

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 760/12

Case of **BHAGWAT CHAUHAN**

Applicant Bhagwat Chauhan of village Chamania P.S. Ariyari district Sheikhpura has approached this Commission seeking compensation for his unauthorized detention for more than nine months.

The applicant was put on trial and convicted for the offence under section 395 IPC by the court of Additional Sessions Judge (Fast Track Court-III) Sheikhpura in Sessions Case No.459/86 (Trial No.32/10) arising out of Ariyari P.S. Case No.74/83. While convicting the applicant the court awarded him sentence of six years rigorous imprisonment and fine of Rs. two thousand. On his conviction he was sent to Divisional Jail, Sheikhpura to serve the sentence. He was later transferred to Special Central Jail, Bhagalpur. In between he also remained in Munger Jail in connection with some other case at Munger in which he was acquitted.

Allowing set off period of eight months and 25 days between 27.11.2006 and 22.8.2007 and one year eight months and five days between 17.6.2008 and 22.2.2010 spent in jail as an under trial prisoner and, further, allowing due remissions, the probable date of his release was fixed as 23.3.2014. Admittedly, the applicant was in Munger Jail between 20.2.1986 and 20.3.1989 i.e. a period of three years one month and one day – in connection with the same case – which was not counted while calculating probable date of his release. It is not in dispute that had this period been taken into account, the due date of release would have been 22.2.2011. He was actually released on 13.12.2011 i.e. after nine months and 21 days.

Sri U.K. Sharan AIG Prisons who appeared on behalf of Prisons Department submitted that the Department was not aware of the fact that the applicant had remained as under trial prisoner in Munger Jail from 20.2.1986 to 20.3.1989. He pointed out that Sheikhpura was earlier part of Munger district and there was no record in Sheikhpura/Bhagalpur jails showing the applicant's custody in Munger Jail.

Sri Sharan also submitted that the prisoner is supposed to disclose details of the custody and after the verification of those details, the due/probable date of release is worked out. In the instant case, applicant disclosed the factum of his previous custody/incarceration only on 24.3.2011 whereafter his claim was

verified. He admitted that there was further delay (after 24.3.2011) but according to him the delay was due to procedural reasons and not intentional.

Having given due consideration to the Department's plea the Commission does not feel inclined to accept the same. In view of the developed technology, it is idle to contend that the factum of previous incarceration/custody should be disclosed by the prisoner himself. The Department can easily maintain record of custody which would be in the interest of not only the prisoner but also the department i.e. the State. Besides, it need hardly be pointed out, prisoners do not belong to the same class or strata of society with the same level of understanding and intellect. Many of them are illiterate and ignorant of their basic rights. In that view, it is not fair on the part of the Prisons Administration to take the plea that the factum and details of the previous custody/incarceration must be disclosed by the prisoner himself. Where the question of liberty of the person is involved the State cannot take the matter casually.

In any view of the matter, admittedly, the applicant had disclosed the factum details of his incarceration in Munger Jail on 24.3.2011. But he was released after over nine months on 13.12.2011. Sri Sharan tried to explain the delay. He pointed out that there were certain typographical errors regarding case numbers etc. which caused delay. The delay, in the opinion of the Commission, was man-made and in any case attributable to departmental authorities and cannot be accepted as a valid excuse.

Article 21 of the Constitution of India guarantees personal liberty to a citizen accept in accordance with the procedure established by law. The procedure established by law permitted applicant's incarceration up to 21.2.2011. Subsequent detention being unauthorized was completely illegal and unconstitutional, and violative of his human rights. The applicant is therefore entitled to compensation. In the facts and circumstances, the Commission would award compensation of Rs. seventy-five thousand.

The Commission accordingly directs Secretary, Home (Special) Department to pay Rs. seventy-five thousand as compensation to the applicant within a period of six weeks.

Put up in the last week of December 2012 awaiting compliance report.

Copy of this order may be sent to Secretary, Home (Special) Department and the applicant for compliance/information, as the case may be.

Date: 05.11.2012

Justice S.N. Jha
Chairperson