

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

File No **BHRC/COMP.1390/12**

Case of **JAIRAM YADAV**

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Complaint of the applicant Jairam Yadav son of Parma Yadav – resident of village Ghat Bandhaura (Madhwa Tola) P.S. Vijaipur, district Gopalganj is about his arrest in connection with Vijaipur P.S. Case No.59/12 by S.H.O. Vijaipur P.S. and I.O. of the case P.S.I. Mukesh Kumar in the night of 20.3.2012. The case had been instituted on the same day i.e. 20.3.2012 at 4 PM and the applicant was arrested within hours thereof.

In its order dated 1.11.2012 the Commission noticed that the case had been instituted under sections 147, 149, 323, 341, 379 and 504 IPC all of which except section 379 were bailable. And so far as section 379 is concerned, the superior officers who supervised the case found the allegation to be false, and accordingly charge sheet was submitted under other sections and not under section 379 IPC. The Commission also noticed that the applicant was arrested when his intermediate examination was going on but the SHO/IO paid no heed to his remonstrations. As a matter of fact, his grandmother had died few days ago and the family was mourning her death. His father was in mourning clothings (Uttari) but he too was apprehended and taken to police station. He was later released but only after paying sum of Rs. five thousand. The applicant was sent for judicial custody on the next day. Earlier, at the police station he was abused and assaulted.

In the order dated 1.11.2012 the Commission observed: -

“The Commission is not able to appreciate as to what was the compelling need to arrest the applicant in a case of this nature on the very day of lodging of the case. The Commission has before it umpteen complaints in which accused persons are not being arrested in serious cases of murder, dacoity, rape or the like.”

In the circumstances the Commission issued notice to SHO Vijaipur P.S, S.I. Madan Prasad Singh and the I.O. of the case, P.S.I. Mukesh Kumar who were prima facie conjointly responsible for making the arrest – in terms of section 16 of the Protection of Human Rights Act. Both S.I. Madan Prasad Singh and P.S.I. Mukesh Kumar filed their written defence/show-cause. In the facts of the case, the Commission took the view that the matter should be heard in presence of S.P. Gopalganj. Notice was accordingly issued and matter was finally heard in

presence of the applicant, the officials concerned and S.P. Gopalganj Ms. Natasha Guria on 28.11.2012.

Applicant re-iterated his complaint version. He stated that the local police is putting pressure on him to withdraw this complaint and giving threats to falsely implicate him in cases. He referred to Vijaipur P.S. Case No.183/12 for alleged cutting of tree against the applicant.

Both S.I. Madan Prasad Singh and S.I. Mukesh Kumar took a stand that they made the arrest keeping in view the tension between the two sides lest the situation could have assumed communal colour. According to them, they had the power to make the arrest and in this connection they placed reliance on section 41 of the Criminal Procedure Code.

The Commission is not at all impressed by the defence of the officers. As a matter of fact, S.I. Gopalganj fairly stated that she was in agreement with the observations of the Commission contained in the order dated 1.11.2012. She stated that disciplinary action will be taken against S.I. Mukesh Kumar after obtaining explanation from him. As regards S.I. Madan Prasad Singh, she stated that as he has been transferred to Darbhanga district in the meantime, it is for Sr.S.P. Darbhanga to take action against him. But she would recommend suitable action against him.

As mentioned above, all sections under which the FIR was registered was bailable except section 379 IPC which too was finally dropped at the stage of submission of charge sheet. Nevertheless, in order to appreciate the bona fide of the officers in making the arrest for the only non-bailable offence under section 379 IPC, the Commission looked into the fardbeyan/FIR and it transpired that the only thing stated therein to attract mischief of section 379 IPC was that the informant was carrying sum of Rs.5700 for purchasing articles in Vijaipur bazaar when he was relieved of the money by the applicant and five others after being assaulted.

The Commission would observe that such an omnibus allegation as taking of cash, wrist watch or some similar personal effect is usually made in the fardbeyan/FIR so as to make the case non-bailable and cognizable. This is what was apparently done in the instant case. The Commission would observe that sometimes such allegations are made in the fardbeyan/FIR at the instance of the police officer with some oblique motive. Be that as it may, thankfully, the superior officers did not accept the allegation of theft to be true and dropped the section in the charge sheet.

Another thing which the Commission would like to highlight is that the applicant was arrested in the midst of his on-going intermediate. From the

schedule of Uttar Pradesh Secondary Examination Board, Allahabad read with the applicant's admit card for the intermediate examination 2012 it appears that the examination in the relevant subjects was fixed on 19<sup>th</sup>, 21<sup>st</sup>, 31<sup>st</sup> March, and 2<sup>nd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> April 2012. As seen above, he was arrested in the night of 20.3.2012. The next paper [Economics (2<sup>nd</sup> Part)] was on 21.3.2012. In view of the on-going examination, in the normal course, the officers should have shown better understanding and avoided arresting the applicant. Indeed, keeping in view the kind of allegations in the complaint, there being no criminal antecedents or background of the applicant, it was not at all necessary to take him into custody. The Commission is inclined to believe that the extreme step of arresting the applicant was taken in bad faith – at the behest of and in collusion with the informant of the case or his family. One can take notice of the fact that even those who are in custody – as an under trial or convict – are allowed to appear in the examinations but here was a case where a boy was taken into custody in the midst of examination – in a case which did not warrant arrest at all.

As a matter of fact, as seen above, the applicant's grandmother had died few days ago. Her shradh was still to be performed and the whole family was in a state of mourning. However, all this did not matter to the officers the officers who took the applicant and his father – who was in his 'uttari' to the police station. Even if the allegation of realising rupees five thousand is ignored, it would not reduce the gravity of their misconduct.

As observed in the earlier order there are cases galore in which police do not care to make arrests notwithstanding the gravity of the case, and do custodial interrogation which is part of investigation and sometimes in the interest of fair and complete investigation. The circumstances suggest that the officers were determined to take the impugned action. The Commission is of the view that the officers, namely, S.I. Madan Prasad Singh and P.S.I. Mukesh Kumar deserve to be suitably punished. Indeed, the case not only warrants disciplinary action, they should also pay monetary compensation to the applicant for the physical abuse and mental trauma which he suffered at their hands. In the facts and circumstances, the amount of compensation is quantified at rupees twenty-five thousand each to be paid to the applicant.

The Commission accordingly directs S.P. Gopalganj and Sr.S.P. Darbhanga to initiate disciplinary proceedings against, respectively, S.I. Mukesh Kumar and S.I. Madan Prasad Singh (now posted at Keonti P.S.) and take the matter to its logical end in accordance with law. They are also directed to deduct the sum of

rupees twenty-five thousand each from the salary of the said officials, and pay the same as compensation to the applicant.

Compliance report be submitted by 8.2.2013.

Put up on 11.2.2013 awaiting compliance report.

Copy of this order may be sent to (i) S.P. Gopalganj (ii) Sr.S.P. Darbhanga, (iii) S.I. Madan Prasad Singh, the then SHO Vijaipur, district Gopalganj P.S. – now Keonti P.S., district Darbhanga, (iv) S.I. Mukesh Kumar, the then P.S.I. Vijaipur P.S. and (v) the applicant for compliance/information – as the case may be.

Date: 5.12.2012

Justice S.N. Jha  
Chairperson