may arrange for bail. The statutory provision nowhere contemplates that the accused must first be remanded to judicial custody or kept in police lock-up until being produced before the Magistrate. Rather, the legislative intent is to secure immediate restoration of liberty subject only to execution of the requisite bond. Learned counsel further submits that in the facts of the present case, the petitioner was repeatedly requesting the respondent No.4 that the alleged offence was bailable and that he was prepared to furnish the necessary bail bond. Despite such request, respondent No.4 neither released the petitioner nor informed him about his statutory right. Instead, the petitioner was illegally detained inside the police station for more than twenty-four hours and was produced before the learned Magistrate only on



the following day. It is further submitted that the learned Magistrate, while enlarging the petitioner on bail on 13.02.2025, also sought an explanation from the SHO as to under what authority the petitioner had been arrested and detained in a bailable offence. Despite such judicial direction, no satisfactory explanation was furnished by the concerned police officer. Learned counsel submits that once the illegal detention is established, violation of Article 21 automatically follows. The right to personal liberty is one of the most cherished fundamental rights and any deprivation thereof except in accordance with procedure established by law gives rise to a constitutional remedy of public law compensation. Learned counsel further placing reliance upon the judgments of the Hon'ble Supreme Court in *Arnesh Kumar vs. State of Bihar* and *Satender Kumar Antil vs. CBI*, learned counsel contended that constitutional courts are empowered to award monetary compensation where illegal arrest or unlawful detention results in violation of Article 21. It is, therefore, prayed that the respondents be directed to compensate the petitioner by payment of Rs.5,00,000/- together with liberty to recover the amount from the erring officer after holding departmental enquiry.

3. Per contra, learned Government Advocate opposed the writ petition and submitted that the petitioner was arrested during investigation on the basis of material collected by the investigating agency and the arrest was made in discharge of official duties. It is submitted that the investigation was at a crucial stage and the investigating officer bona fide believed that custodial interrogation of the petitioner was necessary. Learned Government



Advocate further submitted that the question whether the investigating officer properly exercised his statutory discretion or committed any procedural irregularity is essentially an administrative matter which can appropriately be examined departmentally. Accordingly, dismissal of the writ petition has been prayed for.

4. Heard learned counsel for the parties and perused the material available on record.

5. The principal question requiring consideration is whether respondent No.4 was legally justified in arresting and detaining the petitioner in connection with a bailable offence and whether such detention amounts to infringement of the petitioner's fundamental right guaranteed under Article 21 of the Constitution of India. The pleadings placed before this Court reveal that the petitioner was arrested on 12.02.2025 in connection with Crime No.52/2025 and continued in police custody till he was produced before the learned Magistrate on 13.02.2025. The petitioner has specifically pleaded that the alleged offence was bailable and that despite his readiness to furnish bail bonds, respondent No.4 neither informed him of his statutory entitlement nor released him on bail. These assertions remain unrebutted by any material justifying such continued detention.

6. Section 47(2) of the Bharatiya Nagarik Suraksha Sanhita unequivocally provides that when a person is arrested for a bailable offence, the arresting officer shall inform him that he is entitled to be released on bail. The statutory obligation is mandatory in nature and is intended to safeguard personal liberty. The purpose of the provision would stand defeated if an



accused in a bailable offence is unnecessarily confined in police custody and produced before the Magistrate only after prolonged detention.

7. This Court is unable to accept the contention of the respondents that merely because the petitioner was produced before the Magistrate within twenty-four hours, the constitutional mandate stood satisfied. Compliance with Article 22(2) cannot be read in isolation so as to dilute the statutory protection available in respect of bailable offences. Production before the Magistrate within twenty-four hours is the outer constitutional safeguard. However, where the offence itself is bailable, the investigating officer cannot ignore the legislative command requiring release of the accused on furnishing the requisite bail bond.

8. The record further indicates that the learned Magistrate, while enlarging the petitioner on bail, deemed it necessary to seek an explanation from the SHO regarding the legality of arrest in a bailable offence. This circumstance lends considerable support to the petitioner's grievance that the statutory safeguards were ignored. Personal liberty occupies a paramount position under our constitutional framework.

9. In the present case, this Court finds that respondent No.4 failed to adhere to the mandatory statutory procedure governing arrest in a bailable offence. The petitioner was illegally deprived of his liberty without authority of law. Such action constitutes a clear infringement of Article 21 of the Constitution of India.

10. Having regard to the nature of the constitutional violation, the period of unlawful detention, and the settled principles governing award of



public law compensation, this Court is of the considered opinion that ends of justice would be met by directing the respondents to compensate the petitioner. Accordingly, the writ petition is allowed in the following terms:

(i) The arrest and continued detention of the petitioner in connection with Crime No.52/2025, despite the offence being bailable, are declared to be illegal and violative of Article 21 of the Constitution of India.

(ii) Respondents No.1 to 4 are directed to pay compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner within a period of eight weeks from the date of receipt of a certified copy of this order.

(iii) It shall be open to the State Government, after holding an appropriate departmental enquiry in accordance with law and after affording due opportunity of hearing to the concerned officer, to recover the compensation amount from the delinquent officer if responsibility is established.

11. The writ petition stands allowed in the aforesaid terms.

12. No order as to costs.

(MILIND RAMESH PHADKE)
JUDGE

(aspr)