

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road

File No **BHRC/COMP.** 116/09

Case of **BHUP NARAYAN SINGH**

Applicant Bhup Narayan Singh of Bahadurpur Housing Colony, Patna filed application alleging that he was picked up by the police from his house in the dead of night on 16.12.2008 at 2:30 A.M. because they could not find his son Pramod Kumar against whom there was warrant of arrest in the house. The applicant stated that the police party led by Shri Siddharth Mohan Jain, A.S.P. Patna City broke open the shutters of the main gate and started breaking the collapsible gate leading to the upper floor of the house when, apprehending something untoward, the applicant rushed downstairs and saw the police party. The gate was unlocked by the driver, Satyendra, and the applicant was told that they had come to arrest his son Pramod Kumar. The applicant informed the police party that Pramod Kumar did not live with him since more than three years. In any case, they could search the house. The police searched every nook and corner of the house but did not find Pramod or his wife and children. When they found that the search had gone in vain they arrested him without showing any document. He was not allowed time to even change his clothes. He was physically pushed inside the police vehicle and kept in the lock-up of Agamkuan P.S. The news of his arrest spread like wildfire and hundreds of persons including local MLA Shri Arun Sinha, and MLC Shri Vasudeo Prasad assembled and protested the arrest. The applicant was later told that he had been arrested in connection with a complaint case in which there was arrest warrant against him.

Senior S.P. Patna submitted report to the effect that the applicant was a warrantee in Case No.702 (c)/07 of the court of Shri Deepak Kumar, Judicial Magistrate, First-class, Patna. He was taken into custody in execution of the warrant in that case and brought to the Police Station. In the following morning on 17.12.2008 he was produced in court from where he was remanded to Beur Jail. The report stated that the applicant was shown due courtesy and arrested in compliance of the court's order. The applicant filed response to the said report reiterating his case.

In its order dated 8.10.2009 the Commission found that it was the admitted position that the applicant was arrested in connection with a private complaint case and that the arrest was effected in course of raid of his house in late night of 16/17.12.2008. The Commission observed as under:-

“What instantly comes to mind is what was the tearing hurry or exigency to raid the applicant’s house in the dead of night and arrest him. It is not the case of the police that the applicant was evading arrest; that he was a proclaimed offender or that there was any attempt or chance of his fleeing away. The applicant is a retired officer of the Bihar Administrative Service. He has no criminal background and therefore even if it is conceded that the police could arrest him in execution of the warrant of arrest, surely, there could be better ways of doing the same. It cannot be denied that even proclaimed offender, a hard core criminal or a terrorist and convict have certain human rights which cannot be denied or taken away. Raiding the house of an elderly person living with his elderly wife in the dead of cold winter night in the month of December for effecting arrest in connection with a private complaint case is simply outrageous.”

The Commission rejected the police version that the applicant’s house was raided as he was a warrantee and as such arrested, as an afterthought. It observed that if the main purpose of the raid and search was to arrest the applicant he was available in his house at all times, and there was no allegation that the police ever made any attempt to serve warrant but he was not available or he evaded the service. The Commission accepted the complaint version that the police raided the house in search of the applicant’s son against whom a case was pending since 2006. Arrest of the applicant was prima facie an act of desperation to justify the mid-night raid and as applicant’s son was not found in the house. Observing further that the incident caused mental and physical torture amounting to violation of applicant’s human rights, the Commission took a view that for violation of his human rights, the applicant is entitled to be compensated and for the high handed act of the police, the role of Shri Siddhartha Mohan Jain, the then A.S.P. Patna City, who was leading the police party should be examined.

Accordingly, notice was issued to the State Government through Principal Secretary, Department of Home and the DGP Bihar to submit their response as to why the Commission should not award compensation to the applicant and direct departmental enquiry against police party particularly Shri S.M. Jain. In response to notice, the Under Secretary, Department of Home and the D.I.G. (Human Rights) on behalf of the D.G.P. sent copies of the report of the D.I.G. Central Range, Patna dated 17.12.2009.

Copy of the report was sent to the applicant to which he filed his response. On consideration of the report etc. the Commission fixed the matter for oral hearing on 19.10.2010. Notice was also issued to Shri S.M. Jain in view of section 16 of the Protection of Human Rights Act which lays down that if at any stage of the enquiry, the Commission considers it necessary to enquire into the conduct of any person or in its opinion the reputation of any person is likely to be prejudicially affected by the enquiry, that person should be given a reasonable opportunity of being heard in the enquiry. On 19.10.2010 the matter was

adjourned to 29.11.2010 on the request of Shri Jain. On his request again, the matter was adjourned to 14.12.2010. On 14.12.2010 both the applicant and Shri S.M. Jain appeared for hearing and the matter was heard. None appeared on behalf of the Government/Department of Home. Shri Jain later filed a written defence on 15.12.2010. The applicant filed rejoinder on 21.12.2010.

