

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

File No **BHRC/COMP. 3692/11**

Case of Jabuddin Khan

Applicant Rakesh Dubey – an Advocate, has filed this complaint complaining of illegal arrest and detention of Jabuddin Khan and the matter was finally heard today in their presence. S.P. Khagaria Sri Shiv Kumar Jha was also present.

It is the admitted position that Jabuddin Khan son of late Allauddin Khan was arrested in execution of permanent warrant of arrest in connection with Pirbahore P.S. Case No.15/96 – registered against one Ziauddin Khan son of Salauddin Khan. In other words, Jabuddin Khan was not an accused in the case but he was wrongly arrested and remained in detention until his release on P.R. bond after four months and ten days.

It may be mentioned that not only the father's name but the particulars of the residence viz. village address of Ziauddin Khan – as noted in the FIR/charge sheet/case record – are different from those of Jabuddin Khan.

Sri Rakesh Dubey referred to the findings of the Judicial Magistrate First Class Patna Smt. Rashmi Prasad dated 18.12.2010 in GR No.176/96 pertaining to Pirbahore P.S. Case no.15/96 by which Jabuddin Khan was released on P.R. bond and the Magistrate's final order dated 5.7.2011 by which he was discharged from the liabilities of the PR bond and set free, concluding that "the petitioner is not an accused in this case". It is important to mention that informant of Pirbahore P.S. Case no.15/96 Aftab Ahmad Khan and his wife Rashda Nilofer Begum but the Investigating Officer of the case Smt. Asha Thakur were

examined as court witnesses – before the Magistrate passed the said order dated 5.7.2011 – all of whom categorically stated that Jabuddin Khan was not the accused; the accused was Ziauddin Khan, a different person.

It may be mentioned here that Pirbahore P.S. Case 15/96 was registered on the complaint of Aftab Ahmad Khan about theft of cash and jewellery by his domestic help Ziauddin Khan aged about 20-21 years old. The victim Jabuddin Khan is a retired employee of the Eastern Coal Fields Ltd. in his sixties. He produced proof of being a retired employee of Eastern Coal Fields Ltd, such as certificate of the Mines Vocational Training, copies of the medical reports, Identity Card of the Eastern Coal Fields Ltd, salary sheets etc.

It is not necessary to make any probe on the point of identity of the applicant in view of the clear finding of a Judicial Magistrate – that Jabuddin Khan was not the accused in the case.

Sri Shiv Kumar Jha, in the facts and circumstances, did not sound any note of dissent. He submitted that permanent warrant was received by Maheshkoot P.S. from Pirbahore P.S. Patna and there was no way in which the identity of the person could be established. He also stated that the name/description of the village of the real accused, Ziauddin Khan, was not correctly mentioned in the permanent warrant of arrest which caused some confusion. In fact no village by name “Shailbhar Jhikatiya” existed. He however agreed that if the name of the village was not correct the warrant should have been returned to Pirbahore P.S, and Jabuddin Khan could not have been arrested. It is the case of the applicant that at the time of arrest he not only protested and disclosed his official background of being in government service but the officer did not pay any heed to his remonstrations.

It transpired that the officer who arrested Jabuddin Khan was S.I. Pramod Kumar Singh – then posted at Maheshkoot P.S. in December 2010. He has since been transferred to another district from Khagaria. Sri Shiv Kumar Jha is not aware of his present posting.

The Commission has no manner of doubt that for his illegal arrest and detention resulting in deprivation of his right to liberty for as long as four months and ten days, Jabuddin Khan is entitled to be compensated. Sri Rakesh Dubey submitted that he suffered not only mental trauma and humiliation but real consequential loss too. He had to fight the case, examine witnesses to prove his innocence; the marriage negotiation of his daughter broke, his son's education was disturbed and so on. All this caused mental trauma but real tangible loss and he should be adequately compensated. The Commission would observe that the loss and suffering of Jabuddin Khan cannot be reversed; monetary compensation however may give him some solace. In the facts and circumstances, the Commission would award compensation of rupees two lakh.

The Commission accordingly directs Principal Secretary, Home Department, Government of Bihar to pay compensation of rupees two lakh to Jabuddin Khan son of late Allauddin Khan, resident of village Salim Nagar P.S. Maheshkoot, district Khagaria within a period of six weeks and submit compliance report to this Commission.

It is made clear that while compensation is to be paid by the state at the first instance, it has the liberty to recover the amount from the officer concerned, namely, S.I. Pramod Kumar Singh – then posted at Maheshkoot P.S. district Khagaria, in accordance with law.

Copy of this order may be sent to (i) Principal Secretary, Home (Special) Department (ii) S.P. Khagaria and (iii) the applicant.

Date: 26.08.2013

Justice S.N. Jha
Chairperson