

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

File No **BHRC/COMP.** 2028/12

Case of **AVINASH PRASAD SINGH**

The complaint of applicant Avinash Prasad Singh – a resident of village Nabinagar, P.S. Bakhtiarpur, District Saharsa – is about his illegal detention.

The applicant was an accused in Simri-Bakhtiarpur P.S. Case No.171/10 in which he was discharged on 23.5.2012. It so happened that he also figured as accused in another case at Karnpur (district Ganganagar) in the state of Rajasthan registered as GR No.96/97 under sections 323, 325 and 441 IPC in court of ACJM in connection with which production warrant had been received at Saharsa jail on 3.8.2011 where he was lodged, for his production in Karnpur Court on 30.8.2011. The Saharsa Court – which was in seisin of Tr. No.94/11 arising from Simri-Bakhtiarpur P.S. Case No.171/10 – by order dated 6.8.2011 allowed him to be taken to Karnpur but this did not happen.

Despite his discharge in Simri-Bakhtiarpur P.S. Case No.171/10 the applicant remained in jail – apparently in view of the fact that he was wanted in the other case in the Karnpur court even though production warrant had lapsed. Be that as it may, on the application of the applicant, filed on 1.6.2012, ACJM Karnpur issued a fresh production warrant on 14.6.2012. A police party comprising of an ASI and two constables of Rajasthan Police came to Saharsa with the production warrant on 22.6.2012 but Superintendent District Jail, Saharsa did not hand over custody of the applicant to them. The applicant was finally taken to Karnpur by the Saharsa police on 15.7.2012 and he was produced in Karnpur court on 20.7.2012. On his production in the Karnpur court he was released.

On consideration of the report submitted by the Jail Administration the Commission vide order dated 31.1.2013 observed that prima facie the applicant deserves to be monetarily compensated for violation of his human rights and the amount recovered from the salary of the Superintendent District Jail Saharsa, who deserved to be punished departmentally.

Notice was thus issued to Superintendent, District Jail Saharsa Sri Satya Narayan Singh in terms of section 16 of the Protection of Human Rights Act, and he accordingly appeared and filed his written defence. The matter was heard at length in presence of the applicant who appeared along with his father and Sri Satya Narayan Mandal, Superintendent, District Jail Saharsa on 1.3.2013. Sri U.K. Sharan, AIG Prisons was present on behalf of IG Prisons.

Sri Mandal submitted that the police party of Rajasthan Police was not 'armed' or and did not produce 'command'. Secondly, reservation had already been made in train for journey by the police party of Saharsa police and the applicant on 15.7.2012. For these reasons, he declined to hand over applicant's custody to the police party.

As observed in the earlier order dated 31.1.2013 the status of the applicant as on 23.5.2012 and onwards was that he stood acquitted/discharged in Simri-Bakhtiarpur P.S. Case No.171/10 and therefore there was no justification to detain him in Saharsa Jail except his impending production in Karnpur court in the State of Rajasthan. Indeed, the Session court in seisin of the case had earlier in August 2011 allowed the applicant to be taken to Karnpur (Ganganagar) on the condition that he be returned before the date fixed in the case. This condition was used as a ploy for refusing the custody of the applicant to the Rajasthan police at that stage. The Commission would observe that conditional order of that kind is usual and could not be a valid ground to deny the applicant being taken away pursuant to a valid production warrant. Had the applicant been taken to Karnpur earlier he would have been released by the court concerned as it happened on 20.7.2012 because the offences were minor in nature.

In any case, after his acquittal in Simri-Bakhtiarpur P.S. Case No.171/10 it was not the business of Jail Superintendent to keep him in detention except that he had to be produced in another case at a different place, and yet he refused to hand over applicant's custody when the police party came with a valid production warrant on the ground of security. The Commission is inclined to think that what really weighed with the authorities was the fact that the tickets had been booked for train journey and reservation had been made. The plea that the police party was not armed or that they did not have the 'command' is not borne out by the records. In any view, having been acquitted in the case in connection with which applicant was lodged in the jail at Saharsa, it was totally unjustified on the part of the Jail Superintendent to insist on the fact that the police party was not armed. This indeed was the concern of the Rajasthan police which was in possession of the valid production warrant and had come to take applicant's custody. The case of the applicant is that demand of bribe of Rs.3000 was made by the Jailor but the applicant did not oblige and he therefore managed to stall handing over his custody to the Rajasthan Police.

In the circumstances, the Commission is satisfied that the detention of the applicant in Saharsa Jail beyond 28.5.2012 and in any case beyond 22.6.2012 was unjustified and an abuse of authority – resulting in violation of applicant's human rights for which he deserves to be monetarily compensated. In the

circumstances, compensation of rupees fifty thousand is awarded to the applicant recoverable from salary of Satya Narayan Mandal, Superintendent, District Jail Saharsa.

Apart from monetary compensation Sri Mandal deserves to be punished departmentally for his acts of omission and commission. IG Prisons accordingly should consider initiating departmental proceeding against him.

Compliance report as above be submitted within six weeks.

Put up in the last week of April 2013 awaiting compliance.

Copy may be sent to (i) applicant (ii) IG Prisons and (iii) Sri Satya Narayan Mandal, Superintendent, District Jail Saharsa for information and compliance as the case may be.

Date: 04.03.2013

Justice S.N. Jha
Chairperson