Shri S.M. Jain submitted that the applicant was arrested in execution of warrant of arrest under special drive under orders of the senior officers to carry out execution of pending warrants. He kept moving from one area to another supervising the execution of warrant. When he reached the house of the applicant the police party had already arrived there and confirmed the applicant's presence. It was then that he came to know that there was warrant pending against the applicant. He had no personal grudge or grievance against the applicant. The arrest was in compliance of court's order and in discharge of official duty. He took the stand that at that time he did not know that the arrest was effected in a complaint case. He was also produced before the Magistrate and remanded to judicial custody. The applicant filed application for bail which was rejected by the Magistrate's court. In response to the observation of the Commission about the timing and manner of arrest in a private complaint case, Shri Jain admitted that his action might be over zealous. However, he took shelter under the umbrella of official duty describing the applicant's complaint as an afterthought.

In reply, in the course of hearing, the applicant rebutted the submissions of Shri S.M. Jain. He controverted Shri Jain's contention that he had reached the place after the police party had already arrived and that he was not in know of the applicant's identity. He stated that Shri Jain knew him personally as they had met earlier in the office chamber of S.P. Muzaffarpur under whom Shri Jain was then receiving training as a probationer. He reiterated that the police came to the house in search of his son but in order to justify the raid in the dead of night they picked up the applicant without showing any paper or letting him know that he was wanted in a case. He submitted that the argument that he was arrested in the complaint case was an afterthought in order to justify the action.

As indicated in its preliminary order dated 8.10.2009, the Commission cannot deny the power of the police to arrest a person – more so, if a warrant of arrest is pending against him. The police, therefore could certainly arrest the applicant. The question is whether the manner and timing of arrest was in accordance with the norms. The applicant is a retired government servant in his eighties. After retirement from the Bihar Administrative Service he enrolled himself as an advocate in the Patna High Court. He is associated with several organizations such as Bihar Pensioner Samaj, Bharat Sewak Samaj and Bihar Brahmarshi Samaj as Vice President/ Patron. Undisputedly, he has no criminal

background and therefore even if it is conceded that the police could arrest him in execution of a warrant of arrest, surely there were better ways of doing the same. Raiding the house of an elderly person living with his elderly wife in the mid-night of cold December for effecting the arrest – and that too in connection with a private complaint case – was certainly outrageous. Although a bald plea has been taken in the written defence that he was evading summons, there is not an iota of evidence or material to show that he ever avoided summons or that he was not available. Much has been said about the applicant's alleged conduct in "usurping" properties of "countless" persons (alluding to the allegations in the complaint case against the applicant) in the report of the D.I.G. Central Range, but from the documents available in the file it appears that criminal case ended in summary dismissal as no witness appeared to support the prosecution case despite several opportunities. This was the end of the case about which so much noise has been made in the D.I.G.'s report or written defence of Shri Jain.

Be that as it may, as observed above, as on the date of arrest, a warrant of arrest was pending against the applicant which empowered the police to arrest him but in the considered view of the Commission the manner in which the applicant was arrested in the dead of night at 2:30 A.M. by breaking open the collapsible gate was absolutely unjustified and unwarranted. It was not as if the applicant was a person who would have absconded if he had not been arrested in the midnight. There is no such remark or endorsement in the record. As observed in the earlier order, even a proclaimed offender or a hard-core criminal has certain human rights. The Commission is satisfied that the incident caused avoidable physical and mental torture to the applicant amounting to violation of his human rights for which he ought to be monetarily compensated. In the facts of the case, the Commission would award compensation of Rs fifty thousand to him. The amount shall be paid at the first instance by the State Government with option to recover from the guilty officials.

The Commission is not satisfied with the defence of Shri S.M. Jain. May be, as submitted by him, he was new to the job but it can not be said that he was not aware of the basics. What he did or allowed to be done reflects his insensitivity towards elders which bodes ill of a police officer in the higher echelons of Police Service, and he cannot escape responsibility. The Commission is of the view that the role of the police especially that of Shri S.M. Jain be examined at the government level and suitable action taken.

The Commission would grant two months time to the Government to submit compliance report.

Justice S.N. Jha
Chairperson