

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

File No **BHRC/COMP.** 3510/12

Case of **LALAN MANDAL @ LALU MANDAL**

Complaint of applicant Rajiv Kumar Singh – an Advocate of Bhagalpur Civil Court – is about the arrest of Lalan Mandal @ Lalu Mandal despite the order of anticipatory bail by the Sessions Judge.

Lalan Mandal @ Lalu Mandal – an accused in SC/ST (Bhagalpur P.S. Case No.1/12) – applied for anticipatory bail before the Sessions Judge Bhagalpur in ABP No.1204/12 on 18.6.2012 which was allowed on 22.8.2012. The court passed the usual order to the effect that in the event of arrest or surrender in the court below, he shall be released on bail on furnishing bail bonds. As it so happened, he was arrested by the police in execution of the warrant of arrest on 30.8.2012. On 31.8.2012 an application was filed in the court of CJM Bhagalpur informing him about the order of the Sessions Judge granting anticipatory bail. As the order had not been communicated to the court below i.e. the court of CJM, a so called certificate on the reverse of "Application for Information" (in printed format) was produced in support of the application. The certificate/information runs as follows:- "Sir, the petitioner Lalan Mandal has been granted anticipatory bail application on 22.8.2012 vide ABP No.1204/12 dated 18.6.2012 in SC/ST (Bhagalpur) P.S. Case No.1/12. Sd/-(Illegible), Steno to District Judge office Bhagalpur, 31.8.2012." The case of the applicant is that CJM Bhagalpur did not accept the said certificate/information and remanded the accused to judicial custody.

On 1.9.2012 application was filed seeking permission to file bail bonds. The CJM however did not accept the prayer on the ground that the order of the Sessions Court had not been received. The order dated 22.8.2012 was finally received on 6.9.2012. The case of the applicant is that when the matter was mentioned before the CJM he orally observed that since the applicant has been arrested, an amended order may be obtained from the Sessions Judge. In the circumstances, application was moved by the Sessions Judge which was disposed of by order dated 7.9.2012. The Sessions Judge observed that "the learned CJM is expected that he would honour the order of this court without any further direction in this matter." At this stage on 7.9.2012 the bail bonds, furnished by the accused, were accepted and he was released.

The order granting anticipatory bail was subject to the accused furnishing bail bonds. His arrest by the police on 30.8.2012 therefore, strictly speaking,

cannot be said to be illegal or arbitrary. It may be recalled that the application seeking permission to file bail bonds was submitted on 1.9.2012. CJM Bhagalpur also ex facie cannot be faulted for declining to accept the bail bonds since copy of the order dated 22.8.2012 granting anticipatory bail to the applicant had not been received till then. It was received only on 6.9.2012. On 7.9.2012 the bail bonds were accepted and the accused was released.

The applicant who appeared along with Sri S.K. Diwakar, another Advocate, on 16.5.2013 took the plea that the certificate/information having been produced before the CJM, he should have honoured the same – as is the practice – and accepted the bail bonds on 1.9.2012. When the Commission wanted to know if there is any rule under which such certificate could be granted, it was submitted that such certificates are being granted in the whole state and honoured by the courts concerned. The applicant alternatively submitted that even if the certificate did not have any value, there was no justification in communicating the anticipatory bail order after 15 days to the court of CJM situate at the same place.

The Commission shares the concern of the applicant about the belated communication of anticipatory bail orders causing avoidable prejudices to the person concerned. In the instant case itself, had the order dated 22.8.2012 been communicated without any delay, the accused would have been released on bail – of course, on his furnishing the bail bonds – on 30/31.8.2012 itself. As a matter of fact, CJM would not have issued the process for arrest on 24.8.2012. By reason of the belated communication, the accused had to remain in jail for about seven days. It is true that he offered to furnish bail bonds on 1.9.2012 but as it actually happened, even if he had submitted the bail bonds earlier, it would not have been accepted for want of copy of the order of the Sessions Court. Violation of his human rights is thus writ large.

However, power of superintendence and control of the subordinate courts vests exclusively in the High Court and having regard to the constitutional scheme, the Commission is not inclined to pursue the matter. In the circumstances, all that this Commission can do is to send copy of this order to the Registrar General, Patna High Court for such enquiry and action as may be considered appropriate.

Let this be so done.

Applicant may be informed of this order.

File is thus closed.

Date: 20.05.2013

Justice S.N. Jha
Chairperson